

INTERNATIONAL CLIMATE FRAMEWORK IN THE MAKING: THE ROLE OF THE BASIC COUNTRIES IN THE NEGOTIATIONS TOWARDS THE PARIS AGREEMENT

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Abstract

This paper focuses on the analysis of the multilateral regime of climate change from the perspective of the regimental complex. It examines the role of the BASIC countries in the signing of the new climate agreement in Paris and its relationship with traditional powers like the United States and the European Union. The role of the BASIC countries has been crucial to close a new deal, and in exchange for that power, the group has accepted two conditions: a bottom-up agreement and nationally determined contributions as a vehicle for climate action. Similarly, the diffusion of power in the international system means that although the triangle formed by the BASIC-EU-US has been critical to achieving a new climate agreement, other actors also played an important role in the negotiation process of COP 21.

Keywords

Climate change; Regimental Complex; BASIC Negotiations; Paris Agreement

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Introduction

For over four decades, member states of the United Nations have created environmental regimes in order to give an institutionalist response both to the growing challenges in the field and to the scientific predictions, denoting the exacerbation of the degradation of environmental conditions identified and incorporated as a topic on the international agenda since the sixties. Accordingly, several international regimes focused on environmental protection have been created. Regarding solely climate

change, the international architecture is composed of the United Nations Framework Convention on Climate Change (UNFCCC), signed in 1992, the Kyoto Protocol (KP), adopted in 1997 in the third Conference of the Parties (COP3) of the UNFCCC, its amendment in 2012 (COP18, Doha), a series of decisions taken at the Conferences of the Parties (COP) as the highest authority of the UNFCCC, and the Paris Agreement adopted in December 2015 (COP21). The Framework Convention is part of the documents signed in the context of the Earth Summit held in Rio de Janeiro in 1992, together with the Convention to Combat Desertification, the Framework Convention on Biodiversity (CBD), the Declaration on Forests, and the Declaration on Environment and Development. It is a document that establishes a binary view of the world consolidated in its system of annexes, where developed countries must reduce their emissions of greenhouse gases (GHGs) and provide implementation means to enable developing countries to conduct their own climate mitigation actions and adapt to the adverse effects of climate change. This division stems from the greater responsibility of the former in causing climate change that has established itself on the principle of common but differentiated responsibilities (CBDR) and therefore on the leadership role they should play in climate action (Article 3.1. of the UNFCCC).

Despite strong criticism of the KP, its effectiveness and the market mechanisms it established as flexible mechanisms, it meant a concrete step forward regarding the implementation of the Convention and the establishment of an international regime for reducing greenhouse gas emissions to address climate change. It is based on the principles and purposes of the Convention², committing the countries of Annex I to

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² The provisions of the UNFCCC include inter and intra-generational equity, the precautionary and preventive principle, the right to sustainable development, international cooperation, and the principle of common but differentiated responsibilities (CBDR) (Aristegui, 2012:589-590).



targets to reduce and limit emissions during a period which, since Doha, is called the first commitment period (2008-2012, 1st CPKP)³.

However, the relative efficacy of the KP in the contrast between what was committed, which was unambitious for that time, and what was obtained, which was even less ambitious, led to a second commitment period (2013-2020, 2nd CPKP) agreed at the COP 18 held in Doha in 2012, after three significant episodes in the life of the COPs: the failure of the Copenhagen Conference in 2009; the legitimization of the Copenhagen agreements in the Cancun Conference in 2010 and the establishment of the Durban mandate to reach a new agreement in 2015 and, in the meantime, under the slogan of eliminating the implementation gap, constitute a second commitment period.

The Doha amendment is a true reflection of the shortcomings of the regime. Illegitimate since its inception due to the lack of quorum in terms of its participants, evidenced by the low percentage of covered global emissions, with a number of ratifications even more limited in 2015, reducing the concept of implementation gap to the mitigation of climate change and that despite the reduction commitment of 20 to 40% to 1990 levels, it will have effective consequences on the limitation and reduction of global emissions. Whereupon, neither the first nor the second period were convincing to achieve the purpose. In practice, they stimulated a set of market measures as an escape to commitments that satisfied two groups of countries: those that benefited from carbon markets through relationships with their own regional and national markets, like the European Union (EU), and those that benefited as recipients and captured the CDM (Clean Development Mechanisms), such as China, India, Brazil, and Mexico, which accounted for 75% of projects⁴.

Regarding the actors of the global climate architecture, it can be said that, given the structural conditions of the international system after the fall of the Berlin Wall, Europe and the United States (US) were the main actors in the climate regime during the nineties and the beginning of the new millennium. However, due to domestic conditions and the advent of the George W. Bush administration, the US withdrew from the KP without approving its signature, leaving the EU as the new and undisputed leader in terms of climate change at multilateral level⁵. This allowed it to shape the regime and give it a nature that suited its needs and interests at the cost of acting as its locomotive and promoter. This is the reason why at the beginning of the new millennium, when the entry into force of the KP was already doomed to fail, the EU agreed with Russia its ratification in exchange for recognition as a market economy that would allow it to join the World Trade Organization (WTO).

However, despite the relevance of the EU, it can be said that in 2009 it could

not arrange, through its leadership, for the signing of a new agreement following the end of the 1st CPKP. In the COP15 held in Copenhagen in 2009, the EU paid the price for a resounding failure in its quest to reach a new ambitious agreement in terms of reducing

³ These goals were set regarding 6 types of GHGs: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆).

⁴ Expand in <http://www.cdmpipeline.org>

⁵ There is extensive literature regarding the European climate leadership. By way of exemplification, we only mention the following contributions: Paterson, 2009; García Lupiola, 2009; García Lupiola, 2011; Lopez Lopez, 2002; Perez de las Heras, 2013; Fernández Egea y Sindico, 2007; Barrera López, 2010.



emissions according to a logic the United States called "top-down"⁶. The leaders of the US and of the BASIC group (Brazil, South Africa, India and China) acted as the main hitmen, achieving an agreement whose text was different from the one proposed by the EU as the hostess. However, the lack of transparency of the process and the result led to the objection by countries of the ALBA group, which expressed their refusal to endorse a text that emerged on the side of a negotiation process.

Had the Copenhagen agreement been approved in 2009, it would have legitimized the multilateral climate work appropriate for a directory of major emitters that make decisions together. While it is true that the EU, the US and China are responsible for almost 60% of global emissions, a dynamic of this nature could have collapsed the pillars, at least formal, of the international regime.

The BASIC group, as a negotiation subgroup, operates within the Group of 77 and China⁷ and since its inception in November 2009, it immediately stated to be

under the orbit of the G77⁸. Its participation in the negotiation process has acquired a more than significant importance after the Copenhagen Conference, especially as a result of the weakening of the EU leadership and the rejection of the KP by the US and an international order increasingly more convulsed and with multiple actors with relative power. Similarly, the climate regime does not operate according to a zero-sum logic, and the moving of the EU is explained both by dilemmas in the international system and by the EU's internal disputes (Bueno, 2014), which does not mean that the EU has failed to comply and accept that the relative success of the new agreement lies in the consensus among a greater number of voices in which all must yield valuable things.

As was evident at COP15, the role of the BASIC group was crucial to close the new Paris agreement, and in exchange for that power, the group accepted two conditions of the North American climate imaginary: the benefits of a "bottom-up" agreement that allows them to limit their climate action to the internal context with the sole commitment to reduce their greenhouse gas emissions voluntarily - as announced in 2009⁹ - and to join the group of countries that have submitted their intended nationally determined contributions (INDCs).

As a result of the above, the question we ask is: what is the role of the BASIC group in the international climate architecture and what was its position since COP15, with a view to adopting the Paris Package at COP21? How do these aspects relate to the EU and the

⁶ Two of the main arguments advanced by the United States to opt out of the Kyoto Protocol were the illegitimacy of an agreement in which China, the second overall emitter at the time the KP was negotiated, did not participate; and later, that Kyoto was ineffective as it proposed a commitment from the regime to the states that in some cases could not be achieved (top-down approach). Accordingly, each state should establish its own possible climate commitment (bottom-up). The US argued that the regime has been "top-down" until then and that this has been one of the main reasons for its failure, along with the interpretation of the principle of responsibility and the binary view of the world, which, in its view, no longer represented reality. For this reason, it has supported the notion of nationally defined contribution (NDCs) and its registration through flexible bodies as "national agendas" or records as a way of representing what each state is able to do.

⁷ G77 + China is a formal negotiation group comprising 133 countries. Expand in www.g77.org

⁸ The reference to the G77 is present in all the declarations and joint communiques that the BASIC countries have made since the first meeting in November 2009 in Beijing, China. There is a particular effort to highlight that it constitutes a space for cooperation and negotiation within the G77 + China and not outside it (Bueno, 2013:215).

⁹ The Copenhagen Accord does not have a legally binding character, first because it is an agreement reached at a COP (and therefore not an international treaty), but mostly for having had the negative opinion of three countries (Sudan, Bolivia and Venezuela).



US as the main actors? To what extent is the Paris agreement an agreement between the major emitters?

We shall address these questions from the viewpoint of International Relations and its theories as a way to perceive and explain a convulsed and diverse world. In this sense, an institutionalist kind of response is provided, allowing us to reflect on the margins and limits of this theory to explain the phenomenon.

Theoretical and conceptual framework

The concept of international regime within the Theory of International Regimes has two canonical definitions, expressed by the most representative authors: Stephen Krasner on the one hand, and Robert Keohane and Joseph Nye on the other. Krasner (1989: 14) defines international regimes as "principles, norms, rules and decision-making procedures around which actors' expectations converge". Keohane and Nye (1988: 18), outlining a similar definition of this concept, state that international regimes are "procedures, rules or institutions for certain types of activities" that governments create or accept to regulate and control transnational and interstate relations. According to these authors, the emergence of international regimes aims to resolve the shortcomings of the international system providing profits for states. Meanwhile, the first definition broadens the spectrum to another set of actors that are not states and their interests in shaping and maintaining regimes.

The debate on rules enables reflecting, first, about the Convention in terms of its principles, purposes and structure as well as about the distinction provided between Annex I Parties, Annex II Parties and Parties non-Annex I¹⁰, as well as on the KP and its amendment, since they establish certain obligations to be met by Annex I Parties in terms of reduction and quantified limitation of emissions. This institutionalist response considers that both the UNFCCC and the KP and the recent Paris Agreement represent the main pillars of the International Climate Change Regime.

In this regard, Keohane and Ovodenko argue that "institutions reduce transaction costs and uncertainties for governments in their future interactions within a specific conflict area" (Ovodenko and Keohane, 2012: 523). However, even though the institutions help solve information problems (which reduces transaction costs and uncertainties), its creation is sometimes difficult precisely due to incomplete and imperfect data. Accordingly, it is easier and less expensive to maintain international regimes than to create them (Sodupe, 2003: 123). The latter is reflected in the problems behind the creation of the KP and in the difficulty states are facing in achieving a new agreement to replace it. Also, while it was more feasible to obtain an extension of the protocol through the signing of the Doha amendment than making a new treaty on climate change, only 65 ratifications of the 144 required for the entry into force of the amendment have been attained¹¹.

Keohane also seeks to demonstrate that, on its own terms, neorealism is wrong when it theorizes about the inevitability of the existence of hegemony or conflict for the

¹⁰ Annex I Parties are a group of developed countries, Annex II Parties are the OECD countries that must provide the implementation means to developing countries so that they can make their mitigation actions and adaptation to climate change, and non-Annex I Parties are all those not included in the first.

¹¹ Number in May 2016, information available at www.unfccc.int



emergence of an International Regime (Sodupe, 2003: 120). This can be seen in the role played by the EU between 2001 and 2005, when the US announced that it would not ratify the Protocol. The EU undertook to fill the gaps and avoid the failure of the Protocol before it started, belatedly but successfully seeking that other countries ratify it so it could enter into force.¹²

The EU did not often exercise the role of hegemonic actor, perhaps because of its own leadership style, and because it was convinced of the relevance of the rules for attaining its own goals as a Union of States and in the framework of a partnership model guided by the principles of Jean Monnet (Vel0, 2014), it promoted the continuity of the regime that would move its own domestic structure and allow it to have an international leadership position.

Therefore, an international regime can successfully take the necessary steps to reduce transaction costs and uncertainty among states, with or without hegemonic state or conflict that promotes it. This way it will seek to resolve certain shortcomings of the international system and provide profits for the states. However, the resolution of the problems it seeks to address, and its fruits, will depend on the degree of integration. In this sense, Keohane and Victor (2011: 8-9) analyse the international climate regime in the light of the concept of regimental complex that differs from traditional definitions of regimes to the extent that they are analysed as comprehensive regulatory institutions of an international nature usually focused on a single legal instrument. However, there are other highly fragmented systems composed of a set of instruments. For these authors, climate change is an example of the regimental complex since it lies somewhere in the middle of these two extremes. They identify three forces that mark the level of integration or fragmentation of regimes: the diversity of interests, the level of uncertainties and the level of linkage. Greater integration or fragmentation of the results gives incentives to actors to invest in an institution or to seek to multiply it.

Regarding the first force, the authors explain that existence of integrated schemes is expected when the interests of the main and most powerful actors (whether states or not) are similar enough, within a conflict area, which requires the creation of a single institution as the best way to achieved the benefits of cooperation. A strong demand from key stakeholders around a common goal produces an integrated institution without potential rivals.

The level of uncertainties can be seen when the states seek to cooperate in very complex issues with a large number of actors involved, where there may be a high degree of uncertainties about the potential benefits they will receive and the risks they will be exposed to by the resulting regulations.

Finally, the level of linkage within regimes means that many institutions favour the links between conflict areas as a means to increase their scope or extent, encouraging integration. The link between conflict areas would help define the obligations around them for actors in an uncertain space.

¹² The entry into force of the KP was possible in early 2005, due to the provisions of Article 25. It states that its entry into force was subject to the deposit of ratification, acceptance, approval or accession instruments by at least 55 UNFCCC parties, including Annex I Parties whose total emissions represent at least 55% of total carbon dioxide emissions of Annex I Parties corresponding to 1990. This condition was met after the ratification of the Protocol by Russia at the end of 2004.



It should be noted that before the COP15, and since the formation of the Global

Climate System (UNFCCC in 1992), climate architecture showed an alternation of leadership between the EU and the US as major powers of the International System of the Post-Cold War. However, since Copenhagen, a new climate regime that led to the 2015 Paris Agreement began to take shape, in which the powers of the BASIC group played a major role along with the US and the EU.

However, the scattered power of the current international system also showed in Copenhagen, through smaller players like the ALBA countries, that the climate regime is not a directory of emitters. Consequently, since Copenhagen, other subgroups or cooperative structures that promote certainties have been formed. The formation of the LMDC group (Like Minded Developing Countries) that brings together actors such as China and India, but also ALBA, is an attempt by the former to confine the damage occurred at the COP15 to Paris, and, on the other hand, to increase linkages with other actors that share the quest to hold the binary view of the world that promotes the UNFCCC in terms of differentiation. As a result, the LMDC has operated as a tool for damage control, and, in turn, as a means to increase the negotiating margin and level of certainty by two BASIC countries, China and India.

Therefore, in an attempt to get closer to the answers to the questions raised, this institutionalist approach assumes that the role of the BASIC group in the architecture of the climate regime was a determining factor between 2009 and 2015, taking into account the prominent role it played since the Copenhagen Conference (2009). Consequently, the group was a key player with a view to adopting the "Paris Package" at the COP21, becoming a triangle formed by the US-EU-BASIC without whose previous consensus an agreement would not have been reached.

"Common ground" in the triangle

To obtain answers to the above questions, we have analysed the existing relationship between the positions of the BASIC countries, the EU and the US during the period in question. This analysis was made by contrasting the results of the COPs and the Paris Agreement with the positions taken by the BASIC countries in the ministerial meetings held, establishing what demands made by these actors were reflected in the final decisions of each COP (Pascual, 2015) and of the Agreement.

Since we have said that the leadership of the regime has been alternating between the US and the EU, we assume that the COP decisions that led to the Agreement were constructed from a minimum consensus among these actors or "common ground". Therefore, the BASIC countries' demands included in the COP decisions since Copenhagen would be part of the "common ground".

However, one cannot take the interests of the EU and the US as a block. Rather, there are aspects where the BASIC group could converge with one or another actor given the circumstances. We also know that the BASIC itself is not a monolithic entity and that there are important differences among participants regarding the future of the regime and some of its major debates, such as differentiation and how this affects mitigation, making or not new international commitments to reduce emissions. A proof of these differences is the fact that China and India are part of the LMDC, with more *status quo*



views of the international climate architecture and unrestricted support of the binary division of the world.

With respect to the first force identified by Keohane and Victor, one could argue that the similarity of interests between the US, the EU and the BASIC group as to the progress of the climate regime is algid. There are issues where there is greater rapprochement between BASIC countries and the US, or between the EU and the BASIC group, or between the EU and the US, but it is difficult to identify topics they all agree with.

The closest rapprochement or "common ground" was perhaps the concept of nationally determined contributions and intended nationally determined contributions or that the Parties intend to make (NDCs and INDCs), reached in Warsaw at the COP19 after years of debate on differentiated commitments under the Convention and how this would be reflected in the new agreement. Importantly, we see the "common ground" as the lowest common denominator shared by the actors in certain circumstances according to their interests and rival positions, which means that depending on the case there will be one or other more related to that result.

National contributions respond to the convergence between the US and the BASIC group in the "bottom-up" view of the process, and in what way each Party should be able to determine for itself the effort it is willing to make, provided this does not mean a constraint from the regime that is internationally enforceable, as the Kyoto commitments were. While the EU prefers "top-down" commitments or contributions that allow it to distribute efforts within its own structure of 28 members, it has accepted this common denominator to the extent that it provides widespread climate action beyond the limits of Annex I countries.

Registration of contributions in annexes, national agendas, electronic records and other similar options were one of the debates between key actors and limit the flexibility of the contribution of the Parties. That was another point of some convergence between BASIC countries and the US, whereas the EU preferred a system of annexes similar to that of the Convention, with the former arguing that a flexible system should be adopted to enable advancing the contribution (thinking that the advance would be forward and without backsliding). In the Paris Agreement the "common ground" has been a public record kept by the Secretariat of the UNFCCC that allows a flexible and forward moving approach rather than a static mode as in the annexes.

In addition to registration, another central aspect of the INDCs/NDCs is what elements they cover and in what sense they constitute, or not, an international commitment, especially mitigation. The EU argued that with registration, whether in annexes or in a record of the INDCs, they should become NDCs and therefore international commitments to reduce emissions, focusing on mitigation. The latter aspect was shared by the US, but not regarding the question of commitment, since that country has defended the nationally determined and voluntary nature of contributions.

Accordingly, what was at stake in these debates was differentiation, in the sense that if NDCs were to assume an international commitment, differentiation would lose its traditional meaning¹³. If, in addition, the NDCs focused exclusively on mitigation,

¹³ By traditional meaning we refer to the binary division of the world whereby developed countries have mandatory mitigation commitments and developing countries have not.



differentiation would come to an end, and, above all, self-differentiation would triumph. The Paris result denotes that contributions will remain voluntary. Furthermore, it shows that in terms of mitigation, differentiation persists, in that developed countries should include goals for quantified and absolute emissions and in the case of developing countries, their mitigation efforts tend to present goals for reducing and limiting emissions. Furthermore, Article 3 acknowledges NDCs as the vehicle of climate action that includes all the elements and not only mitigation.

Another vital aspect of the negotiations is linked to transparency, especially in terms of action. The EU has pushed forward, as a vestige of the "top-down" strategy, the approach for a unified framework of transparency without differentiation. Other proposals were advanced, such as the one by Mexico, for a transitional system to be established. The US, meanwhile, agreed that transparency should be unified as a form of dissolving the binary differentiation. In the Paris Agreement, transparency does not advocate an explicit unified system but it does not make it clear in what sense the existing dynamics can be supported. In addition, the flexibility mentioned in Article 13 refers to the different capacities and not to the responsibilities, which changes the perspective from which communication is analysed and the monitoring, review and verification (MRV) are performed.

Until the Paris Conference, contributions were grey areas, although most

Parties presented them before December and entered the aggregate effect report conducted by the Secretariat. First, the role that the implementation means would have in a structure focused on contributions was unknown, since no developed country had included this aspect in their INDCs. In addition, the role of the adaptation component of the INDCs of developing countries was not clear, and how some countries like the EU and the US, which want to make them internationally enforceable and turn them into making commitments, would achieve it was also not evident. After COP21, it can be said that the NDCs became the vehicle for climate action and that it could include all elements. However, the fact that it is voluntary, as the US proposed, is a price paid by developing countries in exchange for not having mandatory reduction commitments, giving away the implementation means. This is evident in countries such as China and Brazil, which did not express the need for external implementing means their INDCs.

The underlying issue and, therefore, the greatest obstacle to achieving greater similarity of interests among the major players has been the BASIC countries' defence of the CBDR principle against demands for greater commitment, mainly regarding mitigating, by developed countries.

Accordingly, differentiation is the bulwark that generates the dual membership of countries like China and India of the BASIC group and of the LMDC. While the BASIC countries agreed to make voluntary commitments as an entry price of their leadership in Copenhagen, those countries have remained united in not renouncing differentiation.

Rather, the members have different views about the concept of differentiation, with China and India presenting a strategy more likely to maintain the *status quo* of the Convention, and Brazil and South Africa proposing other alternatives.

The concentric differentiation of Brazil is one of these options. Finally, while the BASIC group keeps together in giving in to differentiation, the Paris Agreement ended with a partial modification of this principle in order to achieve greater



similarity of interests that enables a climate agreement. This is reflected in Article 2, paragraph 2 of the CBDR Agreement in the sentence "in the light of different national circumstances", which means that the binary division of the world no longer exists and there is room for certain nuances. In fact, in what refers strictly to mitigation, the CBDR principle, with the inclusion of national circumstances, applies in Article 4 paragraph 3 when it establishes that the NDCs shall reflect "the greatest ambition possible" taking into account this principle.

The diversity of interests around the concept of differentiation is not only evident in mitigation commitments, but also as regards the implementation means. So much so that an area where a satisfactory communion of interests is not achieved is climate financing. This does not serve only the interests of the actors who make up the triangle. There is a communion of interests between the EU and the US not to give in on this. However, even though from the discursive perspective and its membership of the G77 the BASIC group called for implementation means, in fact this issue is not a real priority for the group. Climate financing is a flag in the developing world and BASIC countries took it as their own, especially as a discursive tool.

Similarly, shortly before the Paris Conference, it had been made clear that if the issue of climate finance was not corrected – at least in part - the agreement would not be possible from the perspective of the G77. This is why the EU fulfilled its pledges in the Green Climate Fund (GCF) to reach the target of 10 billion dollars, since it realized that the progress of the Fund in October was vital as a political sign before the COP.

Not the US, which is the only country that did not fulfil its promise, alleging disagreement within the US Congress. The capitalization of the 10 billion dollars Fund was barely reached in June 2015. However, there is still a long battle over the remaining amount to reach the 100 billion committed in Cancun in 2010. Paris and Lima, as hosts, announced at the informal ministerial meeting in Paris after the ADP 2.10 meeting (September 2015) that the OECD had commissioned a report on climate finance. This report tends to show that the developed countries have provided 60 billion annually in 2013 and 2014¹⁴.

Consequently, there were two key reports before the COP that sought to mobilize the content of the agreement: the report on the aggregate effect of the contributions made by the Secretariat of the Convention and the report on climate finance made by the OECD-CPI. Mitigation and financing were the political keys in Paris.

In terms of mitigation, we have said that the differentiation was maintained and has been the key factor for BASIC countries to give way in other claims. In terms of funding, Article 9 recognizes that developed countries are the ones that must assist developing countries in both mitigation and adaptation. It must be stressed that this is representative in the sense that, in other sections of the Agreement, it is not established who will provide the implementation means. Also, the role of public capital is recognized, albeit not as exclusive or principal. Another significant issue is the recognition of the importance of donations for adaptation and the need for developed countries to communicate the support provided and mobilized through public interventions on a biennial basis.

Moreover, technology is an important pattern of discord among actors like India and the United States, especially as regards Intellectual Property. Proof of the diversity of

¹⁴ Expand in <http://www.oecd.org/env/cc/Climate-Finance-in-2013-14-and-the-USD-billion-goal.pdf>, accessed in October 2015.



interests and of the difficulty in achieving a "common ground" is that the various drafts of documents prepared by the Co-Chairs of the ADP barely include a paragraph in this area, even with the mandate that the Durban elements should be included in a balanced way.

In addition to the UNFCCC as the primary forum for addressing climate change at multilateral level, the issue has been addressed in other forums and international negotiation spaces, acting, in some cases, as rivals of the International Climate Regime and in other cases as a follow-up. We say this for two important reasons. First, this situation shows factually, according to the theory adopted, the weakness of the integration of the regime as the only institution where issues related to climate change are discussed. Second, and as a consequence of the first, the main actors have sought to endorse and strengthen their positions especially in economic and trade forums that not only aim to discuss issues alien to climate change, but that are forums where principles as the CBDR do not apply. Examples of these institutions that act as rivals of the International Climate Regime (which takes place within the framework of the UN) include the G20, the G8+5 Climate Dialogue and the Major Economies Forum (MEF).

The United Nations' firm intent, supported by the EU, to convert environmental dialogues into an expanded forum is also well known, such as the attempt to merge the three Rio Conventions: the UNFCCC, the Convention to Combat Desertification and the Convention on Biodiversity.

Regarding the uncertainty or the level of uncertainties, they were present in the regime from the outset. Some examples include: the large number of actors involved in the international climate negotiations, the voluntary reduction commitments agreed in Copenhagen, and again the INDCs.

On the one hand, it is true that the BASIC group achieved, from its adherence to voluntary commitments, a reduction in the level of uncertainty regarding mitigation actions to achieve the overall goal of Cancun to avoid an increase in temperature exceeding 2 degrees Celsius. However, at the same time it caused an increase in the level of uncertainty since it opened the door to developing countries having to make commitments to limit or reduce by changing the rules of the CBDR principle and the binary view of the world. In addition, despite the BASIC group not failing to declare that the 2015 agreement should be in line with the principles, rules and structure of the UNFCCC, especially emphasizing the CBDR, with the Agreement the problem of how to interpret the new phrase "in the light of different national circumstances" arises, not only for BASIC countries but also for other emerging countries.

Other countries had made voluntary commitments previously, such as Argentina in 1998 the at COP 4 held in Buenos Aires. At that time, countries like China not only strongly opposed but questioned Argentina's presidency of the COP and its legitimacy in the role to make a commitment of that nature, contrary to the position of the G77 and China.

A decade after that episode, the middle powers of the BASIC countries were faced with the challenge of paying a price for their leadership and for being part of the group of major emitters. When the time to choose came, voluntary commitments constituted an acceptable small fee that allowed them to play a leading role in Copenhagen.

On the other hand, the INDCs are the next step when reducing uncertainty under "bottom up" rules. The contributions would reduce the uncertainty in



the same way that voluntary commitments do, inasmuch as they provide assurance to the global goal stipulated in Paris of "below 2°C and make efforts to reduce temperature increase to 1, 5°C".

It was expected that the "aggregate effect" report of the Secretariat of the UNFCCC would shed light regarding the collective ability to achieve this goal, and at least not to exceed the 2°C. However, it has been shown that the contributions are insufficient and place us in a world closer to 3°C. For the system of contributions not to fail before it starts, the facilitating dialogue scheduled for 2018 in Decision 1/CP.21, paragraph 20, will play a major role. This dialogue will be the space for reviewing the INDCs that the LMDC sought to avoid at any cost (ex-ante review). Similarly, in the context of the gains in Paris in other matters, China in particular gave up this point.

Accordingly, the level of uncertainties is very high, to the point that the KP system did not work, the same applying to the system of the contributions to date. Perhaps both the EU and the US expect the market mechanisms set out in Article 6 to act as incentives to increase ambition.

The fact that almost all Parties and all major emitters have submitted their contribution helps reduce uncertainty. In fact, by the 1 October deadline established by Decision 1/CP.20, 144 Parties had submitted their contributions, while some ALBA countries were among the absentees¹⁵. By January 2016, 160 Parties had submitted their INDC and it is noteworthy that Venezuela is one of them.

The quest of BASIC countries like Brazil and South Africa to reach middle ground between the positions of the EU, the US and the LMDC tends to reduce uncertainty as they promote greater possibilities to reach an agreement in Paris. However, some of these measures are not well received by developing countries which, unlike those countries, would be involved in similar GHG mitigation commitments without being part of the list of the largest emitters. For example, the concentric differentiation of Brazil places the developing world, including BASIC countries, in the second circle, leaving out only the small island states and the LDCs. In fact, finally this is quite similar to the Paris result, although the second circle obligations have been reduced significantly as a result of the action of China and India.

With regard to the gap, not only in terms of mitigation to which science refers constantly, but also of the gap in terms of implementation means, it is worth mentioning that there is uncertainty before and after the post-2020 regime. The gap is a climate debt towards the most vulnerable countries prior to the new agreement. This is why the so-called pre-2020 Workstream 2 ambition is as important as the post-2020 period. As the climate commitment widens, differentiated debt will increase. To reduce this gap, treatment of the pre-2020 period should leave the facilitating context attributed to it by some of the Parties. Reducing emissions and compliance with clear roadmaps in all elements and especially in terms of support are indispensable.

As for the pre-2020 ambition, the Decision 1/CP.21 includes: an invitation without differentiation to all parties to adhere to the MRV system linked to mitigation; the voluntary cancellation of emission reduction certificates by any actor; the importance of transparency in the use of mechanisms to make the KP more flexible; strengthening the

¹⁵ The INDCs can be accessed in <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx>



technical review process of actions with high potential for mitigation (TEPs) involving various actors; increased participation of the financial and technological mechanism of the Convention in the TEPs system; the importance of achieving a roadmap on the commitment of the 100 billion made in Copenhagen by developed countries; the Lima-Paris Action Agenda, which includes the participation of a variety of actors and the high-level involvement and inclusion of the TEP-A, which are technical review processes linked to adaptation conducted by the African Group, among others.

The analysis of the debates of the pre-2020 ambition during 2014 and 2015 shows that the strengthening of TEPs, the involvement of non-state and private actors and high-level events constituted what both the EU and the US called "common ground". However, these aspects were not sufficient for the other subgroups. This required negotiating the inclusion of TEP-A by the African Group, and the mention of implementation means raised by the LMDC, which had introduced the "Accelerated Implementation Process" (AIP) as a proposal in financing and technology, of which the decision shows almost nothing.

Although the pre-2020 ambition has increased in scope, as today it includes almost all elements, uncertainty is still present as the implementation means are not clear and the TEP-A are not clear when compared with the results that the same process had on mitigation.

Another point where the degree of uncertainty in the international climate regime can be measured is financing. As stated previously, the issue of climate finance pre and post 2020 has been and continues to be a point of conflict that generates uncertainty for donors, given the macroeconomic conditions of the International System. It also creates uncertainty for vulnerable countries whose climate action, especially undergoing adaptation, depends on these funds. In this regard, and speaking particularly of the GCF, since Copenhagen the BASIC group is demanding a guarantee and a roadmap regarding the 100 billion dollars formally committed in Cancún for developing countries.

Finally, in relation to the mitigation overall goal, we can name the low level of ambition shown by the developed countries in relation to the leadership they must assume under the Convention, and also with respect to what was agreed at the KP at its first and second commitment period, and much more in Paris, where not even quantified commitments were made. While the mitigation levels suggested by the IPCC are between 25%-40% by 2020, and between 40% and 70% by 2050, this has been associated with the top-down logic and therefore not addressed in the Paris Package.

In addition, the coercion exercised by the United States in the closing ceremony of the COP21 requiring the Secretariat of the Convention to change the word "shall" with "should" in terms of the leadership of developed countries in climate action in Article 4.4 has demonstrated the more conservative and more reluctant side in assuming the costs of such leadership.

The emergence of the BASIC group in international climate negotiations increased linkages within the regime, favouring the third force identified by Keohane and Victor. From the perspective of the authors, the existence of links in certain conflict areas encourages the integration of an international regime.

The increased links between the main actors of the negotiation process was evident when contrasting the BASIC countries' demands at their ministerial meetings with the results of the COP and the Paris Agreement, manifest in decision-making. From this contrast one



observed that there was a strong degree of linkage with regard to the Durban Platform. During its meetings in 2010, ministers of the BASIC countries stated that the Bali Roadmap should remain the basis for negotiations (also respecting the negotiation process in two ways: the AWG-LCA on the one hand, and the AWG-KP on the other). However, at ministerial meetings number 10 and 11 that took place in 2011, after COP 17, they gave their support to the Durban Platform stating that they recognized it as an opportunity to achieve a strengthened, equitable, inclusive, and effective Climate Regime. Thus, the Platform established a high degree of linkage between the US, the EU and the BASIC countries, since it encouraged a new target for the agreement that would replace the KP, in a single-way negotiation process (either the AWG-DPA or the ADP) that also would replace the previous two-way process proposed at the Bali Roadmap.

Likewise, the BASIC group managed to make important productive links (especially with the EU), by participating in the delineation of II PCPK and by giving greater political impetus to the GCF. In the first case, the BASIC had already assumed the position in favour of an extension of the KP at its first meeting in 2009. Also during the 2011 meetings it had stated that its establishment was vital for a positive outcome of COP 17. In this sense, there was a focus on the understanding between the EU and the BASICs focuses, as we have said before, the EU was the most interested in extending the KP, due to a set of reasons, including its own mitigation commitments top-down process as regards the regional ETS emissions market and its relationship with the mechanisms of the KP.

Similarly, the role of the BASICs also favoured the creation of the Warsaw International Mechanism for Loss and Damage associated with Climate Change, through the demand made at its meeting number 14, which took place in 2013, to clarify an institutional mechanism which can solve the problems resulting from losses and damages, a very important issue for developing countries. Once the Warsaw Mechanism was established at COP 19, the BASICs supported its creation by welcoming it in the joint statement of its meeting number 18, in 2014. In this regard, it should be noted that this is not a particularly relevant issue for any of the group of countries, but it is an important bargaining tool in the negotiations with small island states and least developed countries (LDCs and SIDS).

On the other hand, with respect to the GCF, the BASIC group had claimed during their meetings that one should begin with the launch of the Fund, urging developed countries to capitalize it with public resources. Such capitalization was politically agreed at COP in Lima, in 2014, favouring the integration of the regime. In turn, it was also possible to hierarchize the adaptation by matching it with financial mitigation, given that according to the statute, the GCF must distribute its funds 50/50 between mitigation and adaptation. These issues, long demanded by developing countries, were addressed to some extent as a result of a process of mutual concessions, with the EU and the US realizing that without some form of climate finance, the COP 21 would not achieve any results.

Another important aspect for the negotiation process was the realization of the REDD plus mechanism, particularly for Brazil. REDD plus is a UN programme focused on reducing emissions from deforestation and de-gradation of forests, and seeks to increase the capture and preservation of carbon. The programme aims to create incentives that enable developing countries to protect their forest resources, contributing to the global



reduction of greenhouse gases and to be rewarded for it, through a payment mechanism based on results.

During the ministerial meeting of the BASIC countries that took place in 2013, this issue was important and valued as critical to the success of COP 19. They focused on the financial support that developed countries should grant the mechanism. The countries that assumed greater leadership in this regard were the United States, Norway and the United Kingdom, who, during the COP 19, pledged to provide 280 billion dollars to sustain the programme. The allowance made by BASIC was accepting that the funds could come from both public and private sources, as well as what the GCF can provide from its resources.

BASIC's role in the international climate regime: fragmentation or integration

Thus, as a general balance of the role played by the BASIC as regards the three forces described by Keohane and Victor, we can say, first, that it reflects the changes in the International System in terms of the role of played by middle powers (Bueno, 2013), the displacement of previously hegemonic actors and the diffusion of power. The debate on the concept of multipolarity is based on that.

We affirm, with Elodie Brun (2015), that the current situation of international relations is described as multipolar in that the concept refers to the diffusion of power but cannot explain it. This failure, the author argues, stems from three issues: that multipolarity is associated with stability in the international system and this is not necessarily so; that more than a real situation hides the desires and aspirations of emerging powers as the system remains asymmetrical; and that there are no poles as in the Cold War because the policies of the actors do not attract anyone, that is, there are no poles of attraction.

The climate regime is a setting of great international visibility to show, on the one hand, the changes in the system that are reflected in the structure of the triangle we have described; but on the other, they show that it is the United States that continues upsetting the balance in favour of one or another option. In the absence of the hegemonic power, Europe acted as leader and paid the price needed to reap the benefits of the structures of the regime which, in a large part were shaped under its leadership.

However, this construction of power "in the absence of" found the limit of the political will of the same party that had made climate change its flagship on returning to the international game flaunting old victories. In this sense, the only restraint to the climate leadership of the United States was not the EU or the BASIC but the actual US domestic politics. Even with these limits, since Copenhagen, United States imprinted changes in the conditions of the regime. The Paris package reflects the power's main concern that China accedes in similar conditions with climatic contributions that bring parity to the international climate efforts of China and the United States, showing the power's capacity to delineate rules. However, it also reflects a reality, China's increase in power.

The United States, unlike Europe, does not require strict rules or exegete compliance at the international level for them to permeate its domestic structure. That condition that exists in the European model was last seen in Denmark. However, the EU, as part of the triangle and founder of the regime, has power instruments that it uses and account for the results in Paris. The sections of the agreement in the documents



produced from Geneva reflect quite clearly these debates. The compliance section has lost relevance due to what was previously exposed, that is, the lack of interest on the part of the US and the BASIC itself that the regime acquires rigid and punitive conditions. However, the cycles and transparency sections, the EU's main interest to ensure there was no retrogression in the commitments or contributions made by the US and BASIC and organising its own domestic structure of 28 members, have been strengthened, including in relation to the Durban six elements.

The recognition of the power of the US to tip the scales in its favour does not mean diminishing the role of the BASIC or the EU. The problem here is that the interests of BASIC, especially China and India, have been more consistent with the US approach than with that of the EU. The position of the latter sought to force the BASIC and the US to make mitigation and financing commitments regarding other developing countries, which none was willing to take upon itself.

We ask in what way the regime has brought stability/containment to the international system. We are also interested in defining how the diversity of interests, uncertainty and linking have acted as forces of integration or fragmentation of the regime, especially in relation to the emergence of the BASIC since Copenhagen.

Regarding the first force analyzed, 2009 shows an increase in the diversity of interests in the climate regime, both as a result of the emergence of BASIC and of Obama's role in the presidency of the United States and its participation in COP 15. This diversity of interests initially has brought fragmentation to the regime as seen in the COP15 itself, since it forced the triangle to note that beyond its power as a whole, the more democratized international system has other actors, in this case ALBA, willing to pay the cost of a no agreement. However, after that time, the ALBA began to be kept by the LMDC, where China and India hold a leading role. Six years after that episode, the BASIC may have brought integration to the regime in that the competing interests of the US and the EU led to a regime of big players where the small and middle powers had no impact on the game rules. While it cannot be said that Brazil, China, India and South Africa defend the interests of the developing world, except their own, there are certain commonalities within the G77 plus China than in Paris. Only BASIC could defend effectively, especially on differentiation issues, the heart of the climate negotiations.

Consequently, the BASIC has reduced the uncertainty of the regime in that it accepted the new INDCs/NDCs scheme, preceded by voluntary commitments, and has been permeable to operating as a link between the table of senior players and the developing world. This does not mean that uncertainties do not persist in all elements. The political, economic, social and geographical differences, among others, inside the developing world determine that often China's interests may be closer to those of the US than those of Somalia, Vietnam, or Uruguay. That is where a new concept emerges regarding the responsibilities that can lie on the historical responsibilities assumed by Brazil at the time of signing the KP, and which are today received by different negotiation subgroups within the regime. The emerging ones cannot just have benefits associated with their power, as power includes responsibilities and that is a truth that international relations have been affirming with some vehemence.

The horizontality and relative freedom of the contributions system -at least until there is a framework of transparency and cycles- may not demonstrate the costs of such



leadership. In this regard, the EU will be the guardian to ensure that the whole triangle acquire some level of responsibility within the regime in order to achieve the temperature overall goal.

Regarding the last force, the degree of linkage that the BASIC encouraged by interacting with both the US and the EU and the G77, fostered the creation of links between actors with extreme interests and positions. Examples include REDD plus or the Warsaw Mechanism for Loss and Damage. The first case is an issue of major concern for Brazil, for which reason the group included it in its slogans. Thus, it bid for financing from both Europe and the US for this project, under the slogan that it is a parameter of international cooperation in reducing emissions and carbon capture and fixation without commitments in this regard in terms of the historical emissions. Rather, they see it as a "cost-effective" way to improve the overall carbon balance through the logic of environmental services.

In the case of Loss and Damage, although not being direct interest of any country part of BASIC, the group motorized and acted as a link between the positions of SIDS and LDCs and the opposition of both the US and the EU. Although the compensation mechanism advanced by the islands and LDCs was unsuccessful, the Warsaw mechanism was included, which could mean more funding and cooperation for these groups with some additions to the Agreement, which was unthinkable earlier. For the BASIC, it was a bargaining chip when the agreement was closed, but CBDR was lost in the process as a high price for including losses and damages.

Keohane and Victor's regimental complex concept, especially applied to the climate regime enables seeing some midpoint on a continuum between a well-integrated set of institutions and precise regulatory frameworks and a series of fragmented institutions. The authors state that the distribution of interests explains why a single institution could not see the light, especially between the US and the EU as a bid on that continuum.

In this sense, the BASIC can operate as a balancer or at least can help tip the balance one way or another, leaving the game board to these two actors, which have different weights. Moreover, the high level of uncertainties of the regime means that the Parties do not want to make commitments, since the free rider logic has prevailed so far. Also in this case, the presence of BASIC can help uncertainties to be smaller, legitimated and actioning the new chapter of contributions. This does not mean that the actors that make up the triangle can rely on these relative certainties even after Paris.

Paris left behind the fears of Copenhagen and ALBA was neutralized, especially Nicaragua which, at the last minute tried to stop the Agreement and Venezuela, which showed a strangely cooperative side at the end of the Conference with Ambassador Salerno who officiated as moderator of the debate on the preamble and publicly presented the INDCs of her country.

The broad support given by the Parties to the document should be recognized, as seen in the signing ceremony conducted by the Secretary General of the United Nations on 22 April in New York, in which 175 of the 197 Parties to the UNFCCC signed the document. Nevertheless, as happened with the KP, the status of ratification has certain misgivings. While the United States and China have agreed to an early ratification, especially under the American electoral scenario, which has a high potential to damage the legitimacy of the Agreement if candidate Donald Trump wins, so far, the entrance into force is far away in terms of the necessary numbers.



In turn, although the agreement has been welcomed by many actors in the international community who see hope in the Paris Package, others showed their reluctance and dissatisfaction with the result. In the latter case, some non-governmental organizations contested the lack of ambition of the Agreement and the flexibility of the contributions scheme in a context where greater commitment was expected and needed¹⁶.

There is no doubt that the COP21 was a game of forces model where all players measured their relative weights in relation to the interests of the big, small and middle players that shaped and conditioned the result to the extent that the diffusion of power reaches not only the middle or emerging powers but also a moving International System.

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¹⁶ Such is the case of Friends of the Earth, which said that the Agreement lacks specific measures to combat global warming and that the flexibility of Article 4 is a carte blanche to continue emitting.

Check <http://www.tierra.org/los-paises-parecen-rendirse-en-la-lucha-contra-el-cambio-climatico/> and <http://www.tierra.org/el-acuerdo-de-paris-una-farsa-en-la-lucha-contra-el-cambio-climatico/>.

In the same vein, there are some statements by members of Greenpeace, who argued that while it welcomes the commitment of nearly 200 countries to limit temperature increase globally to 1.5° C, it alerts to the fact that the text does not set the means to achieve it. See <http://www.greenpeace.org/argentina/es/noticias/ACUERDO-COP21-Punto-de-partida-para-el-abandono-de-los-combustibles-fosiles-pero-con-compromisos-insuficientes-para-lograrlo/>



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Annex 1: Acronyms Index

ADP: Ad Hoc Working Group on the Durban Platform for Enhanced Action.

AIP: Accelerated Implementation Process.

ALBA: Alianza Bolivariana para los Pueblos de Nuestra América (Bolivarian Alliance for the Peoples of Our America).

AWG-DPA: See ADP.

AWG-KP: Ad Hoc Working Group on the Kyoto Protocol.

AWG-LCA: Ad Hoc Working Group on Long-term Cooperative Action

BASIC: Group formed by Brazil, South Africa, India and China.

CBDR: Principle of common but differentiated responsibilities.

CH4: Methane.

CBD: Convention on Biodiversity.

UNFCCC: United Nations Framework Convention on Climate Change.

CO2: Carbon dioxide.

COP: Conference of the Parties to the UNFCCC.



ETS: EU Emissions Trading System.

EEUU: United States.

G77+China: Group of 77 and China.

GCF: Green Climate Fund.

GHG: Greenhouse Gas.

HFC: Hydrofluorocarbons.

I CPKP: First commitment period of the KP.

II CPKP: Second commitment period of the KP.

INDC: Intended Nationally Determined Contributions.

LDC: Less Developed Countries.

LMDC: Like Minded Developing Countries.

CDM: Clean Development Mechanisms.

MEF: Major Economies Forum on Energy and Climate.

MRV: Monitoring, Review and Verification.

N₂O: Nitrous Oxide.

NDC: Nationally Determined Contributions.

OECD: Organisation for Economic Co-operation and Development.

OECD-CPI: Consumer Price Index of the OECD.

WTO: World Trade Organization.

UN: United Nations.

DC: Developed countries.

UC: Underdeveloped countries.

PFC: Perfluorocarbons.

KP: Kyoto Protocol.

REDD plus: Reducing Emissions from Deforestation and Forest Degradation Mechanism.

SF₆: Sulfur hexafluoride.

SIDS: Small Island Developing Countries.

TEP: Technical Examination Process *on* Mitigation.

EU: European Union.