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GÜRKAN ÇAPAR

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NEW DEALS WITHIN THE GLOBAL CLIMATE CHANGE COMPLEX***

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FROM CONFLICTUAL TO COORDINATED INTERLEGALITY: THE GREEN NEW DEALS WITHIN THE GLOBAL CLIMATE CHANGE REGIME COMPLEX

Gürkan Çapar *

ABSTRACT: Climate change is one of the gravest problems we have to deal with in the 21st century. No need to say, it is a problem of politics. It forces us to face the ineffectiveness of the international legal order established after the Second World War and the failures of our way of tackling global collective action problems. This paper will first outline, by taking a historical perspective, the institutional developments global climate change governance has been experiencing within the last two decades, with a particular focus on the contrast between Kyoto Protocol and Paris Agreement (PA) and their distinctive mode of governance. This institutional revolution, stimulated by globalization and its pressure on our traditional, intergovernmental, and state-based international law paradigm, has provided a firm basis for coping with climate change problems. Paris Agreement, born into this climate change regime complex, incorporated these transnational institutions into the UN-led climate change system. Seen from this angle, Paris Agreement, which “is a bold move toward public problem solving on a global scale”¹, created an atmosphere for the flourishing of transnational and national actors, in which the Green New Deals has recently begin to blossom across the world. In this global climate change complex, orchestrated by the UN framework, there are different national legal orders developing distinct but aligned climate change policies, among which the EU, the US and China bear significant importance. The paper argues that the conflictual relationship both between developing and developed countries, on the one hand, and between the US and the EU, on the other, will likely to turn into cooperative relationship. By doing so, it embraces an inter-legal approach upon having shown the deficiencies of GAL and mere political approaches.

KEY WORDS: Inter-legality, climate change governance, global administrative law, regime complex, transnational law

* Ph.D. candidate at Scuola Superiore Sant’Anna, DIRPOLIS, gurkan.capar@santannapisa.it, I would like to thank Prof.Chiti for his inspiring course about EU Green New Deal, without which this paper may not be written.

¹ Slaughter, A. M. (2015). The Paris approach to global governance. *Project Syndicate*, 28

1. Introduction

The EU launched its Green New Deal (GND) on December 2019 just before the explosion of the health crisis caused by COVID-19. With the pandemic emergency, other new GNDs have been launched across the world by major states such as the US, China, and India. Recently, South Korea has followed also to this trend by giving GND a prominent place in its post-COVID-19 stimulus plan². What is more, today the GND is a highly debated concept even in countries where it is yet to be realized³. Unsurprisingly, the repercussions of the EU's GND have been felt even in countries where climate change is traditionally not an item on the agenda such as Turkey. Such plurality of GNDs raises a number of questions: what are the underlying reasons for this trend of GNDs? Why are we witnessing the rise of GNDs? And is this trend a mere reflection of the global regulatory competition between global powers with respect to the question of how to regulate climate change regime complex? Or does it result from the Paris Agreement's legal framework?"

To address these questions, this article will first look at the climate change regime complex by taking an institutional perspective (§ 2). In doing so, it will show how the UN-led climate change governance's institutional architecture and mode of governance have significantly altered in the period following the Copenhagen Accord (§ 2.1 - 2.2). By exposing the differences between Kyoto Protocol and Paris Agreement, the article will argue that the mode of governance established with the Paris Agreement sustains the empowerment and subjectivation of the nation-states (§ 2.3), and this in turn brings about plurality of GNDs since the states are obliged to honour their promises (nationally determined contributions) they pledged (§ 2.4). In the second part, by benefiting from the theoretical approaches of Global Administrative Law and Interlegality, the article will shed light on the relationship between legalities within the global climate change regime complex (§ 3). To this end, it will focus on the territorial, or state-based legalities within the global climate change regime complex, that is, it will dwell on infra-systemic interlegality. Relying on its analysis on infra-systemic interlegality, the article will argue that we are experiencing a turn from conflictual to coordinated relationship between legalities under the global climate change regime, not least

² Lee, J. H., & Woo, J. (2020). Green New Deal Policy of South Korea: Policy Innovation for a Sustainability Transition. *Sustainability*, 12(23), 10191.

³ See for Latin America Cohen, D. A., & Riofrancos, T. (2020). Latin America's Green New Deal. NACLA Report on the Americas 52(4); for South Africa <https://www.esi-africa.com/industry-sectors/finance-and-policy/south-africa-sanedi-endorses-green-new-deal-for-economic-recovery/>

after the significant changes introduced with the Paris Agreement. It will conclude by hinting at some possible ramifications of the GND for the EU.

2. The UN Climate Change Complex

2.1. Introduction (*Situating the Institutional Problem*)

Climate change is one of the gravest problems we have to deal with in the 21st century. Needless to say, it is a problem of politics. It forces us to face the ineffectiveness of the international legal order established after the Second World War and the failures of our way of tackling global collective action problems. Traditional international law paradigm based upon the idea of equality of states and unanimity rule for decision-making, on the one hand, and state's reluctance and diverging interests, on the other, are probably main reasons for this failure. It signals also how ineffective our international legal order, established after the Second World War, is in the face of today's highly challenging problems. Thus, it is not a coincidence that with the turn of the century we witnessed a Cambrian explosion of transnational organizations (TNO) as a complement to the ill-founded intergovernmental organizations (IGO)⁴ of the cold-war period. By way of illustration, transnational organizations, controlled by non-state actors and performing administrative-like functions, has mushroomed in the last three decades, while IGOs has remained static and fluctuated around 250.⁵ On top of this, states have circumvented formal and multilateral international treaties such as UN-led climate change regime and had recourse to informal, clublike structures to reach a decision that has a global effect despite the lack of participation. This trend shows that the gap created by the shortages of IGOs in addressing the new challenges of global governance has been filled by functionally equivalent institutions.

⁴ Abbott, K. W. (2012). The transnational regime complex for climate change. *Environment and Planning C: Government and Policy*, 30(4), 571-590; Dingwerth, K., & Green, J. F. (2015). Transnationalism. In K. Backstrand, E. Lövbrand (Eds.) *Research handbook on climate governance*. (pp. 153-163) Edward Elgar Publishing, 155

⁵ Abbott, K. W., Green, J. F., & Keohane, R. O. (2016). Organizational ecology and institutional change in global governance. *International Organization*, 247, 249; Battini, S. (2016). The proliferation of global regulatory regimes. In S. Cassese (Ed.) *Research Handbook on Global Administrative Law*. (pp.45-64) Edward Elgar Publishing, 47

2.2. *Institutional Developments outside the UN-led Climate Change Regime*

Such ‘institutional revolution’⁶ was nothing more than an answer to the spatial revolution of the globalization displacing the states from their position of general ends entity.⁷ On this account, states are either under-effective because they cannot cope with the global dimension of regulation by themselves or over-effective because their regulations may have extraterritorial effects (regulation without representation)⁸. While states may address the effectiveness deficit by controlling the foreign regulations effecting its own legal order, they may wipe out accountability deficit by paying heed to the outsiders’ interest⁹. As a result, the international order established after the Second World War in which states are the main actors gave way to a more pluralist, even partially nonconsensual legal order with globalization¹⁰. In short, “(t)he national differentiation of law is now overlain by sectoral fragmentation”¹¹, and territorially-bound legal jurisdiction is replaced or complemented by functionally-determined jurisdictions that claim global validity. When it comes to climate change regime, transnational organizations come to the help of climate change legal order instituted by the Rio Declaration when it stops short of addressing the environmental problems. Alongside the formal legal institutions of the Rio such as The UN Framework Conventions on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD) we have witnessed the rise of transnational organizations such as ISO 14000 environmental management standards, Carbon NZero, and CarbonFree Certified, on the one hand, and clublike small, minilateral arrangements and cooperations such as G7/G8, G20, and MEF.

The UNFCCC was supposed to be complemented and fleshed out with the further annual conferences of the Parties (COP). Thus, the Convention, adopting “framework convention plus model, took on essentially a procedural form” and “its substantial provisions

⁶ Abbott, K. W., Green, J. F., & Keohane, R. O. (2016). Organizational ecology and institutional change in global governance. *International Organization*, 247, 271-272

⁷ “A state is a “general ends” entity, and its job is to be responsible for the whole, without aiming to execute one particular function at the expense of others.” Palombella, G. (2019). Theory, Realities and Promises of Interlegality: A Manifesto. In J. Klabbers, G. Palombella *The Challenge of Inter-Legality* (pp.363-390) Cambridge University Press, 369

⁸ Battini, S. (2016). The proliferation of global regulatory regimes, 49-50

⁹ Battini, S. (2016). The proliferation of global regulatory regimes, 53

¹⁰ See for the failure of consensual multilateralism and the turn to informal, non-consensual rule-making Krisch, N. (2014). The decay of consent: international law in an age of global public goods. *American Journal of International Law*, 108(1), 1-40.

¹¹ Teubner, G., & Fischer-Lescano, A. (2004). Regime-collisions: the vain search for legal unity in the fragmentation of global law. *Michigan Journal of International Law*, 25(4), 999, 1008

were formulated in rather vague language”¹². For instance, Article 2 of the UNFCCC laid down that the objective of the treaty is to stop the GHG emission “at a level that would prevent dangerous anthropogenic (i.e., human) interference with the climate system”. It was expected that further conferences or treaties will put flesh on the bones of the framework treaty. The first attempt in this endeavor came with the Kyoto Protocol, which was ratified in 1997 and entered into force in 2005. To operationalize the UNFCCC’s objectives, it set specific binding GHG emission reduction targets for the developed countries¹³. Even though Kyoto Protocol, which is inspired by highly successful Montreal Protocol on Substances that Deplete the Ozone Layer, embraced a top-down and highly prescriptive approach¹⁴. In turn, it failed to live up to its promises and Canada, Russia and Japan abstained from adopting new targets for the 2013-2020 period¹⁵. It was, as pointed out by Heyvaert, a “paragon of regulatory precision, laying down quantified emission reduction targets relating to specific greenhouse gases, to be achieved within a well-defined timeframe”¹⁶.

In the face of this obvious failure of multilateralism and formal climate change regime, countries and transnational organizations headed towards different organizations or institutions to promote their own interests. While ‘fragmenters’ resisted the UN-led formal climate change regime due to its strict mitigation targets and negative effects on economy, on the other are ‘deepeners’ pushed forward for more ambitious measures and policies by dint of their dissatisfaction with the ineffective UN regime¹⁷. Under these conditions, the fora such as G7/8, G20, MEF, APP, and countless transnational organizations served the interest of both groups. They were used for either good cause in order to induce the recalcitrant states to take further actions or for bad reason in order to sidestep UN regime and shy away from strict provisions of the Kyoto Protocol. While the EU and its member states exemplify the former, the US can be conceived of as the prime example of the former. It was in this context that climate change problems gained significant traction outside the formal framework of climate change regime by virtue of transnational organizations and minilateral, clublike meetings in the first decade of the 21st century.

¹² Coen, D., Kreienkamp, J., & Pegram, T. (2020). *Global Climate Governance*. Cambridge University Press, 18

¹³ Dikmen, B. A. (2020) Global Climate Governance between State and Non-State Actors: Dynamics of Contestation and Re-Legitimation. *Marmara Üniversitesi Siyasal Bilimler Dergisi*, 8(Özel Sayı), 59, 64

¹⁴ Coen, D., Kreienkamp, J., & Pegram, T. (2020). *Global Climate Governance*, 18

¹⁵ Bodansky, D. (2015). Transnational Legal Order or Disorder?. *Transnational legal orders*, 287, 293

¹⁶ Heyvaert, V. (2013). Regulatory competition—accounting for the transnational dimension of environmental regulation. *Journal of Environmental Law*, 25(1), 1, 13

¹⁷ Dikmen, B. A. (2020) Global Climate Governance between State and Non-State Actors, 64

2.3. *The transnationalization of the International Law with the Paris Agreement*

2.3.1. *Modus Operandi of Climate Change After the Paris Agreement*

Although the Copenhagen Accord had bitterly shattered the hopes of environmental activist owing to its failure in concluding a new comprehensive agreement as a replacement of the Kyoto Protocol (KP), the following COPs set the stage for the landmark COP21 Paris Agreement (PA), which then transformed drastically the *modus operandi* of the climate change governance¹⁸. The PA explicitly stipulated that it would “be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties”¹⁹. Thus, it was a further movement from the top-down approach of the KP towards a designed “bottom-up architecture, consisting of national pledges and international scrutiny”²⁰. In a nutshell, it was “a transition from a ‘regulatory’ model of binding, negotiated emissions targets to a ‘catalytic and facilitative’ model that seeks to create conditions under which actors progressively reduce their emissions through coordinated policy shift”²¹. In the subsequent years following the PA, it is also telling to see the rise of transnationalism and regime complex scholarship. They portrayed the climate change governance as a regime complex consisting of “loosely coupled system of institutions” without “no clear hierarchy or core”²² as opposed to a full-fledged regime with substantive treaty and high court exemplified with the WTO and trade regime.

In the first instance, the PA dispensed with the idea that developed countries, which are mostly responsible for climate change, have to take necessary measures while developing countries are not obliged to make any effort due to their very limited contribution to it. By doing so, it dissolved the crude distinction between developed and developing countries, and instead embraced a more nuanced and cooperative approach to the principle of common but

¹⁸ Fermeiglia, M. (2020). Comparative Law and Climate Change. In F. Fiorentini, M. Infantino (Eds.) *Mentoring Comparative Lawyers: Methods, Times, and Places* (pp. 237-259). Springer, Cham, 238

¹⁹ Article 13 of the Paris Convention

²⁰ Bodansky, D. (2015). Transnational Legal Order or Disorder?, 293

²¹ Hale, T. (2016). “All hands on deck”: The Paris agreement and nonstate climate action. *Global Environmental Politics*, 16(3), 12, 12; Hale, T. (2020). Catalytic cooperation. *Global Environmental Politics*, 20(4), 73-98.

²² Keohane, R. O., & Victor, D. G. (2011). The regime complex for climate change. *Perspectives on politics*, 7, 9; see for the argument that Keohane and Victor dwell on international organizations in their analysis on climate change regime complexes, thus theirs is an international regime complex rather than a transnational one. Abbott, K. W. (2012). The transnational regime complex for climate change. *Environment and Planning C: Government and Policy*, 30(4), 571-590.

differentiated responsibility (CBDR)²³. Now, each country, irrespective of the degree of its economic development and contribution to the climate change, will certify its nationally determined contribution (NDC) to emission cuts every five years though it is incumbent upon the states to determine their own contribution to the global emission cut. Every five years, the countries will also be reviewed and evaluated in accordance with their success in reaching the targets that was already set out by themselves. It, in doing so, refrained from giving a one right answer to the question to what extent developed countries should contribute to the GHG emission reductions vis-à-vis developing ones, and thereby kept its silence on the distributive questions at least for now.²⁴

Second, it incorporated the transnational institutions into the UN-led climate change regime by considering them not “as an alternative to the UNFCCC process, or as merely a helpful addition, but as a core element of its logic of spurring rising action on climate over time”²⁵. This is in fact in contradiction with the traditional approach of international environmental law whereby transnational actors could only be the subject of international law as long as the states serve as a transmission belt²⁶. Hence, the PA signifies a turn to transnationalism, whose origins could be traced back to the Copenhagen Accord²⁷. In other words, the agreement granted legal status to the transnational organizations, empowered them or called upon them for help when the support of activists, journalists, scientist, civil societies, NGOs, and etc are needed. For instance, to observe and incentivize half-hearted states by means of ‘naming and shaming’ could only be realized with the support of NGOs and non-state actors in general²⁸. Thus, it is fair to say that the PA by prioritizing transparency over compliance marks a shift from compliance to transparency or “from selective coercion to collectively supported competition”²⁹. As poignantly stated by Slaughter, “(b)y the standards of a traditional treaty, it falls woefully short. Yet its deficits in this regard are its greatest strengths as a model

²³ Coen, D., Kreienkamp, J., & Pegram, T. (2020). Global Climate Governance, 21

²⁴ Falkner, R. (2016). The Paris Agreement and the new logic of international climate politics. *International Affairs*, 92(5), 1107, 1115

²⁵ Hale, T. (2016). “All hands on deck”: The Paris agreement and nonstate climate action. *Global Environmental Politics*, 16(3), 12, 13-14

²⁶ Bodansky, D. (2020). Top 10 Developments in International Environmental Law: 1990-2020. *Yearbook of International Environmental Law (Oxford Univ Press, 2020)*, 19

²⁷ Hale, T. (2016). “All hands on deck”: The Paris agreement and nonstate climate action, 13 (paying attention also to the increased scholarly attention to the transnationalism studies)

²⁸ Dikmen, B. A. (2020) Global Climate Governance between State and Non-State Actors, 74; see for the argument that states may also exert pressure to each other Falkner, R. (2016). The Paris Agreement and the new logic of international climate politics. *International Affairs*, 92(5), 1107, 1121-1123

²⁹ Slaughter, A. M. (2015). The Paris approach to global governance. *Project Syndicate*, 28

for effective global governance in the twenty-first century”³⁰. In sum, it marks a transition from hard to soft mode in climate change governance.

Aside from this change in the mode of governance, the PA is a compromise and a response to the demands both of deepeners, aiming to politicize and prioritize climate change, on the one hand, and of fragmenters, escaping from the shackles of Kyoto Protocol and UN-led climate change regime³¹. Seen from this perspective, it struggled to find a middle-way between two sides, both of which searching for solutions outside of the UN framework. Paris Agreement can be seen as a great achievement when seen from this perspective as it integrated both unilateral fragmenters and transnational deepeners into the UN framework³². For whilst the procedural obligation of states to submit a more demanding pledge every five year may be conceived of as a response to the counter-institutionalization demand of recalcitrant states, the empowerment of transnational actors as the watchdog of the NDCs could only be realized with the politicization of the climate change by the deepeners³³. This new logic is described by Falkner as “domestically driven climate change action”³⁴. To sum up, the PA as the epitome of post-sovereign global governance, did not only allocate responsibility by either giving more leeway to the actors (states) within the formal treaty mechanism or integrating some into the formal treaty framework, but also struck a delicate balance between IGOs and its transnational competitors. In some sense, international law has been transnationalized while transnational law has been internationalized “through nonhierarchical ‘orchestration’ of climate change governance, in which international organizations or other appropriate authorities support and steer transnational schemes”³⁵.

Finally, burden-sharing is inherent in the institutional compromise between internationalism and transnationalism. Climate change global governance is beset with the

³⁰ Ibid

³¹ Dikmen, B. A. Global Climate Governance between State and Non-State Actors, 70-76

³² Ibid

³³ Ibid; see for the watchdog role of non-state actors Bäckstrand, K., Kuyper, J. W., Linnér, B. O., & Lövbrand, E. (2017). Non-state actors in global climate governance: from Copenhagen to Paris and beyond, *Environmental Politics*, 26(4)

³⁴ Falkner, R. (2016). The Paris Agreement and the new logic of international climate politics. *International Affairs*, 92(5), 1107, 1118-1124

³⁵ Abbott, K. W. (2012). The transnational regime complex for climate change. *Environment and Planning C: Government and Policy*, 30(4), 571, 571; see for a very similar argument Hickmann, T., Widerberg, O., Lederer, M., & Pattberg, P. (2019). The United Nations Framework Convention on Climate Change Secretariat as an orchestrator in global climate policymaking. *International Review of Administrative Sciences*, 1; see for a study questioning the effectiveness of this orchestration Chan, S., & Amling, W. (2019). Does orchestration in the Global Climate Action Agenda effectively prioritize and mobilize transnational climate adaptation action?. *International Environmental Agreements: Politics, Law and Economics*, 19(4-5), 429-446

question of how to distribute the mitigation burden between developing and developed countries. Seen from the perspective of global justice, it is clear that while the Global North has been reaping the benefits of carbon-based industrialization, the Global South, in which almost 85% of the world reside, bears the brunt of its negative impacts. To illustrate, “between 1850 and 2002, countries in the Global North emitted three times as many GHG emissions as countries in the Global South, where approximately 85 per cent of the global population also resides”³⁶. What is more, today 50% of the total GHG emission is caused by the wealthiest 10%³⁷. This is why, any measure taken against climate change should, from a normative perspective, take account of the parties’ responsibilities and its subsequent distributive results. What is significant for PA is that it not only contains provisions about mitigation, associated with diminishing or putting a halt on the GHG emission, but also includes clauses for adaptation and loss & damage policies, which are related to the distributive and corrective measures and pertain to impeding the negative consequences of climate change. Thus, it could be argued that the PA signifies a turn towards distributive and burden-sharing policies. However, it is also essential to mention that this compromise could be materialized only after the fact that countries such as China and India surpassed the majority of Western countries on the GHG emission³⁸.

2.3.2. *Politics of Paris Agreement*

So far, the article has discussed the institutional dimensions and implications of the climate change regime complex. First, it has taken a historical perspective with a view to casting a light on *the modus operandi* of these institutions and the dynamics between these institutions. In that regard, it has shown how the institutional changes have been accompanied with, or even forced by, the defined and redefined peculiar roles for each of the actors, be it IGOs or TOs. To this end, it has outlined the trajectory of institutional evolution having been occurred in the last two decades within the global governance of climate change. It has also showed that while the deficiencies of the formal UN-led regime brought about counter-institutional (by fragmenter states) and progressive political (deeper transnational organizations and the EU) movements, these non-UNFCCC movements, by acting as a legal irritant³⁹, have later obtained formal

³⁶ Paul, H. K. (2020). The Green New Deal and global justice. *Renewal*, 28(1), 61, 64

³⁷ Ibid

³⁸ In 2006, China’s total GHG emission exceeded the US, and today these countries total GHG emission almost amount to half of the world’s total emission. See Ritchie, H., & Roser, M. (2017). CO₂ and greenhouse gas emissions. Our world in data (retrieved from <https://ourworldindata.org/co2/country/china?country=~CHN>)

³⁹ Here, I am using irritation in the way it is conceptualized by Teubner. See Teubner, G. (1998). Legal irritants: good faith in British law or how unifying law ends up in new divergencies. *The Modern Law Review*, 61(1), 11-32

recognition by the PA. What is more, these institutional transformations bring with themselves some important changes in the legal instruments made use of by these organizations in the climate change regime complex. By way of illustration, it is very rare to encounter legal obligations in non-obligatory sense in multilateral environmental agreements even though they may include a mix of soft and hard obligations⁴⁰. However, the PA exemplifies a delicate “mix of hard, soft and non-obligations, the boundaries between which are blurred, but each of which plays a distinct and valuable role”⁴¹. This is a remarkable shift from the predictable, clear and rule-based governance approach, which imposes important costs on national sovereignty, to a more vague and principled- and process-based approach. Needless to say, this is also a transformation in our conceptualization of law and rule of law⁴². It is a turn from formal understanding of Rule of Law introduced and advanced by Fuller to a more institutional and procedural one defended by Waldron. The upshot of this change is, for the purpose of this article, that the functioning of the institutions gained priority over the shape and form taken by these products at the end of the process.

It was a widely-held assumption that with the rise of neoliberalism and the expansion of globalization, the differences among nation-states and cultures is going to gradually erode, and the world would end up being a more flattened global sphere in which states have less significant role to play⁴³. Nevertheless, things have not gone as expected since neoliberalism and states, rather than being in opposition between themselves, have built up complementary relationship with neoliberalism. As taught by Foucault, neoliberalism and its market logic, rather than taking something away from government, transformed the ways through which states should/could pursue their own ends⁴⁴. By the same token, geopolitics, having become highly popular following the 9/11, corresponds to this idea that states pursue their own interest and that they do not shy away from using its political, economic, legal and even normative power. Thus, when seen through the lenses of geopolitics, the climate change regime complex,

⁴⁰ Rajamani, L. (2016). The 2015 Paris Agreement: Interplay between hard, soft and non-obligations. *Journal of Environmental Law*, 28(2), 337, 352

⁴¹ Ibid 337

⁴² See for formal understanding of rule of law Fuller, L. L. (1969). *The Morality of Law*. Rev. ed. New Haven, Conn.: Yale University Press. (His eight principles for legality 1. Generality, 2. publicity, 3. Prospectivity, 4. Intelligibility, 5. Consistency, 6. Practicability, 7. Stability and 8. Congruence); see for an institutional and procedural approach to rule of law Waldron, J. (2011). *The rule of law and the importance of procedure*. *Nomos*, 50, 3-31.

⁴³ Roberts, S. (2016) Neoliberal Geopolitics In S. Springer, K. Birch, & J. MacLeavy (Eds.). *Handbook of Neoliberalism* (pp.433-443) Routledge, 433

⁴⁴ Foucault, M. (2008). *The birth of biopolitics: lectures at the Collège de France, 1978-1979*. Springer.Tr. (Davidson, A. I., & Burchell, G.), 121

and in particular the Paris Agreement, are not only more understandable, represent a projection as to the future of climate change governance.

In climate change governance, the EU has been considered, in particular for the last two decades, as the forerunner of progressive climate policies⁴⁵. It is the main polity going beyond the UN-led climate change regime as opposed to fragmenters such as the US and BASIC (Brazil, South Africa, India, and China) countries. With the fear of China's rising economic power, the US, not least with the turn of the century, left the environmental leadership to the EU for the sake of its own economic interests. It seems fair to say that the EU, with the intention to fill this gap, "attempted to lead by example" and demonstrated its leadership ambition not only with words but also with deeds⁴⁶. In the period spanning from Rio to Paris, the EU's fundamental climate change policy was to sustain the system of Kyoto Protocol, if not, to replace it with a new one in the same top-down logic. As to the US, it was the supporter of a symmetrical treaty as opposed to asymmetrical KP discriminating developing countries at the expense of developed ones. Therefore, for the US, "the new agreement should have a pledge-and-review structure that allows bottom-up, or 'nationally determined mitigation commitments,' rather than top-down, binding targets and timetables, such as the EU has pushed for in the past"⁴⁷. As regards China, it has traditionally taken side with developing countries and presented itself as the representator of this bloc by endorsing the ideas such as climate justice, historical responsibility of the West, and distributive financial policies⁴⁸. It was therefore the supporter of an agreement that draws a distinction between developed and developing countries, thereby binding the former with top-down targets while the latter have the discretion to set up its own targets⁴⁹. However, the rapid economic development of China and other BASIC countries have given rise to a discordance between these countries and the remainder of developing countries. For they also became the perpetrator of climate change rather than being a victim thereof.

Against this background, the Copenhagen Accord (CA), laying down non-binding pledge and review procedure, was concluded between the US and BASIC countries despite the

⁴⁵ Bradford, A. (2020). *The Brussels effect: How the European Union rules the world*. Oxford University Press, 207-231

⁴⁶ Parker, C. F., & Karlsson, C. (2015). Climate leadership In K. Backstrand, E. Lövbrand (Eds.) *Research handbook on climate governance*. (pp. 191-201) Edward Elgar Publishing, 195

⁴⁷ Ibid 198

⁴⁸ Ibid 196

⁴⁹ Ibid 197

EU's ambitions for a more top-down agreement⁵⁰. The EU, drawing on the lessons taken from this fiasco, gave up its “normative agenda and unrealistic expectations” and embarked on moving “towards a pragmatic strategy, attuned to the realities of changing power constellations” in Durban (COP 17)⁵¹. This strategy paid off with the support of developing countries and an agreement reached on extending the Kyoto Protocol up until 2020. What is more, the countries reached a decision that a new legally binding treaty will have been finalized by 2015 (Durban Platform) with the support of traditionally reluctant states such as the US and China⁵². The EU, during this process, act as a ‘leadator’, a leader-cum-mediator since it “became a bridge builder between the major emitter”⁵³. In the advance of Paris Agreement, the EU, once again exemplifying its directional leadership, recalibrated its 2030 GHG emission targets to 40% reduction, compared to 1990, with its 2030 Climate and Energy Framework on October 2014⁵⁴. Against this backdrop, the bilateral agreement, concluded by China and the US, contributed to the EU's lediator leadership and flared up the hopes for a positive outcome from the Paris⁵⁵. In Paris, the EU, adopting a similar approach to Durban, defended a “legally binding agreement with strong provisions for transparency and accountability, and a mechanism for raising the ambition over time”⁵⁶ and secured a “hybrid set up with bottom-up reduction pledges combined with a top-down review of performance”⁵⁷.

2.4. *Global Green New Deal or Plurality of Green New Deals?*

Even though there have been some developments within the period following the Paris Agreement such as the Global Pact for the Environment⁵⁸ and Paris Rulebook, which marks a transition from negotiation to implementation phase⁵⁹, none of them is as much important as the

⁵⁰ “the EU was not even in the room when the final details on the Copenhagen Accord were hammered out” Parker, C. F., Karlsson, C., & Hjerpe, M. (2017). Assessing the European Union's global climate change leadership: from Copenhagen to the Paris Agreement. *Journal of European Integration*, 39(2), 239, 247

⁵¹ Bäckstrand, K., & Elgström, O. (2013). The EU's role in climate change negotiations: from leader to ‘leadator’. *Journal of European Public Policy*, 20(10), 1369, 1369

⁵² Ibid 1382

⁵³ Ibid 1380-1381

⁵⁴ European Council (2014) 2030 Climate and Energy Policy Framework

⁵⁵ Falkner, R. (2016). The Paris Agreement and the new logic of international climate politics. *International Affairs*, 92(5), 1107, 1114

⁵⁶ European Parliament (2015) EU Position for COP21 climate change conference [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572787/EPRS_BRI\(2015\)572787_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572787/EPRS_BRI(2015)572787_EN.pdf)

⁵⁷ Parker, C. F., Karlsson, C., & Hjerpe, M. (2017). Assessing the European Union's global climate change leadership, 249

⁵⁸ See for explanations about how unsatisfying the content of the treaty when compared to its title Kotzé, L. (2019). A global environmental constitution for the Anthropocene?. *Transnational Environmental Law*, 8(1), 11, 23-27

⁵⁹ Rajamani, L., & Bodansky, D. (2019). The Paris Rulebook: Balancing International Prescriptiveness with National Discretion. *International & Comparative Law Quarterly*, 68(4), 1023, 1025

rise of global Green New Deal (GND). Loaded with the positive connotations of Roosevelt's New Deal, the aim of the global GND is to achieve climate neutrality by 2050 "in a way that also expands decent job opportunities and raises mass living standards for working people and the poor throughout the world"⁶⁰. To this end, the two things are crucial: clean energy transformation and state's intervention to the market⁶¹. As it implied even from these two crucial points, the GND crosscuts different sectors ranging from industry to agriculture, from consumption to transportation, thereby requires a large-scale reconstruction of our relationship not only with environment but also with ourselves.

The IPCC's 2018 climate change report, showing the negative consequences of a 1.5 °C increase in global average temperature and the ways how to rein in the global warming within these range, had a positive impact on awakening the big powers from their sleep. First, the US's democrat party, under the leadership of Alexandra Ocasio-Cortez, proposed a resolution for a Green New Deal. Upon having criticized due to its ambitious targets, the Green New Deal has morphed into the CLEAN (Climate Leadership and Environmental Action for Our Nation's) Future Act⁶². Though the presidency of Donald Trump hindered the US Green New Deal, it may be assumed that with the election of Joe Biden the US will highly likely return to the game as a much more motivated player. In a way satisfying this expectation, Joe Biden, in his first speech after the election results, clearly stated that America is "going to make sure that labor is at the table and environmentalists are at the table in any trade deals" that will be made⁶³. As to China, despite the absence of a comprehensive Green New Deal regulation, the Chinese president announced that China aspires to be climate neutral country by 2060⁶⁴. On top of this, the EU signed a new trade agreement with China on the last days of 2020 and as Valdis Dombrovskis, the EU commissioner for trade, stated, it also includes some commitments made by China with respect to "environment, climate change and combatting forced labour"⁶⁵. Considering that the EU has also embarked its own Green New Deal on December 2019, which

⁶⁰ Chomsky, N., Pollin, R., & Polychroniou, C. J. (2020). *Climate Crisis and the Global Green New Deal: The Political Economy of Saving the Planet*. Verso, 54 (ebook version)

⁶¹ Ibid

⁶² Conca, J. (2020). Democrats' Green New Deal Becomes The CLEAN Future Act. Retrieved 31 December 2020, from <https://www.forbes.com/sites/jamesconca/2020/01/15/democrats-green-new-deal-becomes-the-clean-future-act/>

⁶³ Biden says US needs to align with democracies after RCEP signing. (2021). Retrieved 1 January 2021, from <https://asia.nikkei.com/Economy/Trade/Biden-says-US-needs-to-align-with-democracies-after-RCEP-signing>

⁶⁴ China's Great Green Reset: Carbon neutrality by 2060. (2020). Retrieved 31 December 2020, from <https://news.cgtn.com/news/2020-09-24/China-s-Great-Green-Reset-Carbon-neutrality-by-2060-U2EvAoswHS/index.html>

⁶⁵ European Commission Press Release, "Eu and China reach agreement in principle on investment" (30 December 2020)

was already at the top of Ursula von der Leyen’s political guideline, it may be argued that the PA has already evoked positive responses⁶⁶. Additionally, it not only empowered and subjectivized nation states by devolving responsibility to them but also invigorated the climate change communication between the countries for finding a solution to an inevitable, common problem.

The question is why different Green New Deals are popping up across the world. Is it a reason for celebration or a signifier of how deficient climate change regime is? Is it a purely geopolitical competition, as proposed by some scholars⁶⁷, between different legal orders such as the US, the EU and China or does it have anything to do with the legal order established with the Paris Treaty? To address these questions, the paper will first take a descriptive approach, and will then conceptualize this picture by benefiting from the theoretical approaches of GAL and interlegality.

3. The Climate Change Complex from the Perspective of Law

3.1. The Approach of Political Science Scholarship

We are confronted with a climate change complex⁶⁸ instead of a full-fledged comprehensive regime due, among other factors, to the diversity of interest and uncertainty, which are exacerbated by the cross-cutting nature of climate change problem⁶⁹. In their seminal article, Keohane and Victor foresaw that there are no grounds for hope that the efforts to form an integrated institutional climate change regime will likely to succeed. Nevertheless, this was not a reason for despair, because “(i)n settings of high uncertainty and policy flux, regime

⁶⁶ Von der Leyen, U. (2019). Political Guidelines for the next European Commission 2019-2024. *A Union that strives for more: My agenda for Europe*, 16; European Commission, ‘The European Green Deal’, Communication from the Commission, COM (2019) 640, 11 December 2019

⁶⁷ I would like to mention that this paper is written after unending discussions with Guilherme Pratti who is a prominent defender of the geopolitics camp. Thus, his ideas and arguments helped me a lot in framing my line of argumentation against the arguments that purport to boil down the regulatory competition of GNDs to the geopolitics or that undermine the legal aspect of this global spread of GNDs.

⁶⁸ Lederer classifies the scholars of global governance with respect to their analysis of climate change regime and put forwards that there are three different groups: those who are optimistic, agnostic and pessimistic. Whereas, for optimistic view, there are still functions to be performed by IGOs, the pessimistic and agnostic views give up their hope that the UN-led climate change regime may still have something to contribute. As to the regime complex, he argues that it falls under the rubric of agnostics along with the approaches like polyarchy, orchestration and regime interplay. Yet for me, it is more aligned with optimist approach, not least when considered the latest studies of Keohane and Victor. See Lederer, M. (2015). Global governance. In K. Backstrand, E. Lövbrand (Eds.) *Research handbook on climate governance*. (pp. 3-13) Edward Elgar Publishing, 5-9

⁶⁹ Keohane, R. O., & Victor, D. G. (2011). The regime complex for climate change. *Perspectives on politics*, 7, 7-9

complexes are not just politically more realistic, but they also offer some significant advantages such as flexibility and adaptability⁷⁰. To put it clearly, there is no need to put all the problems in one package. It is possible to address the same problems with a holistic lens without addressing all of them at the same institution, at the same time, and at the same bargaining process. Therefore, a complex reduces the political importance of bargaining process and gives way to more fragmented but coordinated approaches in the furtherance of climate change objectives. The best thing to be done, given these perennial political problems, is to take advantage of climate change complex under the orchestration of UNFCCC/Paris Agreement as an umbrella treaty⁷¹.

Written in a context in which the disappointment created by the Copenhagen Accord⁷² was still up in the air, they suggested a more promising path to follow: it is much better to embrace a pragmatic approach and set out to focus on sector-based problems rather than being obsessed with big treaties, names and institutions. We do not need a formal global environmental constitution in order to fulfill the functions served by the constitution. This is the backdrop against which the Paris Agreement was ratified and when seen from this perspective it, rather than being a radical rupture, represents a firm line of continuity with the logic adopted following the Copenhagen Accord. As already alluded to above, the PA marks a critical turning point in the mode of governance, for it, by empowering the nation-states and watering down the density of the UN framework, replaced the top-down approach with the bottom-up one. By doing so, it found a delicate balance between international prescriptiveness and national discretion⁷³. Thus, it seems fairly sound to argue that no matter how thin it is there is a global climate change complex under the orchestration of the UN framework. And the Green New Deals, even though they are to some extent related to geopolitics, are the outcomes of this regime (re)established with the Paris Treaty; therefore, they operate within the UN legal framework with the aim to prevent an environmental catastrophe. From here the question arises: how to explain the relationship between different legal orders such as the UN and the EU climate change regimes or the EU and the US climate change regimes. These are the questions pertaining to the infra-sectoral relationships within the climate change regime without regard

⁷⁰ Ibid 7

⁷¹ Abbott, K. W. (2012). The transnational regime complex for climate change. *Environment and Planning C: Government and Policy*, 30(4), 571, 573; Keohane, R. O., & Victor, D. G. (2011). The regime complex for climate change, 19

⁷² "...the Copenhagen climate summit proved to be a turning point, not only for climate change politics but also for regime literature, as a consensus emerged that international negotiations would not initiate a strong regime" Lederer, M. (2015). *Global governance*, 4

⁷³ Rajamani, L., & Bodansky, D. (2019). *The Paris Rulebook*, 1023-1040

to intersectoral interaction between climate change and other regimes since it may require analyzing also the developments within the other sectors, which may further complicate the issue. Thus, the paper, in what follows, will concentrate on the infra-sectoral interlegality in disregard of the effects exerted by the other sectors, say trade, on the climate change regime.

3.2. *A Perspective from Global Administrative Law*

The first potentially useful theoretical approach is that of Global Administrative Law (GAL). GAL provides an alternative to the traditional international law paradigm according to which states are exclusive subjects of international law and are not subject to legal obligation without their consents⁷⁴. From the point of view of GAL, this traditional paradigm, for them, fails to come to grips with the challenges posed by globalization. Due to such conceptual blindness, international law paradigm is ill suited for detecting the “unnoticed rise of global administrative law”⁷⁵. Today, “many of the international institutions and regimes that engage in ‘global governance’ perform functions that most national public lawyers would regard as having a genuinely administrative character: they operate below the level of highly publicized diplomatic conferences and treaty-making”⁷⁶. In some sense, it seems plausible to assert that GAL is defined by reference to what it is not: It is neither international nor national, then it should be global; it is neither constitutional nor judicial, then it should be administrative; it is not hard-law obsessed with compliance; then it includes also soft law. Further, GAL presumes that there is a global administrative space “populated by several distinct types of regulatory administrative institutions and various types of entities that are the subjects of regulation, including not only states but also individuals, firms, and NGOs”⁷⁷. What makes this global space administrative is its close interest in holding global administrative bodies accountable for their administrative activities⁷⁸; therefore, it is not exaggeration to contend that one of the core concepts of GAL is ‘accountability’. Moreover, as argued by Palombella, this results from “the

⁷⁴ See for a seminal article about the birth of GAL Cassese, S. (2004). Administrative law without the state-The challenge of global regulation. *NYUJ Int'l. L. & Pol.*, 37, 663; see also for a concise summary of the GAL Cassese, S. (2015). Global administrative law: the state of the art. *International Journal of Constitutional Law*, 13(2), 465-468

⁷⁵ Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The emergence of global administrative law. *Law and contemporary problems*, 68(3/4), 15, 15-18

⁷⁶ Ibid 18

⁷⁷ Ibid 19

⁷⁸ Krisch, N. (2006). The pluralism of global administrative law. *European Journal of International Law*, 17(1), 247, 248

self-referentiality of global regimes”⁷⁹, that is, its global aspirations by “flatten(ing) the variety of legal orders and their differences”⁸⁰. Seen in this light, GAL, which has neither demos nor a state to rely on, has only one thing to hold on to: accountability, namely legal legitimacy. Recall that global administrative bodies as members of the global administrative space are intact to a significant extent from the political influence of states, and this may yield to the technocracy or juristocracy unless their accountability instruments are deepened. It is my contention that this is the point in stark contradiction with the realities of climate change governance since it is impossible to overlook the impacts of states on the climate change regime.

The weakest point of GAL is inter alia, its presumption of a global administrative space presupposing some kind of an internal coordination, no matter how loose it is, among global administrative bodies, and this may in turn yield to a technocratic administrative governance without a necessary political or constitutional input. From here it is possible to raise the question whether there are any global coordination or connection between numerous bodies operating at different level of governance under the circumstances of global regulatory competition between the powerful states. Thus, it underestimates the importance of geopolitics. What is more, this endows GAL with some kind of output legitimacy as it will bring a kind of order to the order(less) climate change regime⁸¹. In a similar vein, Chiti, by pointing to this “stabilizing and legitimizing” aspiration of GAL, questions whether “the reference to global administrative space bring about the risk of an idealization of GAL as an institutional project”⁸². GAL is therefore vulnerable to criticism coming from legal pluralism because no matter how much it puts emphasis on pluralist, multilateral aspect of global governance it still goes global by giving a prominent place to *global* administrative space. And this is a normative aspiration no matter how weak it is because it assumes that administrative bodies operating within the global administrative space either develop mechanisms of accountability or call each other to account in such a way that this creates order out of chaos. Chiti perfectly explains this dimension of GAL as follows: “the notion of global administrative space qualifies the regulatory organizations beyond the state as ‘administrations’ or ‘institutions’, thus referring to a unitary – though internally plural and fragmented – legal order in which the various systems operate as

⁷⁹ Palombella, G. (2019). “Formats” of Law and Their Intertwining In J. Klabbers, G.Palombella *The Challenge of Inter-Legality* (pp.23-41) Cambridge University Press, 35

⁸⁰ Ibid.37

⁸¹ Bodansky, D. (2015). *Transnational Legal Order or Disorder?*, 287

⁸² Chiti, E. (2015). Where does GAL find its legal grounding?. *International Journal of Constitutional Law*, 13(2), 486, 489

institutions”⁸³. Contrary to this optimistic presupposition, the interaction between different administrative bodies or different regulatory regimes may be conflictual and competitive as well as it may be complementary as exemplified so far by the climate change complex.

3.3. *Inter-Legal Approach to Climate Change Complex*

Interlegality is one of the recent attempts aiming at coming to terms with the fragmentation of international law and its attendant consequences, that is, the existence of functionally differentiated multiple legal orders alongside domestic legal orders⁸⁴. The scholarships of global legal pluralism, even though they have minute differences, set out to find a middle course between pluralism and universalism (globalism) without prejudice to neither of them. Yet, as poignantly argued by Lindahl, “at issue in globalisation is not only the unity and plurality of legal orders but rather processes of legal unification and pluralisation that come about through inclusion and exclusion”⁸⁵ because law by nature cannot include without excluding and cannot empower without disempowering⁸⁶. Bermann, in the same vein, aims at steering a middle course between two extremes, on the one hand, and reconciling them on the other. To this end, he proposes some “pluralist procedural mechanisms, institutional designs, or discursive practices that maintain space for consideration of multiple norms from multiple communities” such as “margins of appreciation, complementarity, subsidiarity, zones of autonomy, hybrid participation agreements, reciprocal recognition, and so on”⁸⁷. As it may be inferred from these procedural tools, the only (global) value that may be tolerated, in Berman’s global legal pluralism, is the ones that promote dialogue across differences.

Despite their commonalities, all the approaches have a distinct way of approaching the problem fragmentation. Interlegality, by embracing a descriptive approach to global legal reality, zoom in on the interactions between these legal orders⁸⁸. As opposed to GAL, which

⁸³ Chiti, E. (2019). Shaping Inter-legality: The Role of Administrative Law Techniques and Their Implications In J. Klabbers, G. Palombella *The Challenge of Inter-Legality* (pp.271-301) Cambridge University Press, 298

⁸⁴ Klabbers, J., & Palombella, G. (Eds.). (2019). *The challenge of inter-legality*. Cambridge University Press; see for some other studies aspiring to tackle the problem of competing legal regimes Krisch, N. (2010). *Beyond constitutionalism: the pluralist structure of postnational law*. Oxford University Press, USA; Berman, P. S. (Ed.). (2020). *The Oxford Handbook of Global Legal Pluralism*. Oxford University Press

⁸⁵ Lindahl, H. (2018). *Authority and the Globalisation of Inclusion and Exclusion*. Cambridge University Press, 39

⁸⁶ Ibid 46-96

⁸⁷ Berman, P. S. (2020). Understanding Global Legal Pluralism: From Local to Global, From Descriptive to Normative In *The Oxford Handbook of Global Legal Pluralism*. Oxford University Press, 25

⁸⁸ Chiti, E. (2019). Shaping Inter-legality, 272; see for a study suggesting that balancing may be used as a legal tool in order to reach a conclusion in case of legal orders’ interaction. Encinas, G. (2020). Interlegal Balancing. *Interlegality Working Paper Series*. Working Paper No. 02/2020

implicitly presupposes a coordinated global administrative space, for interlegality interaction does not come to mean that there is a “coordinated effort or a joint enterprise”⁸⁹. It has also a thin normative dimension, which springs from the perspective of law rather than an external normative reference point giving an answer to the questions of what a good society or just law is. Accordingly, it is about seeing the injustice glossed over, disguised, and even camouflaged behind one-dimensional, monolithic perspectives. Yet, this normative dimension thereof is beyond the scope of this study since it is more related to the judge’s perspective and judicial decision-making than observing the interaction of legalities⁹⁰.

If it were to describe interlegality with one catchy word, it would most probably be “recognition”⁹¹. Each legal order, irrespective of the quality of interaction, cannot but recognize the others due to inevitable interconnections between legal orders, resulting directly from the subject matter at stake. In other words, despite our attempts at categorizing the life into legal systems such as consumer law, anti-trust law, data protection law, and climate change law, it is not possible to comprehensively encapsulate the case at hand within one category (or system). Thus, any effort devoted to fit the interconnectedness and plurality of life into the bed of Procrustes, regardless of the quality and flexibility thereof, is doomed to failure⁹². The life is in and of itself interconnected, and interlegality is a lens through which this interconnectedness is rendered visible. Thus, as drawn attention by Chiti, “each legal order has its own administrative machinery responsible for” addressing the question of how to respond to the intersection of legalities or how to take the other legalities into consideration, in the culmination of which “trigger(s) the process of recognition that is the heart of inter- legality”⁹³. He argues that this interaction may take three different types: a) joint responsibility, b) coordinated responsibility, c) conflicts of responsibilities in either infra-sectoral or trans-sectoral interlegality. Joint responsibility is the type of administrative interaction in which “there has been a process of interconnection between two or more legal orders at the level of their political decision-making”⁹⁴ so much so that they operate as if they are part of a “common administrative

⁸⁹ Ibid 272

⁹⁰ See for a study approaching interlegality from the perspective of judges and adjudication and revealing the inherent connection between environmental and human rights legal orders Zhunussova, T. (2020) Human Rights and the Environment Before the Inter-American Court of Human Rights. *Interlegality Working Paper Series*. Working Paper No. 05/2020

⁹¹ Ibid 276

⁹² Uzun, E. Hukuksal Pozitivizmi Doğru Okumak (Reading Carefully Legal Positivism) . *HFSA*, 16, 7-9

⁹³ Ibid

⁹⁴ Ibid

systems”⁹⁵. In the absence of such political consensus at the constitutional level that may guide the administrative machineries, the legal orders may try either to abstain from “the possible inconsistencies, overlaps and tensions that may arise between them at the operational level and in the management of issues determined by their overlaps”⁹⁶ (coordinated responsibility), or “to reciprocally protect their regulatory policies and choices”⁹⁷ even at the expense of a conflictual and competition relationship (conflicts of responsibilities). The classification of interlegalities presented by Chiti may be used as a framework to analyze the relationship between various Green New Deals as well as the consequences thereof for the UN-led climate change legal order.

3.4. *In lieu of Conclusion: Interlegal Analysis of the Global Climate Change Regime Complex*

As argued, a global climate change complex, orchestrated by the UN framework, has developed over the years. Such complex includes the climate change policies of different national legal orders among which the EU, the US and China bear significant importance. The latter are important actors because they have the power to shape the global climate change regime by merely regulating their own legal orders and leveraging their market power. Taking a cue from Bradford’s Brussels Effect, there may be a Beijing Effect or a Washington Effect one day⁹⁸. According to Bradford’s argument, the EU, by merely regulating its own market, has been regulating the global marketplace with the help of its market and regulatory power⁹⁹. For her, what differs the EU from the US and China is the its regulatory capacity, which is absent in the latter due to its recent economic rise¹⁰⁰. When it comes to the US, the quality of its regulations, even though it has also as much regulatory capacity as the EU, differs significantly

⁹⁵ Ibid 277

⁹⁶ Ibid 285

⁹⁷ Ibid 287-288

⁹⁸ Bradford, A. (2020). *The Brussels effect*, 64

⁹⁹ Ibid 1. There are five components of the Brussels effect: *market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility*. See for explanations, Bradford, A. (2020). *The Brussels effect*, 25-63; See also Cremona, M., & Scott, J. (Eds.). (2019). *EU law beyond EU borders: the extraterritorial reach of EU Law*. Oxford University Press; Hadjiyianni, I. (2019). *The EU as a Global Regulator for Environmental Protection: A Legitimacy Perspective*. Bloomsbury Publishing

¹⁰⁰ This is evident in the case of China, where the country’s impact on global financial regulation has been limited, despite its vast capital reserves and extensive holdings of US treasuries. China’s limited influence can be traced, in part, to its lack of effective and independent bureaucratic institutions overseeing national market rules in this area. Thus, acknowledging that sophisticated regulatory institutions are required to activate the power of sizable domestic markets means that few jurisdictions aside from the United States or the EU today have the capacity to be regulators with global reach., Bradford, A. (2020). *The Brussels effect*, 31

from the EU. For instance, “the US authorities are often more mindful of the detrimental effects of inefficient intervention” whereas “the EU is more fearful of the harmful effects of nonintervention”¹⁰¹. To this, we may add numerous other differences such as the EU’s integration through law strategy as being an uncompleted federation and the EU’s becoming a regulatory state due to the scarcity of its budget. To put it differently, the EU, having neither purse nor sword, took advantage of the only thing it had: regulation¹⁰². Consequently, these created a culture for minimalist regulation in the US, while in the EU a race to the top generally prevails. As such, the EU has become the regulator of the globe in the policies ranging from data protection to market competition, from environment to consumer health and safety¹⁰³.

It is fair to say that when it comes to climate change, the EU unilateral global regulation will likely to change due to the new mode of governance established with the Paris Agreement. The conflictual relationship both between developing and developed countries, on the one hand, and between the US and the EU, on the other, will likely to turn into cooperative relationship. One of the main reasons for this expectation is the obligations, primarily the obligation to pledge NDC for every 5 years, set out by the Paris Agreement that empowers the state as an actor in climate change governance. Thus, it is not an exaggeration to assume that the countries will move towards the same direction, reducing net CO₂ emission to zero, even though their pace varies. To this end, some countries such as the EU, the US, India, and South Korea have already adopted their own Green New Deal policies¹⁰⁴. What is more, the EU, rather than leveraging its market power unilaterally, is more intended to use bilateral cooperation agreements on climate policy. On the 7th of October 2017, India and the EU signed a joint statement on clean energy and climate change, by means of which both countries “are committed to lead and work together with all stakeholders to combat climate change, implement the 2030 Agenda for Sustainable Development and encourage global low greenhouse gas emissions, climate resilient and sustainable development”¹⁰⁵. As for the relationship with the US, the (EU) Commission, with the intention to turn the election of Joe Biden into an opportunity, drew up “A new EU-US agenda for global change” in which climate change is one of the most important headings

¹⁰¹ Ibid 102

¹⁰² “In the world where the United States projects hard power through its military and engagement in trade wars, and China economic power through its loans and investments, the EU exerts power through the most potent tool for global influence it has—regulation” Ibid 24

¹⁰³ Ibid 99-231, for environment see ch.7

¹⁰⁴ Lee, J. H., & Woo, J. (2020). Green New Deal Policy of South Korea: Policy Innovation for a Sustainability Transition. *Sustainability*, 12(23)

¹⁰⁵ EU – India Joint Statement on Clean Energy and Climate Change, New Delhi, 6 October 2017 (<https://www.consilium.europa.eu/media/23517/eu-india-joint-declaration-climate-and-energy.pdf>)

alongside the COVID 19 measures. It is clear from the agenda that the EU makes a call for collective and collaborative action with the US by stressing out the importance of the stance that will be taken by the US for climate change policies. Last but not least, it is important to underline that the agenda touches also upon the EU-China relations and clearly underscores the importance of taking a similar approach against China, which “is a negotiating partner for cooperation, an economic competitor, and a systemic rival”¹⁰⁶.

In the light of the foregoing, it is plausible to contend that the climate change complex will represent an example of collaborative responsibility, for the threat of climate change is more than ever perceivable. Granted, the degree of collaboration will depend on which countries are participating in the communication, yet in any case it is fair to expect a more collaborative relationship than the pre-Paris period in which conflict is definitely the word to describe the interaction between legalities. Further, it is all but impossible to cope with climate change without the contribution of China and the other BASIC countries; therefore, we “need to welcome and embrace the pluralism and diversity of the climate change movements”¹⁰⁷ as long as they all move towards the same direction. Additionally, the mode of governance the Paris Agreement established calls for active participation of nation states, and this in turn brings with it a collective but differentiated move towards Green New Deal policies. When it comes to the question of how different these Green New Deals are, Lee and Woo, in their study which they compare the Green New Deals of the EU, US, and South Korea, observed that they “all share one goal—tackling the climate change crisis and shifting toward a sustainable society. They all offer solid frameworks around which to shape the policy ambition for large-scale investment programs to foster a green economic transition”¹⁰⁸. In the same vein, Bloomfield and Steward put forward that “(d)espite the gulf between European and North American discourses, and between moderate and radical interventionism, there are striking similarities in the novel policy architecture shared by the two green deal proposals”¹⁰⁹. From this, it can be derived that, the Green New Deals point to the same direction: to achieve the targets laid down in the Paris Agreement, to render the continent carbon-free by 2050 (2060). Post-Covid era provides us new

¹⁰⁶ European Commission (2020) A new EU-US agenda for global change. Joint Communication to the Parliament, the European Council, and the Council, p.8

¹⁰⁷ Bloomfield, J., & Steward, F. (2020). The politics of the green new deal. *The Political Quarterly*, 91(4), 770, 776

¹⁰⁸ Lee, J. H., & Woo, J. (2020). Green New Deal Policy of South Korea: Policy Innovation for a Sustainability Transition. *Sustainability*, 12(23), 10191, p.11

¹⁰⁹ Bloomfield, J., & Steward, F. (2020). The politics of the green new deal, 773, see also the illuminating figure showing the similarities between two green new deals.

opportunities that lacked in the post-2008 crisis period¹¹⁰ because it showed us once again not only how fragile we are in front of the environment but also that we need solidarity to overcome these challenges. Thus, Covid-19 is more foundational than the mere economic crisis of 2008, for it directly has a bearing upon our lives.

From the foregoing it may be implied that in the global climate change complex, the interaction between different Green New Deals/legalities will probably be more collaborative and coordinated than the pre-Paris period. The legalities, rather than competing whether to regulate or not, will cooperate in order to fight effectively against climate change. The treaties the EU signed with China and India and the message it sent to the US for an enhanced transatlantic collaboration are the first signs of this change in the quality of interaction between different legal orders. When it comes to the question of what factors contributed to this shift, it is essential to underscore the importance of the legal framework established with the Paris Agreement alongside the opportunities created by the Covid-19. Green New Deal without a doubt requires revolutionary transformations in our economic, social, and political life. It will also necessitate some radical legal and institutional changes within the EU's substantive constitution which is founded on the ordoliberal idea that despite the economic integration and supranationalization of economic policies, the distributive and social policies should be confined to domestic level¹¹¹. Green New Deal will probably strike a fatal blow to the EU's constitutional/institutional crisis, which are further exacerbated with the measures taken to tackle economic crisis during the last decade¹¹². On this account, no need to be a soothsayer to predict that the EU is going to/should enter in a new constitutional process with a view to aligning its Green New Deal policies with its substantive constitution.

¹¹⁰ Ibid 776-777

¹¹¹ Joerges, C., & Rödl, F. (2004). Social market economy as Europe's Social Model. *A European social citizenship*, 125-157.

¹¹² See for the EU's multidimensional crisis, which is not only economical but also political and institutional Chiti, E., & Teixeira, P. G. The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis'(2013). *Common Market Law Review*, 50, 683