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COMMENT

RESHAPING CLIMATE GOVERNANCE FOR POST-2012

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1. The inadequacy of the present climate governance regime

In the last two decades climate change has been gaining more and more importance firstly in the scientific debate and subsequently in the political and public debate. Climate change is nowadays recognised as one the top priorities in the global agenda as well as in national countries.

Thanks primarily to the four reports produced and released by the IPCC, from 1990 to 2007, the level and quality of knowledge about climate change, its causes and its implications has significantly raised through the years and nowadays there is a greater awareness about the links between the progressive increase of anthropogenic GHG emissions and the climate change phenomenon.

Conversely, the present global regime for climate governance is essentially still the same one that was originally designed by the drafters of the UN Framework Convention on Climate Change, at the beginning of the nineties, about twenty years ago. To the rapid increase of the awareness on the climate change phenomenon in the

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last two decades and the parallel improvement of the general knowledge about mitigation and adaptation needs has not corresponded a revision and update of the climate change governance.

The original institutions foreseen by the UNFCCC, which have been administering through the recent years the Framework Convention as well as the Kyoto Protocol, are essentially based on a Secretariat, assisted by a couple of technical support bodies, namely the SBI and SBSTA, and more importantly, on an annual meeting of the Conference of the Parties (COP). On the basis of such a governance model, the administrative and executive power lies essentially in the hands of the Secretariat, whereas the COP has the duty to provide the political guidance on climate change, both in terms of managing the existing agreements and in view of improving them, through the adoption of the necessary amendments or through the negotiation of further protocols and accords.

However, the variety and complexity of the several issues related to climate change, which can be somehow grouped under the headings of mitigation and adaptation, but which interfere with the domains of several other conventions and various other international organisations, make it very difficult for the UNFCCC Secretariat and the COP to efficiently solve all the pending issues and to effectively tackle climate change in all its interrelated aspects.

There are some key issues in the climate change debate which inevitably call for an improvement of the present climate change governance model. They are related for instance to the deployment of economic and financial support to help developing countries to put into practice their own national mitigation and adaptation actions, or to promote the improvement in the quantity and quality of green or low-carbon technology transferred towards less developed countries, or to increase the level of coordination of the climate change initiatives taken under the UNFCCC and the Kyoto Protocol with the climate change related actions performed under other conventions or by other international organisations.

The improvement of the institutional framework to tackle climate change should be at the forefront of the international negotiations, much more than and well before the definition of the concrete agreements, initiatives and actions for the next decades. However, looking at the development of the debate on the post-2012 global agenda in the last few years, before and after the too much awaited 2010 Copenhagen Conference, this does not seem to have been the case.

In fact, looking at the development and the outcomes of the recent climate change negotiations, it clearly emerges a sense of inadequacy of the present climate change governance model. It has been argued by some scholars that one of the major problems surrounding the present climate change regime is “the challenge of fragmentation of negotiations and governance systems”.¹ This means, in other terms, that the recent practice of the climate change negotiations has shown that it is almost impossible to

¹ F Biermann and others, *Climate Governance Post 2012 - Options for EU Policy Making*, CEPS Policy Briefs, 2008.

reach within the framework of the COP's meetings comprehensive and practicable agreements on the future obligations to be assumed by the different groups of States for tackling climate change and the concrete initiatives to be undertaken.

Moreover, there are increasingly other *fora*, ranging from UN organisations, agencies and programmes to non-UN international organisations, which have been recently dealing in several ways and for different reasons with climate change issues, with a very scarce coordination among them. This leads us to the provisional outcome that the present climate change governance model and regime is inadequate for the next decades and needs some revision and improvement in order to effectively and efficiently cope with the future global climate change challenges and to provide the necessary responses to be developed at international, regional and national level, possibly in a coordinated way.

In sum, the UNFCCC COP does not seem the right forum to reach the long awaited agreement on the post-2012 scenario and to take the right decisions to effectively tackle climate change. This is however just an assumption, that needs to be corroborated by the analysis of the lessons learned in the last few years from the practice of the climate change negotiations.

2. Lessons learned from the climate change negotiations for post-2012: hopes, failures, reality

2.1 The climate change negotiations

The lessons learned from the climate change negotiations which took place in the last few years in order to devise the future of Kyoto Protocol or in more general terms the climate change regime for post-2012 speaks of hopes, failures, reality.

Let's start from the hopes. Following the long years from 1997 to 2004, when the Kyoto Protocol was awaiting the ratification of a number of Annex I countries representing at least 55% of the global 1990 GHG emissions of the most industrialised countries, immediately after the entry into force of the Protocol, at the first meeting of the Parties to the Kyoto Protocol (CMP-1), held in Montreal in 2005, the Parties started negotiations on the post-2012 scenarios.

The first formal step on the post-2012 negotiations was the institution of the *Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol* (AWG-KP). The establishment of such an AWG was based on art. 3(9) KP, which foresees for the possibility to establish further binding reduction commitments for the Annex I Parties under the KP. This would mean that a second commitment period for the same Annex I Parties could be established, without changing the "equilibrium" among the duties of the Annex I and the Non-Annex I Parties which was found at the time of signature of the Kyoto Protocol, back in 1997.

This probably appeared to many countries to be, at the very beginning of the negotiations on post-2012, the most viable option for the future. However this was not the only option on the table. In fact, in parallel with this one, there were at least two other possibilities, which started to be considered at the beginning (since 2005) in a less official way. The second option consisted in the possibility to proceed to a revision of the Kyoto Protocol on the basis of art. 9 KP, for instance with a view to consider the feasibility of enlarging the number of countries with binding commitments under the Protocol, allowing it to expand its life-span after 2012.

Finally, the third option consisted in the possibility to consider abandoning the Kyoto Protocol in the post-2012 scenario, recognising its failure to include on the one side the (then) major GHG emitter at a global level, namely the USA, and on the other side the most relevant emerging economies not included in the Annex I, such as China, India and some others. This option was initially considered by the negotiators under the heading “the Dialogue” and consisted in a much less structured forum with respect to the other options, which however included the USA from the very beginning.

It was only at the 2007 Bali Conference (CMP-3), that a more substantive framework for negotiations on the post-2012 climate change regime was launched. In that occasion, the second option mentioned above, namely the one consisting in the possibility to revise the Kyoto Protocol on the basis of art. 9 KP, was practically abandoned, whereas the third option was officially recognised as a viable negotiating pattern, along the first one. This was made official and concrete through the institution of a new Ad Hoc Working Group, called to work in parallel with the first one already established in Montreal two years earlier. Such a new AWG was named *Ad Hoc Working Group on Long-term Co-operative Action under the Convention* (AWG-LCA) and was given by the Parties the task to conduct a “comprehensive process to enable the full, effective and sustained implementation of the Convention”.

This means, in other terms, that by establishing two different AWGs, working independently the one from the other, the Parties agreed to pursue in a parallel way both the negotiations on the possibility to define a second commitment period for the Kyoto Protocol as well as the negotiations for going beyond the KP, or maybe more precisely, for going back to the Framework Convention, so as to continue fighting against climate change in a different way as compared to the approach chosen some years earlier with the Kyoto Protocol.

The two AWGs, following the two parallel negotiating tracks mentioned above, were due to prepare viable options for the Copenhagen Conference (CMP-5), by which many Parties hoped that a solution could be found to design the post-2012 reference scenario for the climate change regime.

The 2009 Copenhagen Conference represented probably the highest peak in the popularity of the climate change debate among the general public at the global level. However, despite the many hopes and the high political momentum, the negotiating positions of most of the key Parties remained too distant among themselves, despite the long negotiating time already elapsed and the efforts made within and around the two AWGs. The result was that no binding agreement on the post-2012 obligations of the

Parties could be reached in Copenhagen and the solution was shifted to the next Conferences of the Parties.

Despite the high hopes, Copenhagen essentially represented a failure, in the sense that it could not deliver any solution on the post-2012 scenario for climate change. The distance between the hopes and the failure opens up a question that cannot be avoided: between the hopes and the failure what is the reality?

The analysis of the “reality” of the climate change regime and its governance model ought to start from some of the basic underpinning features of the present system, relating to its governing principles, its key actors and its negotiating tracks.

To this effect, it should be firstly underscored that the UNFCCC and the KP are essentially based on the principle of common but differentiated responsibilities. Such a principle has developed in international environmental law as a principle of asymmetric cooperation among the various members of the international community. It derives from the general principle of equity and it aims at promoting the recognition that the special needs of developing countries must be taken into account in the definition and implementation of international environmental law. The principle of common but differentiated responsibilities is crystallised in principle 7 of the Rio Declaration which reads as follows: *“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command”*.

In practice, the principle says that, on the one side, all States of the international community have a common responsibilities for the international protection of the environment and all must cooperate in good faith for pursuing common protection goals. However, at the same time, considering their different contribution to environmental degradation as well as their different human, technical, economic and financial capabilities, they may be assigned differentiated responsibilities in the framework of the multilateral environmental agreements (MEAs). Therefore, such a principle introduces a certain degree of flexibility in the definition and implementation of international environmental law, which is particularly suitable in the case of global environmental issues, such as the ozone layer depletion reduction, the fight against climate change and the preservation of biodiversity.

The principle of common but differentiated responsibilities is nowadays one of the most relevant principles of international environmental law, which has been included in the most important conventions and protocols for the protection of global environmental goods. However, the use of the principle made by the drafters of the UNFCCC in 1992, upon which it is grounded the distinction of the Parties to the UNFCCC into the two rigid groups of Annex I and Non Annex I Countries, was probably not the best way to give full justice to it. In fact, despite the fact that it might encourage the participation to the Convention of a greater number of developing countries, it has the evident disadvantage that it tends to put more stress on the different positions and interests of

the Parties, rather than on their common objective to fight against climate change, which is at the basis of the UNFCCC and which should govern the implementation of the Framework Convention and all the legal instruments related thereto, such as *in primis* the Kyoto Protocol.

Moreover, it should be recalled that the negotiations on the post-2012 scenario, which started as early as 2005 and are still on-going after so many years, did not manage to reduce the initial distance neither among the key Annex I Parties on the one side, most notably between the EU and the USA, nor among them and the most relevant emerging economies within the Non Annex I Parties, such as China, India and Brazil.

Furthermore, the presence of two parallel negotiating tracks, based on the activities of two parallel AWGs, most probably did not help the Parties to concentrate on the definition of a single comprehensive solution on the post-2012 scenario, leaving the possibility for many countries to play different games on different tables, without any evident *bona fide* commitment to try and find an acceptable solution for the future, as it would be required by the principle of co-operation under international environmental law.

There are however some positive lessons which can be learned from the failure to reach an agreement at the Copenhagen Conference. In fact, at Copenhagen, thanks to the last minute efforts of the heads of state of some key-countries, most notably USA and China, an “accord” among the Parties was indeed found, which was named “Copenhagen Accord”. This is not a legally binding agreement, as it is the Kyoto Protocol, but is essentially a political agreement, based on voluntary commitments by the Parties to control and reduce their GHG emissions at a national level. However, its importance lies in the fact that it essentially responds to the basic request of both USA and China, its main sponsors. In fact, it satisfies the request for symmetry of the USA, which were asking for an agreements with similar commitments for both developed and developing countries, as well as the request of China, which in spite of its willingness to give a contribution to the fight against climate change, was not ready to accept binding GHG reduction commitments.

It has been widely criticised the fact that the Copenhagen Accord does not contain internationally binding obligations for the Parties, thus departing from the Kyoto Protocol model and going back to the less rigid and less structured regime established at the beginning of the nineties by the Framework Convention. Such an Accord, however, represents a very important milestone in terms of “reality”.

In fact, it could be argued that the Copenhagen Accord, despite its limits, probably represents the only reasonable outcome which can be nowadays achieved at an international level to continue fighting against climate change, in a more or less concerted way, in the next decades. In other words, the Copenhagen Accord, despite its possible shortcomings, should be probably seen as an outcome which perfectly exemplifies the present international situation, where most of the countries are not willing to accept binding and costly obligations under international environmental law. Most of the countries, in fact, nowadays rather prefer to agree on some general steering principles and guidelines, leaving the implementation phase essentially to their national

realm, with some possible room for international monitoring and verification on their concrete actions, premised on a facilitative rather than sanctioning approach. This is essentially the reality, coming out from the still on-going climate change negotiations, which deserves a further more detailed analysis, to be undertaken in the next paragraph.

2.2 The Copenhagen Accord (lights and shadows)

It is not the aim of the present contribution to provide a detailed analysis on the Copenhagen Accord, which has been already subject to a careful scrutiny.² However, it might be useful to recall here some of its main features, in order to better address the issue of what can now be the way forward at the international level, in order to complete the negotiations for the post-2012 climate change scenario.

Firstly, it should be underlined that, despite its limits, the Copenhagen Accord represents so far the only agreement reached by the UNFCCC Parties on the post-2012 scenario. For this reason, its importance should not be underestimated. Moreover, as already mentioned above, such an Accord probably represents an outcome which perfectly exemplifies the present international situation, where most of the countries are not willing to accept binding and costly obligations under international environmental law.

On the basis of this line of reasoning, the fact that the Copenhagen Accord is just a political agreement, not entailing binding obligations, which has been often perceived as one of its main shortcomings, could also be seen in a reverse way. In fact, if one assumes that the reality of the climate change negotiations is as such that a binding agreement among the Parties to be developed on the Kyoto Protocol's model was not (and probably is still not) feasible, the Copenhagen Accord could be seen instead as a great political success, which may enable the global climate change governance regime not to collapse after 2012.

Moreover, despite the fact that the Copenhagen Accord was reached outside the normal framework of the climate change negotiations, essentially by-passing the COP's competence and removing the negotiating power from the official country negotiators to put it in the hands of a few heads of state, who met in parallel with the official COP's meeting towards the end of the Copenhagen Conference, it cannot be argued that the Accord does not have a proper international support.

In fact, notwithstanding its origin, which essentially consisted in a two-party agreement between USA and China, backed by a total of 25 Parties and not endorsed by the COP, which limited itself to take note of the agreement already reached outside its control, in the subsequent months many UNFCCC Parties have become associated with the Accord and have duly communicated their voluntary mitigation (and adaptation) commitments to the UNFCCC Secretariat.

² For instance, see D Bodansky, *The Copenhagen Climate Change Conference: A Post-Mortem*, 2010, available at <http://ssrn.com/abstract=1553167>.

In this sense, therefore, it could be argued that the subsequent practice has probably made the Copenhagen Accord a much more feasible and serious agreement, as compared to what it seemed at the time of its conclusion, and nowadays it is possible to assume that, despite its limits, the Accord might essentially work and deliver some interesting results in terms of post-2012 contribution to the fight against climate change.

Another basic feature of the Copenhagen Accord, which should be given a proper weight, lies in the fact that despite the non-binding nature of the Accord, which is based on the voluntary commitments decided and communicated by the Parties, nothing prevents the Parties from creating and making an effective use of a solid monitoring, verification and report system, in order to carefully scrutinise the concrete fulfilment of the self-declared voluntary obligations by the Parties, as the Parties already envisaged in the Copenhagen Accord itself.

Moreover, in addition to the establishment of such a monitoring, verification and reporting system, the implementation of the Copenhagen Accord could be backed and reinforced also by an *ad hoc* compliance regime, which could be developed by the Parties on the basis of the well structured compliance regime of the Kyoto Protocol. This might finally mean that a non-binding agreement, based on voluntary commitments by the Parties, if adequately supported by a monitoring, verification and reporting system, and possibly also by a compliance regime, could finally prove a more effective legal instrument as compared to many of the existing MEAs.

On the basis of what I have been arguing above, it can be concluded that the Copenhagen Accord, despite its non-binding nature, in practice should be taken as seriously as a legally binding agreement, giving the context in which it is placed, the broad support received by many Parties and the presence of adequate implementation means, such as *in primis* the planned monitoring, verification and reporting system.

2.3 The way forward after the Copenhagen Accord

Following the outcomes of the Copenhagen Accord and the subsequent 2010 Cancun Agreements, which clarified certain issues and started working on the implementation of the Accord, the international community is now trapped into a fundamental dilemma.

On the one side there is the possibility to give a full credit to the potential of the Copenhagen Accord, by making the greatest international efforts at all levels to give such an agreement a full and effective implementation, supplementing it with concrete actions by the Parties, grounded on voluntary commitments, and backing its implementation through the establishment of an *ad hoc* monitoring and verification system at international level, as envisaged by the Accord, and possibly through the support of a compliance regime.

On the other side, the UNFCCC Parties may consider that the Copenhagen Accord is essentially still a voluntary agreement, which if taken in isolation and not backed by a

formal subsequent binding agreement, gives no solidity and no credibility to the future international efforts to fight against climate change in the next decades. A new binding agreement is therefore needed, substituting the Kyoto Protocol for the post-2012 period and possibly premised on the Copenhagen Accord. In other words, under such a view, a new international agreement would be necessary in order to give teeth to the Copenhagen Accord and formally overcome the Kyoto Protocol approach.

However, in order to achieve this result no clear and undisputed way exists. The Parties may in fact theoretically choose among different options, each of them is equally complex and presents its pros and cons. The available options may grouped into two main alternatives.

The first alternative option may consist in the continuation of the climate change negotiations within the UNFCCC COP (Durban and further); this is the easiest possibility, based on the consideration that the on-going negotiations within the COP, despite the story of hopes and failures shown so far, will finally manage to deliver some sort of binding agreements among the UNFCCC Parties on the future of the climate change negotiations.

The second alternative option might consist in trying to overcome the present *enpasse* about the future of the on-going climate change negotiations for the post-2012 by removing the “political” part of the discussion, which could be taken away from COP and be treated within the framework of the reform of the global environmental governance, most probably starting from the Rio+20 Conference, scheduled for June 2012. Such an option could in fact follow two possible tracks.

Under the first one, the definition of the new and future climate change regime could be linked to the UNEP’s reform, on the basis of a top-down approach aiming at the transformation of the present Environment Programme into a fully-fledged organisation, preferably consisting in a new UN agency, building up on the existing UNEP structure, budget and mandate, and trying to improve its effectiveness at a global level.

Under the second one, the Parties could instead choose to enhance the truly political (and neither the legal, nor the technical) dimension of the negotiations and promote a steering role on the political dimension of the climate change negotiations for the G-20, as enriched with a new environmental and sustainable development agenda. In such a context, the political debate on the basic terms of the future global climate change cooperation, given their relevant economic implications, would be better placed in an economic forum, such as the G-20, rather than in a technical one, such as the UNFCCC COP, thus leaving to the latter a merely “administrative” and technical role.

The possibility to treat separately the political dimension of the climate change negotiations will be addressed in more detailed terms in the next paragraph of the present contribution. In the meantime, however, it is worth spending some words on a further possibility which could be linked to each one of the future scenarios on the post-2012 climate change regime. This is the issue of the so-called decentralisation of the climate change governance.

In fact, irrespectively of the circumstances that the Parties will or will not be able to find any satisfactory and comprehensive agreement soon, going or not beyond the Copenhagen Accord, it may be worth exploring the option of a possible decentralisation of the climate change governance.

The decentralisation of the international approach to climate change, is in fact based on the premise that the Copenhagen Accord is just setting a very broad reference scenario, establishing the main goals and initiatives to be undertaken to fight against climate change, which could be implemented not only within the UNFCCC framework, but also through several other international organisation, agencies and bodies.

In fact, as it has been argued in the literature, considering the slow pace and the uncertain outcome of the climate change negotiations, *a more promising approach to moving forward would be to split the climate change problem up into different pieces and address the more tractable pieces in more specialized forums.* According to the author,³ *to some degree this is happening already. The International Maritime Organization (IMO), for example, is considering international shipping, the International Civil Aviation Organization (ICAO) is considering civil aviation, and the Montreal Protocol is considering HFCs.*

This demonstrates that the climate change governance problem may also be dealt separately from the concrete management of mitigation and adaptation policies and actions. In fact, while the former should necessarily have a reference forum, possibly at a centralised level, the single initiatives and actions in the climate change sectors, must be not necessarily be taken under the UNFCCC umbrella, but they could rather be split into different fora and be related to the implementation of several MEAs, as proposed by the supporters of the decentralised approach.

Having said that, in the next paragraph I will concentrate on the already mentioned possibility to solve the problem of the inadequacy of the present climate change governance regime within the framework of the need for the reform of the global environmental governance.

3. The search for a new climate governance regime

3.1 The need for reform of the global environmental governance

At the beginning of the article, I started from the premise that as it has been argued by some scholars, one of the major problems surrounding the present climate change

³ D Bodansky, *The International Climate Change Regime: The Road from Copenhagen*, 2010, available at http://belfercenter.ksg.harvard.edu/publication/20437/international_climate_change_regime.html?breadcrumb=%2Fproject%2F56%2Fharvard_project_on_climate_agreements%3Fgroupby%3D1%26parent_id%3D%26page_id%3D157%26filter%3D130%26page%3D5.

regime is “the challenge of fragmentation of negotiations and governance systems”.⁴ On the basis of such a premise, in the previous paragraphs I have been analysing the main features of the present climate change regime and the reasons why the many hopes related to the on-going negotiations for the definition of the post-2012 climate change agreement among the UNFCCC Parties. The consequent disappointment for such failures has led us to consider more carefully the pros and cons of the 2009 Copenhagen Accord, which despite its limits and its deficiencies represents so far the only concrete step made towards the shaping of the post-2012 climate change regime.

However, as the analysis of the Copenhagen Accord and the related still on-going negotiations shows, the present difficulties of the UNFCCC Parties to agree on the post-2012 are related not only to the different views of the leading Parties on the type and degree of the efforts to be made by developed countries on the one side and developing countries on the other side, both in terms of mitigation and adaptation to climate change, but are also (and maybe more importantly) related to the basic inadequacy of the present climate change governance regime.

What is this inadequacy after all? In what it really consists? Is it related to the inability of the UNFCCC and KP Parties to agree on their future commitments only or is it a broader problem, which goes beyond the on-going climate change negotiations?

3.2 The reform of the global environmental governance: UNEO and other options

In my opinion, the solution to the inadequacy of the present climate change governance regime must be found essentially in the much more relevant and much greater inadequacy of the global environmental governance regime. It is, in fact, well known that the present global governance of the environmental matters is very fragmented and lacks an institution at international level which can exercise a leadership or at least an effective coordination of the existing multilateral environmental agreements and related initiatives and actions.

The seek for a better climate change governance regime is therefore an issue to be addressed within the broader context of the need to improve the global environmental governance, which is lacking a leading or coordinating institution and which is fragmented in a too excessive number of international conventions, agreements, accords, initiatives and actions.

Most of the discussions over the last few years which were related to the need to revise and update the international environmental governance system have highlighted the lack of an effective reference international organisation in this field with a broad and comprehensive mandate and the related power to enforce it. The reference point in such a context is in fact essentially represented by the UNEP, the United Nations Environment Programme, which is however a mere programme and not an

⁴ F Biermann and others, *Climate Governance Post 2012 - Options for EU Policy Making* (n 1).

organisation or agency operating within the UN system, with a limited budget and a limited mandate. The UNEP, in fact, does not have neither the theoretical nor the practical possibility to exercise a real leadership or at least an effective coordination for the implementation and enforcement of the existing international environmental agreements, insofar many of them are managed by independent Secretariats or other international organisations, which cannot be influenced in any way by UNEP's policies, priorities and proposals.

The necessity to reform the UNEP, in order to create a fully fledged environmental organisation, possibly within the UN system, has been argued by many scholars and is supported by several countries. In this context, I would like to recall a study on the reform of the global environmental governance, in which I was involved a few years ago, which had been commissioned by the French Government to the European University Institute. Such a study represented a contribution to the solution of the international environmental governance problem, which was inserted in a series of scientific studies relied upon by the Government of the French Republic to support its proposal to reorganise the UNEP to better cope with the major existing environmental emergencies and coordinate all the efforts at the international level in this field.

In such a study, which was named “Options and Modalities for the Improvement of International Environmental Governance through the Establishment of a U.N. Environmental Organization”,⁵ the different options for reforming international environmental governance were proposed and analysed in a comparative way. For reasons of simplicity, feasibility and clarity, such options were reduced to only three ones.

The first option would consist in establishing a specialized agency of the United Nations with specific and exclusive competence in the environmental field, which should inherit the competences that are presently owned and exercised by the United Nations Environmental Programme (UNEP) and develop innovative functions for the coordination of environmental initiatives within the UN System as an umbrella organization. This organization could be named “United Nations Environmental Organization” (UNEO).

The second option would be represented by the possibility of reinforcing the structure and competences of UNEP, especially by expanding its existing functions and improving its administrative organisation and funding. This option, which would be the simplest one in technical and logistic terms, would therefore give rise to an enhanced UN programme that could be called “Enhanced UNEP” (EUNEP).

Finally, the third option would consist in establishing a new international organization – not belonging to the UN framework – based on the model of the World Trade

⁵ The study on “Options and Modalities for the Improvement of International Environmental Governance through the Establishment of a U. N. Environmental Organization” was commissioned by the French Government and prepared by a working group based at the European University Institute (Florence). The authors were P. M. Dupuy, F. Francioni, F. Lenzerini, M. Montini, R. Pavoni, E. Morgera, F. De Vittor. The full text of this study is still available at the following address: <http://www.diplomatie.gouv.fr/fr/IMG/pdf/Etudes_iddri_juridique_EN.pdf> .

Organization (WTO). This organization would be characterized by a single structure – encompassing an autonomous administrative structure and a dispute settlement regime – and would be based on common principles informing the whole environmental management at the international level. To this effect, it could be named “World Environment Organization” (WEO).

When drawing a balance between the advantages and disadvantages which characterise each of the above mentioned three options, it emerges that the preferred solution for strengthening international environmental governance would be represented by the establishment of UNEO. In fact, despite the long and expensive negotiations that would be probably required in order to adopt an international agreement for the establishment of a new UN specialized agency and the increased budget that such a fully-fledged organisation would need, such a solution, as compared to the other two ones, would nevertheless present a number of notable advantages, as it will be mentioned below.⁶ First, UNEO would be part of the UN system, being therefore characterized by a stronger institutional status than UNEP, hence facilitating its role as the “environmental authority” at the global level and owning a broader potential for wide membership than a UN-unrelated organization. Second, its status of “universal” environmental organization could ensure a greater coherence of international initiatives and actions in the environmental field. Third, UNEO would facilitate the coordination within the UN system of all the actions in the field of sustainable development, through ensuring stronger and more systematic cooperation with other international organisations, agencies or programmes somehow dealing environmental issues, such as UNDP, FAO, UNESCO, OMS, IMO and so on. Fourth, UNEO would favour the possibility of increasing participation to the existing Multilateral Environmental Agreements (MEAs) of all the international community, by improving their coherence with the global environmental agenda and eliminating possible contrasts and incompatibilities among them. Fifth, UNEO could prove beneficial to developing countries, since its institutional character and its functions would ensure adequate support for the needs of developing countries. Sixth, UNEO would present a very important forum for coordinating and enhancing a better implementation of international environmental law and promoting the conclusion of new MEAs. Seventh, UNEO would have huge visibility before the international civil society as the reference or principal environmental authority at the international level, therefore favouring partnership with NGOs and the private sector and facilitating their input to the global protection of the environment. Eighth, the efficiency of the global environmental action would be improved in light of the capacity of UNEO to dispose of its own budget. For all these reasons, the UNEO option should be preferred with respect to the other two possible solutions mentioned above, consisting respectively in the EUNEP and in the WEO.

As already mentioned above, one of the most relevant positive consequence which may follow from the institution of the UNEO would consist in the possibility for the new agency to effectively coordinate the existing MEAs. In particular, UNEO could perform some innovative tasks which are presently not dealt with by MEAs Secretariats individually (such as annual global cluster coordination meetings, overall integrated

⁶ On this issue, see for more details the study mentioned above.

assessment of MEA national reports, and support to national integrated MEA implementation), without prejudice to the decision-making and budgetary independence of the existing MEAs Secretariats. Therefore, the creation of UNEO would not affect the core of the current functions and/or the status of the MEAs Secretariats and would not create obligations or negative impacts on rights of States parties to certain MEAs, but not supporting UNEO. The UNEO, once instituted, would invite MEAs to accept the overall support offered by UNEO itself, particularly with regard to the management of the most relevant crosscutting issues at the global level. Moreover, support of the MEAs to the UNEO could be given by a single decision of the Conference of the Parties of each MEA concerned, therefore removing the need to renegotiate the text of all pre-existing MEAs.

3.3 The reform of the global environmental governance: a G-20 for environment and sustainable development

As argued above, the solution to the inadequacy of the present climate change governance regime must be found essentially in the much more relevant and much greater inadequacy of the global environmental governance. To this effect, we have been arguing in the previous paragraph the necessity to revise UNEP, possibly promoting the establishment of UNEO, as a specialized agency of the United Nations with specific and exclusive competence in the environmental field, which could promote the coordination of all the global efforts and initiatives in the environmental field, both within and outside the UN System.

The item of the institutional reform of the global environmental governance, including the necessity to revise and update the existing UNEP, is also on the agenda of the forthcoming Rio+20 international conference on sustainable development, which is scheduled for June 2012.⁷ This could be the right time for all the Parties of the international community to discuss on the real and feasible options for reforming UNEP and improving global environmental governance. Hopefully, a broad support for the establishment of UNEO will be found in the Rio+20 2012 conference. If however, this should not happen and UNEP, as it stands, should remain also for the future the only entity with a general competence on environmental matters at international level, other solutions for the improvement of the present climate change governance regime through the reform of the global environmental governance should be found.

An option in this sense might be represented by the possibility to establish a sort of permanent G-20 meeting on environment and sustainable development, based on the present G-20 model, which is however limited to financial and economic matters.

As it is well known, G-20 was conceived a few years ago as the group of the finance ministers and central bank governors of the 20 major economies in the world: 19 national States plus the European Union, as the only non-State Party. Taken all together, the G-20 Parties comprise 85% of global gross national product, 80% of world trade (including EU intra-trade) and two-thirds of the world population. Since 2008, the

⁷ See the agenda of the Rio+20 conference at <http://www.uncsd2012.org/rio20/>.

G-20 meets either in the ministerial form, with the participation of finance ministers and central bank governors, or in the heads of state form. Given the G-20 increased relevance during the still on-going economic crisis, as compared to other international institutions and entities, the Parties agreed in 2009 that the G-20 should replace the G-8, the former main economic forum of the most wealthy States of the world, as the reference forum for global economic governance.⁸

Since then, in fact the G-20 has started to play a pivotal role as the world leading forum for discussion on the most relevant economic and financial issues and has delivered concrete results to tackle the global economic crisis. The outcomes of the G-20 summits are not binding international agreements, but the group rather aims at defining the priorities for initiatives and actions to be pursued at international level by different organisations and institutions, actively supported by the G-20 Parties. The G-20 represents a sort of self-proclaimed steering group for the world economy, composed by the 20 major economies in the world. The group, which is meeting without the assistance of a permanent Secretariat, in a very light administrative way, represents itself as the reference framework for the promotion of a strong, sustainable and balanced growth at a global level, involving both developed and developing countries.

However, as the G-8 meetings evolved over time to comprise also non-economic issues and started dealing also with environmental matters, including climate change, it is now time that also the G-20 loses its solely financial and economic label, in order to become the real reference forum for the global agenda. As compared to the G-8, in fact, the G-20, has a broader world coverage and includes the “new” most relevant emerging economies, among the developing countries group, along with the “old” major industrialised countries. In this sense, therefore it is certainly a better placed forum for dealing also with environment and sustainable development, or more precisely with environmental protection in the context of sustainable development, at a global level.

To this effect, I am convinced that one way to deal with the reform of the global environmental governance would consist in calling the G-20, encompassing the heads of state together with their economic ministers on the one side and environmental ministers on the other side, to become the steering international institution on sustainable development, which should define, in “political terms”, the priorities for action. The priorities for sustainable development should also include the definition of the terms for a concerted action to tackle climate change, both in terms of mitigation and adaptation policies as well as in terms of economic and financial support from the major world economies to the poorer and most affected countries of the world.

Such a proposal moves from the consideration that the main reasons for the recurring failures experienced in the last few years on the definition of the terms of the international cooperation and the related international protocol and/or agreements

⁸ At the G-20 Pittsburgh Summit in September 2009, the Parties agreed that the G-20 should become the “main international economic forum”, in order to reflect the new world’s balance and the growing role of emerging countries. Since then, the G-8 has been redefining its role and, as it emerged clearly from the latest G-8 meeting of heads of state, held in France in May 2011, the “new G-8” is refocusing mostly on geopolitical and security issues, enhancing its dual political and economic dimensions, rather than focusing on the priorities of the international economic agenda only.

thereto, are essentially of a “political” rather than of a “technical” nature. This means in other terms, that, as the Copenhagen Accord learns, the most effective solution for the definition of the future climate change governance should be probably found at a political level beforehand, in a smaller forum, including the major economies and the major world GHG emitters. Then, once agreed the terms of the future cooperation in this field, the details could be negotiated by the UNFCCC Parties, in a more traditional way, during the periodical Conferences of the Parties. By doing so, the “pressure” on the COP’s meetings would also be reduced, by removing the scope of the political segment from those meetings. Conversely, the COP’s meetings would regain the natural role of technical conferences, to be focused on the resolution of technical issues only.

Within such a context, it may be argued that the G-20, which so far has not dealt at all with sustainable development, environmental or climate change issues, is not the appropriate forum to exercise such a steering role for the climate change governance. This proposal, obviously, should be subject to further analysis and discussion. However, I am convinced that the political debates on the basic terms of the global climate change cooperation, given their relevant economic implications, would be better placed in an economic forum, such as the G-20, rather than in a technical one, such as the UNFCCC COP, thus leaving to the latter a merely “administrative” and technical role. After all, the COP should not be allowed to take decisions which may have potentially affect quite heavily the economy of the Parties and, in fact, in recent years most States have become much more cautious about the possibility of future climate change protocols drafted on the Kyoto Protocol’s model, also due to the experience gained in recent times about its relevant economic implications and costs. Moreover, the COP’s role, if limited to technical negotiations only, would be probably much more fruitful if backed by a previous political agreement reached by the most relevant Parties on the basic terms of reference for the future action on climate change.

4. Conclusion

As I have been discussing above, the recent outcomes of the climate change negotiations have revealed the difficulty to reach within the UNFCCC COP’s framework a satisfactory and comprehensive binding agreement for the post-2012. However, the problem lies not only in the different positions of several of the key actors of the climate change negotiations, but it seems rather to be related to the inadequacy of the present climate change governance regime.

The only concrete result which so far emerged from the climate change negotiations on the post-2012 is represented by the 2009 Copenhagen Accord, which is not a legally binding agreement, as it is the Kyoto Protocol, but is essentially a political agreement, based on voluntary commitments by the Parties to control and reduce their GHG emissions at a national level.

This Accord, despite its limits, most probably represents the only reasonable outcome which could be reasonably achieved, within the present climate change governance framework, in order to continue fighting against climate change in the next decades.

The analysis conducted above has therefore highlighted that more ambitious solutions for the future management of climate change can only come from an improvement of the climate change governance regime. In this sense, I have been arguing that the possibility to solve the problem of the inadequacy of the present climate change governance regime should be better addressed within the framework of the need for the reform of the global environmental governance.

To this effect, the Parties could follow two possible tracks. Under the first one, the definition of the new and future climate change regime could be linked to the UNEP's reform, on the basis of a top-down approach aiming at the transformation of the present Environment Programme into a fully-fledged organisation, preferably consisting in a new UN agency, building up on the existing UNEP structure, budget and mandate, and trying to improve its effectiveness at a global level. Under the second one, the Parties could instead choose to enhance the truly political (and neither the legal, nor the technical) dimension of the negotiations and promote a steering role for the G-20, as enriched with a new environmental and sustainable development agenda, thus leaving to the UNFCCC COP a merely "administrative" and technical role.