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The Birth and Foundation of an International 'Polluter Pays' Principle

Abstract:

Global warming causes the gathering of the international community already for 25 years, starting with the Conference of the Parties to the United Nations Framework Convention on Climate Change. Today, more than ever, the challenge and urgency that climate change poses imply serious threat to the human world. Considering the regional inequality around the globe, this crisis prompts the question of solidarity from developed countries towards emerging and less developed countries. Accordingly, this situation brings the interrogation of the responsibility of protection of the environment and populations. In order to act, many appeals to the Polluter Pays Principle. We will first establish the juridical ground of such a principle, to determine its application – especially in international law, whereas the second point will be the assessment of the Katowice summit, as it describes the progress of the international community. Arguably, the Damocles sword that dangerous climate change constitutes would be one of the greatest opportunities to organize the biggest international cooperation in history.

Key words: Global Warming, development, Polluter Pays principle, environmental output, Paris agreement, sustainable

1. Introduction

„The Katowice outcome is crucial for the world moving forward with global response to climate change. It is critical for building up confidence. The time to finalize the Katowice rule-book is now and it is up to all of us, present and committed” – stated the President of the 24th Conference of the Parties to the United Nations Framework Convention on Climate Change and Secretary of State H.E. Michał Kurtyka at the Opening

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Ceremony of COP24 in Katowice, the 3rd December 2018. This speech introduction outlines the countdown that is starting before the scientific expectation of global warming that is considered as a climatic catastrophe and the urgency for the governments to react and work all together against this disastrous perspective.

To present the COP in a nutshell, we should state that this is the supreme decision-making organ of the Convention. All states that signed the Convention are Parties to the Convention and are represented at the COP, during which they are discussing the implementation of such convention and any other legal instruments that are helping the grouped action to adopt effective and precise implementation. This yearly conference corresponds to the moving forward negotiations on the topic of sustainable development, via legal involvement of the parties following the respect of international law. Treaties and resolutions are frequently coming out of this to act against global warming. Such negotiations are commonly about the technical process put in place to bind the countries to their engagement in lower the gas emission.

At the end of the day, it consists more in the creation of a global sustainable economic system, where energetic costs transition and environmental damages are setting the boundaries. This is a place where economy and climate meet, like the Dynamic Integrated Climate Economy theory² shows and calculates, whereas some other authors would argue more about the social dimensions with the principle of fairness between polluters and the price of pollution in terms of obligations and responsibilities towards the environment and nature themselves³ or towards the future generations⁴. One might say that, as opposed to a too focused, too simplistic conceptualization of sustainable development, some authors also propose more global systemic schemes of thoughts as the idea of trajectories of societies, by using the „IPAT equation”, conceptualized by Ehrlich and Holdren⁵. This equation describes how the combination of growing population, affluence and technology contributes towards the impacts of human activity on the environment.

For a quick reminder of the COP’s international history, the first annual co-operational meeting was held in Berlin, in March 1995. Unless a Party offers to host the session, which is usually the case following the tradition of rotation between the five different regions of the world (Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe and Western Europe and Others) the conference would be in Bonn by default, and the host in 2018 was Poland, precisely in Katowice, a city of the Silesian region.

So, the COP24 is the informal name for the 24th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC

² W. Nordhaus, Nobel Price of economy, *An Optimal Transition Path for Controlling Greenhouse Gases*, Science, vol. 258 (5086), 20th November 1992, p. 1315–1319.

³ In that sense of distributive justice and society’s responsibility, see J. Rawls, *A Theory of Justice*, Cambridge, MA, 1971, p. 8.

⁴ E. Brown Weiss, *In Fairness To Future Generations and Sustainable Development*, American University International Law Review 1992, vol. 8, no. 1, p. 19–26.

⁵ P.R. Ehrlich, J.P. Holdren, *Impact of population growth*, Science 1971, 171/3977, p. 1212–1217.

is a „Rio Convention”, adopted after the „Rio Earth Summit” in 1992. Today, there are 196 countries that are taking part of the process. The main goal of the COP meetings is to assess progress in dealing with climate change, to negotiate the Kyoto Protocol, which is an agreement linked to the UNFCCC setting internationally binding emission reduction targets to establish legally binding obligations for countries to reduce their greenhouse gas emissions. Therefore, the climate change is defined as the change in climate due to human activities. Indeed, the change of atmospheric composition and climate change is impacting as an additional element in natural climate variability. To fight the climate change in long term perspective, the answer by the defenders of the planet consists in building our future society following the scheme of the sustainable development doctrine.

According to the Intergovernmental Panel on Climate Change (IPCC) special report, published the 8th October 2018, human activities are estimated to have caused approximately 1,0°C of global warming above pre-industrial levels, with a likely range of 0,8°C to 1,2°C. Global warming is likely to reach 1,5°C between 2030 and 2052, if it continues to increase at the current pace. „With more than 6,000 scientific references cited and the dedicated contribution of thousands of expert and government reviewers worldwide, this important report testifies to the breadth and policy relevance of the IPCC”⁶. To summarize the impact of the global warming on our planet, scientists are exposing the rising of the rate of natural catastrophes, extreme weather, augmentation of the sea level and drastic modification of our ecosystem. Considering this disastrous perspective, the COP24 in Katowice was supposed to give a global political answer by uniting all the countries in the world around a convention proposing binding objectives. If it seems that the result of the summit is halfway satisfying, we can underline the damaging disappearance of any form of human rights that are transmitted to the Marrakesh conference⁷ offering a reflection on environmental refugee or climate refugee – by this term we think about „people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”⁸.

This paper outlines and proposes a reflection about the debate on the Polluter Pays Principle, which made its way through the convention, but which did not obtain a real consensus in its implementation. Starting from developmental objectives and then describing paths of more sustainable developments that also address climate change, may be the easiest way for many developing countries to take the first steps in longer-term action on climate change. The approach has a basis in the Convention, which – together with a proposed reporting structure – would provide enough stringency for a first step with a clear regulation about a solid Polluter Pays Principle. The main expression

⁶ Hoesung Lee, Chair of the IPCC.

⁷ The Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration took place in Marrakech, Morocco on the 10th and 11th December 2018.

⁸ E. El-Hinnawi, *Public discourse of the UN*, 1985, UN Environment Programme (UNEP) expert.

of the principle through the prism of international law would be a carbon law that all states will have to nationally apply.

Here comes the time to argue on the reasons why carbon law appears more and more vital. First, we must consider the fact that the two hundred and fifty biggest companies are representing a third all man-made green-gas emission and only thirty percent of them plan to reduce their emission. Besides, with the example of Great Britain, we can observe other failed attempts of regulation in the past with the texts Climate Change Act of 2008⁹, which is applied to governments and is aiming to reduce the greenhouse gas by eighty percent between 1990 and 2050, or the S172 companies act 2006 concerning the corporate and the responsibility and dialogues of stakeholders¹⁰ world in the United Kingdom. These two acts are interesting for their aim and what these would mean if they were applied at international level, but they also reveal limited results, mainly because of the obligation's scope, which is very small. Moreover, we can notice the incapacity to force governments to apply any binding law on the name of the industry wealth (e.g. *Case people and Planet vs HM Treasury*, 2009).

The paper is organized as follows. The next section outlines the legal basis for the creation of the Polluter Pays Principle (2), which has the ambition to become a broad tool to implement a sustainable development in order to prevent or to limit global warming, especially since the Paris agreement that was still a work in progress in Katowice (3).

2. The Polluter Pays Law Principle as a ground for sustainable development

One Polluter Pays Principle (PPP) for a global answer against global warming and in favor of sustainability must find its roots in international law and be transformed into a concrete and adaptable instrument for the sake of the environment. This constitutes the whole challenge for the international community.

2.1. Theory and foundations of the Polluter Pays Principle

The Brundtland report states that „sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”¹¹, their future human needs and quality of life. This thought brings to the table human life, economic resources, nature and the environment as fundamental values that must be taken into consideration in the path of development of countries and companies. Therefore, the objective of a sustainable process is to achieve more production with lower cost of raw material, which is why sustainability is usually

⁹ The Climate Change Act 2008 (c 27), Act of the Parliament of the United Kingdom to ensure that the net UK carbon account for greenhouse gases for the year 2050 is at least 80% lower than the 1990 baseline.

¹⁰ The Corporate Governance Code, Section F proposal which should stipulate (d) the impact of the company's operations on the community and the environment, (e) *the impact of the company's operations on social and human rights issues* and this aligns with the concept of 'Environmental, Social and Governance', which appears in the UN Principles for Responsible Investment.

¹¹ World Commission for Environment and Development, 1987.

mentioned with concepts like recycling, renewable energies and green energies or environment friendly technology.

The implementation of the PPP is an attempt to look for a better economic production model which is by essence following the doctrine of sustainable development. The PPP is a commonly accepted practice that those who produce pollution should bear the direct costs and the costs of preventing damage to human health or the environment¹². For instance, a factory that produces potentially poisonous substance as a byproduct of its activities is usually held responsible for its safe disposal¹³. The PPP was first mentioned in the recommendation of the Organization for Economic Co-operation and Development (OECD) of 26th May 1972¹⁴ as „principle to be used for allocating the costs of pollution prevention and control is the so-called Polluter-Pays Principle” and reaffirmed in the recommendation of 14th November 1974¹⁵ where:

the Polluter-Pays Principle (...) means that the polluter should bear the expenses of carrying out the pollution prevention and control measures introduced by public authorities in Member countries, to ensure that the environment is in an acceptable state. In other words, the cost of these measures introduced by public authorities in Member countries, to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption.

In 1992 in Rio, PPP was introduced as Principle 16 of the UN Declaration on Environment and Development. Also the European Community took up the OECD recommendation in its first Environmental Action Program (1973–1976) and then in a Recommendation of 3rd March 1975, regarding cost allocation and action by public authorities on environmental matters. Since 1987 the principle has also been enshrined in the Treaty of the European Communities and in numerous national legislations world-wide. Therefore concept of PPP can be customarily considered as a hard law by-product¹⁶, although it is also a soft law¹⁷ tool influencing the international scene through

¹² A. Bleeker: „PPP is a manifestation of the principle of equity known to common law systems. There are indeed strong arguments supporting claims that the PPP is in essence an equity or ‘fairness’ principle as it seeks to assign responsibility to a polluter and to hold him accountable for the pollution, it has created in order to avoid passing on costs to third parties who did not contribute to the creation of that pollution. In particular, the PPP is used to obtain an equitable distribution of pollution damage costs between polluters and the general public” – A. Bleeker, *Does the Polluter Pay? The Polluter-Pays Principle in the Case Law of the European Court of Justice*, European Energy and Environmental Law Review, December 2009, Department of European Legal Studies College of Europe, p. 290.

¹³ C. Hilson, *Regulating Pollution: A UK and EC Perspective*, Oxford 2000, p. 120.

¹⁴ Guiding Principles Concerning International Economic Aspects of Environmental Policies [C (72) 128].

¹⁵ Implementation of the Polluter-Pays Principle [C (74) 223].

¹⁶ A. Williams: „Traditionally, international rules existed primarily in the form of treaties or customary law” – A. Williams, *Reconciling Tourism and the environment: a task for international environmental law?*, Vermont Journal of environmental law 2007, vol. 9, p. 38.

¹⁷ „Soft law” describes high level declarations of intent, consensus declarations agreed by states, technical standards, codes of conduct and guidelines that are not aligned with the classical sources of law

the lens of the sustainable development goals of the UN, where it takes its root. The idea here is to build an international regime to coordinate the different national standards and put up some effective measures. Thus, the PPP is also a „soft law instrument” within public international law¹⁸. This draws another dimension of the international legal system as a framework for cooperation and harmonization mechanisms in the direction of transboundary and national regulation to fight, in this case, the global warming and the concerning excessive pollution.

Indeed, climate change is a global problem requiring the cooperation of all countries to be addressed effectively. Although greenhouse gas emissions from the industrialized North have been far greater than from the developing South, even though the latter are also growing rapidly. Therefore, the principle of „common, but differentiated responsibilities”¹⁹ between industrialized and developing countries has been successfully established in the negotiations. Countries are all gathered around the importance of sustainable development and have recognized it in the United Nations Framework Convention on Climate Change (UNFCCC) process. Article 3.4 of the Convention (1992) states as a principle that: „Parties have a right to, and should promote, sustainable development”. The negotiations have, however, tended to focus on emission targets more than sustainable development, and we can guess that this is partly due to the predominance of the powerful financial interests of Northern countries.

The links between sustainable development and climate change have received increasing attention in the recent literature and led to the main perspective of implementing a carbon tax. Such idea is the most concrete completion of the substantive work behind the legal momentum of the PPP and this is a decisive turn to put in action a sustainable system thanks to international law. This would circumvent one common major issue about international law, that is that most of the legal texts are commonly too vague to be used directly in court because „the search for precise norms disqualifies *ab initio* most norms of customary international law which are usually imprecise, while many treaty norms are also vaguely worded. Given this background, it is not surprising that soft law instruments and general principles of international law are only rarely considered”²⁰.

This tax corresponds to the concept of carbon law, which is an environmental tax on the emission of carbon dioxide, aiming at reducing and controlling the greenhouse gas effect causing global warming. Thus, the carbon law is a concrete application

defined in the United Nations, Statute of the International Court of Justice, 18th April 1946, TS 993, 39 AJIL Supp 215, art. 38 [SICJ]; V.D. Degan, *Sources of international law*, The Hague 1997, p. 237–240; P.M. Dupuy, *Soft Law and the International Law of the Environment*, 12 Michigan Journal of International Law 1991, p. 420–428; C. Chinkin, *The Challenge of Soft Law*, 38:4 The International and Comparative Law Quarterly 1989, p. 850–859 (discussing international soft law).

¹⁸ For an outline of the evolution of the international legal system see M. Shaw, *International law*, Cambridge 2003, p. 1–42.

¹⁹ Mentioned for the first time during the Earth Summit in RIO, 1992, and resides in UNFCCC Article 3 para. 1 and Article 4 para. 1.

²⁰ P. Cullet, *International Environmental Law in Domestic Courts: Switzerland*, International Environmental Law Research Centre, IELRC working paper, p. 9.

of the Polluter Pays law Principle. Also, it is an open proposition to the parties of the COP21 in order to reduce their carbon emissions and it is complementary with the negotiable emission quotas.

2.2. The carbon law as an adaptable tool for sustainable development

In order to explain what a carbon law would be, at first we must establish that this tax is a Pigouvian²¹ tax. In this case it means that this tax would imply that polluters will have to pay a different bill depending on their own pollution. The more they are polluting, the more they will have to pay, and the price of the pollution would have to be set in advance. This way, following the price of the pollution, polluters would be able to foresee this cost in the final price of the final product²². The researched effects are to discourage big companies from using polluting production and promote eco-friendly production²³. A slow increase of the Pigouvian tax would try to convince big polluters to rethink the way they are producing their goods and lead them in a long-term vision, to guide the new investments towards greener activities and production. We got few examples of governmental impulses that have had efficient results as such as the Irish plastic bag tax in 2002. Considering the article of the American broadsheet newspaper „The Balance“: „within a few weeks, plastic bag usage fell 94%. One year later, everyone had bought reusable cloth bags. The revenue goes to the environment ministry for enforcement and clean-up“. Same with a relatively close example in British Columbia, with the implementation of a carbon tax in 2008 that covers about 70% of the province's greenhouse gas emissions. Again, from the American newspaper we see that „between 2007 and 2014, emissions fell 5,5% despite an 8,1% increase in population, and real gross domestic product rose 12,4% during that period“.

At this point, we can see two ways to implement a carbon tax in our society, one tax for the big polluters and one tax for small polluters. This proportional tax is made for the polluters to internalize all the costs of production for the planet and citizens of the world, leading to a sustainable model.

A tax for the big polluters would correspond to the process of instituting the carbon market. The concept of carbon market enables companies to produce a limited quantity of greenhouse gas, which precisely means that if a company is polluting more than what was allowed, it will have to buy some rights to pollute from another company. So, a company which did not use all its rights to pollute, would be able to sell them. This

²¹ A. Pigou, *The Economics of Welfare*, London 1920, chap. VI Income Tax, p. 638.

²² A. Bleeker: „To think of the PPP in terms of efficiency. This is a more economic rationale which sees the principle as a means towards achieving a more efficient allocation of resources in economic production. Pollution is a negative environmental externality (or side-effect) of economic activity. The PPP calls for the internalisation of such negative externalities in the cost of the product“ – A. Bleeker, *op.cit.*, p. 291.

²³ „About 40 countries impose carbon taxes on companies that burn coal, oil, or gas, which produce greenhouse gas emissions. These emissions cause climate change, which can bring about more natural disasters, raises sea levels, and increase droughts“ – K. Amadeo, *Pigouvian Taxes, Their Pros and Cons, and Examples*, The Balance, 2019, <https://www.thebalance.com/pigouvian-tax-definition-and-examples-4157479>.

market could exist at a national level or international level. Such a juridical mechanism corresponds to the Kyoto protocol. Also it already exists as we can see with the European Union Emissions Trading System/ Scheme (EUETS), which is the most important carbon market existing so far, in term of emissions' quantity. To describe the functioning of the system, we will take the European example. Each year, every installation bigger than 20 MW receives a quota of emission. A company then would have to either respect the quota of pollution or buy or sell some right to pollute. In the case of a company's failure to respect the emission limits, the regulator of the market will have to fine this company for every ton of none allowed carbon emitted, plus the company will have to buy some rights from another company. This market organization started in 2005, with the test phase until 2007, then the second period was between 2008–2012 corresponding to the Kyoto protocol agreement. The most interesting characteristic about this implementation at the European level could be that every State must present a national plan to allocate quotas to companies and this one must be presented to the European Commission. This follows the process of implementation of the international law, with a convention, through a national regulation. In the end, such regulation could be regarded as a development of the concept of corporate social responsibility²⁴ in the sense that companies will bear the cost of their deeds. Therefore, companies are forced to be responsible by themselves and towards the public.

This idea reinforces the dimension of the ethic and morale²⁵ in the PPP and corresponds fully with the doctrine of sustainable development at the same time. Finally, the PPP is fundamentally an economic principle translated into a legal instrument. Consequently, these two sides of the PPP articulate „an element of 'equity' or 'fairness' reflected in the PPP by its focus on internalizing negative externalities into the price of products, rather than imposing these costs on society"²⁶.

One tax for small polluters will affect consumers directly. This tax corresponds to the idea of sanctioning certain individual behaviors that are causing pollution. There is this example of carbon law in France²⁷, where owners of heavy polluting cars pay a tax every year to compensate the pollution. This kind of PPP is also dissuasive and promotes the acquisition of new less polluting cars, for example. Consequently, it stigmatizes polluting behaviors in the daily life of consumers, so we can speak of a carbon law on an individual level or scale. Such measures would have the benefit of stimulating the market to always propose new less polluting goods but at the same time it is promoting a huge waste of old goods that are still usable. Thus, we may speculate over the fact that industrial lobbies would mainly be content about this kind of regulation,

²⁴ *Introduction to Sustainable Development*, International Hellenic University, 2015, p. 47.

²⁵ S. Caney, *Cosmopolitan Justice, Responsibility, and Global Climate Change*, *Journal of International Law* 2005, vol. 18, issue 4, p. 747–775; S.C. Jagers, G. Duus-Otterström, *Dual climate change responsibility: on moral divergences between mitigation and adaptation*, *Environmental Politics, Volume 17, Issue 4: Perspectives on Justice, Democracy and Global Climate Change*, London 2008, p. 576–591.

²⁶ A. Bleeker, *op.cit.*, p. 291.

²⁷ Enshrined in 2014, called *Contribution Climat-Énergie* or *Taxes intérieures de consommation*. It generated 6,4 billion euros in 2017 and this information comes from the Institute for Climate Economics.

because it enhances the production of the market. However, the consumers are suffering from such regulation since they receive obligations only, with either a tax, either a sort of forced purchase. Also, a polluting good will lose some value on the market because of the implied tax, reducing the consumer power as well.

In the end, we can see different ways to conceive the implementation of the PPP but we are witnessing the same philosophy of regulation that is mainly punishing polluters with a sanctioning tax. This pattern brings the question of balancing between benefits from having a dissuasive tax or promoting investment and environmentally friendly behavior instead.

3. The Polluter Pays Principle advancement during the Katowice COP 24

This last summit during the previous Polish winter shows the urgency towards the global warming crisis with an international political ambition, although many issues remain like the clarity of the Paris agreement and countries' involvement.

3.1. Focus on the international ambition for the Carbon Law in Katowice 2018

In order to summarize the main mission of the international summit, parties tried to transform the Paris agreement into a concrete juridical document, with the creation of an international functioning carbon law indicating clearly all the rules and objectives of such a treaty. This way, countries and NGOs were discussing and negotiating the mechanisms of the Kyoto Protocol permitting the creation of a hypothetical international carbon market. Besides the carbon market, the parties are participating in the financing of the Green Climate Fund. This Fund was created in order to collect, redistribute and invest into green projects in less developed countries. To sum up, the international fund aims at allowing the energetic transition and technology transfer in emerging and less developed countries. Therefore, it is supposed to create a money movement from the developed countries (northern countries mainly) towards developing ones (southern countries). The Green Fund then states in which group countries are considered for the money distribution.

Considering the organization and the distribution pattern of the Green Fund, we could conceive such a fund as another expression of the PPP, since only developed countries, which have been the biggest polluters for a long time already, are contributing to it in solidarity with southern countries. Therefore, we have an example of the PPP as a law principle based on the initiative of investment, ruled by transparency and engagement. Furthermore, a carbon tax would be an efficient way to finance such a fund every year, as some experts already proposed for the European tax organization²⁸.

At the end of the conference, the Polish Government published the *Solidarity and Just Transition Silesia Declaration* report, which reports all the engagements taken consecutively from the COP24 and affirms all the new objectives. Juridically speaking,

²⁸ P. Coste (former ambassador of France and vice-president of Carbonium), H. El-Haité (former minister of environment in Morocco), A. Michaelowa (main author of the 5th GIEC report), J. Ruet (member of the Think20, G20).

the document is not binding as it is a resolution from the Republic of Poland. If we shall have a literal analysis, the legal document reaffirms the goal of transitioning to a sustainable development and environment, and assesses the fact that the transition would vary depending on the regions of the world, considering their level of development. In terms of juridical discussion here, we could emphasize a right to the equitable access to sustainable development considering that certain countries and areas are less advantaged, thus it is an obligation – maybe more moral – to help countries in need, as the document is not legally binding since it is a soft law writing²⁹.

Accordingly, the soft law dimension is here more to influence and to give a general direction for the further regulations, despite the critics urging the situation that is no less than alarming. We can talk about an inclusive transition, with extra-care for vulnerable countries. This precision follows the line of the Kyoto protocol stating that some countries would have to contribute to financially and technologically help countries in need. Since the energetic transition is barely mentioned once, the Polish Government puts the accent on the right to live in a decent environment, which cannot be achieved without the work of everyone. The solidarity in the work would be the key to success against the global crisis. In addition, the involvement of the public through debates, representation and participatory process seems to be considered as a fundamental element, which could lead to an extension of the political expression for citizens. Nonetheless, these last propositions seem to be a right that the people must claim directly to the State, because there is no reform planned now, so it is merely a suggestion.

If the COP24 made some progress on the Paris agreement, the global result cannot be considered as a frank victory, especially when it comes to the assessment of the remaining international discordance about the environment protection matter.

3.2. Multiple obstacles and the stalemated situations about Polluter Pays Principle implementation

This section will go through Katowice results' analysis and the assessment of the current situation about the negotiation. We will try to evaluate these with three factors that correspond to the adoption of the Paris rule-book, the rise of the ambition to reduce green gas emission and finally the precision around the financial issue. First, did the rule-book³⁰ of Paris get adopted? The objective is to harmonize the content and the schedule of national contribution, including every five years adjustment assessment and the precision around the mechanisms for transparency and the examination of the control committee before the implementation in 2020. A package-deal got adopted and indicates that the national contributions will be given to this committee, plus reviewed by experts and published publicly in the name of transparency. This is meant to insure the participation of every State. Therefore, the committee

²⁹ For example, the 1992 Rio Declaration and other documents are not hard, binding international law – indeed, they are often cited as the quintessential examples of soft law; M.C. Cordonier Segger, *Inspiration for Integration: Interpreting International Trade and Investment Accords for Sustainable Development*, CJCL 2017, 3 (1), p. 177.

³⁰ *Paris Climate Change Agreement*, adopted in 2015, at the COP 21.

will have the power to use „naming and shaming” mechanisms³¹ on a State, because the Paris agreement originally did not bring any other obligations than the respect of the procedural obligation. Nonetheless, the Katowice COP24 did not provide any agreement on the international exchange for the carbon quotas, which is truly alarming for a hypothetical carbon law.

Second, did the ambition of lowering the green gas emission get brought up? Many countries like Argentina or Canada said that they were considering raising their contribution³². This result is on the one hand encouraging, but on the other hand nothing concrete has come from such promises yet. As a matter of assessment with the current situation, the Stern and Stiglitz report recommended, in 2017, to implement a carbon tax going from USD 40–80 per ton of carbon emission and USD 50–100 in 2020³³, whereas 75% of the emissions world-wide were taxed around USD 10 per ton in 2018³⁴.

The last point will be the question of financing. Funds are obviously the core of the Paris agreement and therefore it is important to understand their origin. To start, they are gathered in the Green Climate Fund. As of May 2018, the Green Climate Fund³⁵ has raised the equivalent of USD 10,3 billion in pledges from 43 State governments, 3 regional governments, but also one city, which can also contribute to the Green Climate Fund. These participations are based on the commitments made under the UN Framework Convention on Climate Change (UNFCCC). Among these concerted efforts, advanced economies have formally agreed to jointly mobilize USD 100 billion per year by 2020 in order to fill up the Green Climate Fund. The objective is for all pledges to be converted into contribution agreements within one year from the time at which they are made. Therefore, the main idea here is the transfer of money from the northern countries to the southern countries, through the investment fund, which is in place to build international projects mainly in the southern countries. Such transfer process is supposed to balance the differences between the two hemispheres in terms of economical levels, in order to fight global warming in the most inclusive manner.

The Green Fund only used USD 5,2 billion so far, in 111 projects, and the rest of the financial incomes are still blurry since developed countries are arguing³⁶ about the fact

³¹ Described by P. Rosanvalon in *La Contre-démocratie*, Cambridge 2008, p. 8–64; E. Alt, *La société civile face à la corruption*, Archives de politique criminelle 2017/1, n° 39, p. 89–101; A. Uhlin, *Civil Society and Regional Governance: The Asian Development Bank and the Association of Southeast Asian Nations*, Lanham 2016, ch. 5–6.

³² France recently did it on the 28th of August in doubling the contributions.

³³ S. Nicholas, S. Joseph, *Report of the high-level commission on carbon prices*, World Bank, 2017, p. 10.

³⁴ Observations of C. Métivier, S. Postic, *IEAGHG Information Paper: 2018 IP02, Status of Carbon Pricing in 2017*, Institute for Climate Economics, p. 2.

³⁵ Created in 2010 by the UNFCCC.

³⁶ See the article of „Deutsche Klimafinanzierung” newspaper about the responsibility of the pollution, the capability to contribute to the fund and the willingness of the country to contribute, as a hint to understand the arguments of the countries to finance the GCF; J. Kowalzig, *Refilling the Green Climate Fund: Will rich countries' pledges match expectations?*, Oxfam 2019, <https://www.germanclimatefinance.de/2019/05/13/will-pledges-green-climate-fund-match-expectations/>, 27.08.2019.

that the Fund should not be financed more than fifty percent from public funds, whereas southern countries are expressing their concerns around the fact that it should be even more than fifty percent.

If we can celebrate the progress of the debate, the last assessment of the situation seems to be no less critical with the exit from the treaty of the United States of America, Kuwait and Saudi Arabia. Plus, it seems that Brazil is still arguing on the technicalities about the carbon law because the latest version was not as favorable as before, where the country was benefiting from the regulation more – it was receiving double the amount of money. In addition to this assessment, Turkey is discussing its position as a developed country to not pay the dues to the Green fund and receive from the fund instead. Also, more locally Poland is still defending the coal industry³⁷, which could seem unlikely for the host country of the COP24, especially since it also affects health and environmental conditions of Polish citizens, as does Germany with the opening of coal mines and factories. Overall, all the objections of some states are responsible for an ineffective enforcement of the carbon tax and the PPP itself. The next summits already have many challenges just in order to obtain an international consensus and like always, to rise the annual ecological objectives.

4. Conclusion

The PPP would be a doctrine of responsibility, with the imprint of ecological ethics but also a way to express a mutually benefiting undertaking, with the example of the Green Fund, aimed at living in a healthy environment. Aforementioned, the principle is primarily a juridical obligation, but at the same time the moral dimension is appearing as an imperative of solidarity for the present but also for the future. According to the theory of the principle of fairness³⁸ („generally acknowledged norms of fairness that have traditionally been seen as valid across a wide range of issue areas and at different levels – from interpersonal to international relations”), such normative basis should be promoted and implemented by the states thanks to the mobilization of the international community. Such juridical concept as the PPP could also be considered one day as a part of a list of planetary rights, which could be several subjective rights, among preventive, curative and punitive measures. One regional or international right would therefore fulfill a new generation of Human Rights, such as the proposition of the ecocide movement or the creation of the environmental refugee status as it has been discussed in Marrakesh during the Intergovernmental Conference on the Global Compact for Migration on the 10th and 11th December. We should conclude on the persisting dissensions around any kind of effective implementation of the mechanism

³⁷ „There is no plan today to fully give up on coal” – President Andrzej Duda said in his opening remarks on Monday. „Experts point out that our supplies run for another 200 years, and it would be hard not to use them” – from „The New York Times”.

³⁸ L. Ringius, A. Torvanger, A. Underdal, *Burden Sharing and Fairness Principles in International Climate Policy*, International Environmental Agreements: Politics, Law and Economics 2002, 2, p. 1–22.

counterbalancing the society environmental impact leading to the immobilization of the international scene despite the urge of the situation.

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Fundament międzynarodowej zasady „zanieczyszczający płaci”

Zmiany klimatyczne są problemem, który dotyczy przyszłości wszystkich państw, niezależnie od teraźniejszego stanu rozwoju. Zasada „zanieczyszczający płaci” jest konkretnym sposobem walczenia z rosnącymi toksycznymi emisjami. Ten sposób powoduje, że firmy i państwa będą odpowiedzialne za swój wpływ na środowiskowo i ten wpływ może być kontrolowany.

Słowa kluczowe: zmiany klimatyczne, rozwój, zanieczyszczający płaci, wpływ na środowiskowo, Porozumienie Paryskie, zrównoważony