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**Lucas Carlos LIMA**
Federal University of Minas Gerais
Antônio Carlos Ave., 6627, Belo Horizonte, Brasil, 31270–901
lclima@ufmg.br
ORCID: 0000–0002–8643–6547

**Arno DAL RI Jr.**
Federal University of Santa Catarina
R. Eng. Agronômico Andrei Cristian Ferreira, Florianópolis, Brasil, 88040–900
arnodalri@gmail.com
ORCID: https://orcid.org/0000–0002–7734–0404

# THE ESTABLISHMENT OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE AS THE BASIS OF THE INTERNATIONAL CLIMATE LEGAL REGIME (1985–1992)

**INTRODUCTION.** *The article examines the historical establishment of the United Nations Framework Convention on Climate Change (UNFCCC) and its role as the foundational framework for the international climate legal regime. The study highlights the importance of the choices made during the drafting of the Convention, analyzing their long–term impact on global climate governance. The research explores the events leading up to the Earth Summit (Rio Conference) in 1992, where the UNFCCC was adopted, and investigates how its fundamental principles and obligations shaped subsequent climate policies, including the Kyoto Protocol and the Paris Agreement. The study aims to contextualize the Convention within the broader historical and legal developments in international environmental law.*

**MATERIALS AND METHODS.** *The research follows a qualitative legal–historical approach, utilizing primary sources, including treaty texts, General Assembly resolutions, advisory opinions from international courts, and official conference proceedings. Additionally, secondary sources, such as academic commentary, environmental law textbooks, and journal articles, provide insights into the evolution of international climate law. The study is divided into two key phases. 1. Historical Analysis: A chronological examination of the negotiations preceding the UNFCCC, focusing on the Stockholm Conference (1972), the Montreal Protocol (1987), and scientific reports from the Intergovernmental Panel on Climate Change (IPCC). 2. Legal Framework Analysis: An evaluation of the legal principles enshrined in the UNFCCC, such as sustainable development, common but differentiated responsibilities (CBDR), and intergenerational equity, as well as an assessment of its institutional mechanisms, including the role of the Conference of the Parties (COP).*

**RESEARCH RESULTS.** *The UNFCCC as a Normative Framework: Despite being considered a "framework convention" with broad and non–*

*binding commitments, the UNFCCC introduced fundamental legal principles that later became the cornerstone of climate governance. Legal Innovations and Institutionalization: The Convention established a system of cooperation among states, creating institutional mechanisms such as the COPs, which facilitated continued legal evolution in climate governance. The establishment of the UNFCCC Secretariat further institutionalized climate negotiations. Enduring Influence on International Law: The Convention remains a reference point for climate litigation and international advisory opinions, particularly in recent cases before the Inter–American Court of Human Rights and the International Tribunal for the Law of the Sea. These legal bodies have increasingly drawn upon UNFCCC principles to determine states' obligations concerning climate change.*

**DISCUSSION AND CONCLUSION.** *The article concludes that the UNFCCC, despite its perceived initial weaknesses, has proven to be a resilient and foundational legal instrument in international climate governance. The Convention's principles and procedural mechanisms have enabled the development of binding legal commitments, such as those found in the Kyoto Protocol and the Paris Agreement. Moreover, its flexible institutional design has allowed it to adapt to emerging challenges, such as climate litigation and advisory proceedings in international courts. Looking forward, the UNFCCC is expected to continue shaping future legal obligations related to climate action, particularly as climate disputes become more prominent in international judicial bodies. The study underscores the ongoing relevance of the UNFCCC in the face of evolving environmental challenges, reaffirming its status as the standard framework for global climate governance.*

**KEYWORDS:** *international environmental law, United Nations Framework Convention on Climate Change, international climate law regime, Rio Conference, global climate governance*

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## МЕЖДУНАРОДНОЕ ПРАВО ОКРУЖАЮЩЕЙ СРЕДЫ

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**Лукас Карлос ЛИМА**
Федеральный университет Минас-Жерайс
Антонио Карлоса пр-т, 6627, Белу-Оризонти, Бразилия, 31270–901
lclima@ufmg.br
ORCID: 0000–0002–8643–6547

**Арно ДАЛ РИ Дж.**
Федеральный университет Санта-Катарины
Инженера-агронома Андрея Кристиана Феррейра ул., Флорианополис, Бразилия, 88040–900
arnodalri@gmail.com
ORCID: 0000–0002–7734–0404

# СОЗДАНИЕ РАМОЧНОЙ КОНВЕНЦИИ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ОБ ИЗМЕНЕНИИ КЛИМАТА КАК ОСНОВЫ МЕЖДУНАРОДНОГО ПРАВОВОГО РЕЖИМА В ОБЛАСТИ КЛИМАТА (1985–1992 ГГ.)

**ВВЕДЕНИЕ.** *В статье рассматривается история создания Рамочной конвенции Организации Объединенных Наций об изменении климата (РКИК ООН) и ее роль в качестве основополагающей структуры для международного правового режима климата. В исследовании подчеркивается важность решений, принятых в период разработки Конвенции, анализируется их долгосрочное влияние на глобальное управление климатом. В исследовании изучаются события, предшествовавшие Саммиту Земли (Конференция Рио) в 1992 г/, на котором была принята РКИК ООН, а также рассматривается влияние основополагающих принципов и обязательств Конвенции на последующую климатическую политику, включая Киотский протокол и Парижское соглашение по климату. Целью исследования является контекстуализация Конвенции в рамках более широких исторических и правовых изменений в международном экологическом праве.*

**МАТЕРИАЛЫ И МЕТОДЫ.** *Исследование основано на историко-правовом подходе. Используются первичные источники, включая тексты договоров, резолюции Генеральной Ассамблеи ООН, консультативные заключения международных судов и официальные материалы конференций. Кроме того, используемые вторичные источники, такие как академические комментарии, учебники по экологическому праву и журнальные статьи, дают представление об эволюции международного климатического права. Исследование разделено на два основных этапа. 1. Исторический анализ: хронологическое изучение переговоров, предшествовавших РКИК ООН, с упором на Стокгольмскую конференцию (1972 г.), Монреальский протокол (1987) и научные отчеты Межправительственной группы экспертов по изменению климата (МГЭИК). 2. Анализ правовых рамок: оценка правовых принципов, закрепленных в РКИК ООН, таких как устойчивое развитие, общая, но дифференцированная ответственность и межпоколенческая справедливость, а также оценка ее институциональных механизмов, включая роль Конференций Сторон (КС).*

**РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ.** *РКИК ООН как нормативная основа: несмотря на то что РКИК ООН считалась «рамочной конвенцией», она определила основополагающие правовые принципы, которые впоследствии стали краеугольным камнем управления климатом. Правовые инновации и институционализация: Конвенция установила систему сотрудничества между государствами, создав институциональные механизмы, такие как Конференции Сторон, которые способствовали непрерывной правовой эволюции в управлении климатом. Создание Секретариата РКИК ООН еще больше институционализировало переговоры по климату. Устойчивое влияние на международное право: Конвенция остается точкой отсчета для судебных разбирательств по климату и международных консультативных заключений, особенно в недавних делах в Межамериканском суде по правам человека и Международном трибунале по морскому праву. Эти правовые органы все чаще опираются на принципы РКИК ООН для определения обязательств государств в отношении изменения климата.*

**ОБСУЖДЕНИЕ И ВЫВОДЫ.** *В статье сделан вывод о том, что РКИК ООН, несмотря на ее первоначальные слабости, оказалась устойчивым и основополагающим правовым инструментом в международном управлении климатом. Принципы и процедурные механизмы Конвенции позволили разработать обязательные правовые*

*обязательства, такие как те, что содержатся в Киотском протоколе и Парижском соглашении по климату. Более того, ее гибкая институциональная структура позволила ей адаптироваться к возникающим вызовам, таким как судебные разбирательства по климату и консультативные разбирательства в международных судах. Заглядывая вперед, можно ожидать, что РКИК ООН продолжит формировать будущие правовые обязательства, связанные с действиями по климату, особенно по мере того, как климатические споры становятся все более заметными в международных судебных органах. Исследование подчеркивает сохраняющуюся актуальность РКИК ООН перед лицом меняющихся экологических проблем, подтверждая ее статус правовой основы для глобального управления климатом.*

**КЛЮЧЕВЫЕ СЛОВА:** *международное экологическое право, Рамочная конвенция Организации Объединенных Наций об изменении климата, режим международного климатического права, Конференция в Рио, глобальное управление климатом*

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## 1. Introduction

For scholars of international law who analyse the legal developments surrounding climate change, different instruments developed in different historical circumstances constitute the cornerstones of the regime: the much–mentioned and discussed Paris Agreement of 2015, the often criticised Kyoto Protocol, as well as all the resolutions containing government positions adopted by the Conferences of the Parties ('COPs') on climate matters. From a normative point of view, one instrument has gained particular importance for the development of the international climate legal regime[1]: the 1992 United Nations Framework Convention on Climate Change (hereafter 'Framework Convention' or 'UNFCCC'), sometimes neglected or superficially mentioned in academic debates on climate issues as a mere prelude to later instruments.

As a result of the great environmental meeting that was the Earth Summit in Rio de Janeiro, which brought together states and civil society in unprecedented proportions in the field of international cooperation, the Convention innovated and incorporated the then debated notion of "sustainable development", seeking to balance development and environmental protection in safeguarding the climate system, defined by the Framework Convention itself as "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions". This effort to combine the binomial of development and the environment represents the definitive entry of the latter as an object of protection under international law. As the International Court of Justice recognised years later in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (1996), the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including unborn generations" – a reflection that legally translates into "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"[2].

[1] The term "international climate legal regime" is used here to refer to the set of norms, practices, principles and standards aimed at regulating the problem of climate change in the international legal order. It is not argued that it is a self-contained legal regime due to the high porosity and circularity between the concepts and normative notions of international law in general, and international environmental law in particular. Nor is it used in the sense of "regime" relating to the field of international relations.

[2] International Court of Justice. 1996. Legality of the threat or use of nuclear weapons. Advisory Opinion. – *ICJ Reports.* Para. 29.

The definitive inclusion of the environmental agenda on the international legal agenda took place at the same time as the conclusion of the first multilateral treaty aimed at combating climate change, which is represented by the UNFCCC. It is true that, at the time of its conclusion, the Convention had both admirers and critics. As one commentator observed at the time: "Some regard it as a success, because it is without question a stronger and more comprehensive agreement than previous "framework" conventions, most notably the Vienna Convention for the Protection of the Ozone Layer' Others regard the agreement as a failure, as it does not adequately address many of the most pressing issues of climate change, such as schedules for reduction of greenhouse gases". [Goldberg 1993:239]

This dual perception of "success – failure" is not the point we are interested in addressing in the pages of this article. The hypothesis supported here is that, successful or not, the Framework Convention constitutes the standard framework from which the parameters that delimit and sustain the international climate legal regime derive, since many of its provisions were incorporated as pillars of the regime at subsequent times. The historical distance of more than thirty years since its adoption and subsequent ratification by states allows us to analyse the Convention from a privileged vantage point, both in terms of its notorious impact on the international legal order and the actions of states, as well as the criticism it has received. This is without overlooking the fact that the comments on the Convention, which abound in the doctrine[3], end up neglecting the subsequent developments of the legal regime. This analysis also makes it possible to better contextualise the Convention at the historical point where it is situated in the line of international climate change law. [Grossi 2010]

Given this framework and these observations, the aim of this article is therefore to examine the role played by the United Nations Framework Convention on Climate Change as the standard framework for the international climate legal regime. It seeks to understand which of the fundamental choices made under the Convention have remained important for the regime and the reasons why these choices were made. In the first part, the developments that took place immediately prior to the Earth Summit and the negotiation of the Convention are analysed, in order to contextualise the panorama in which the aforementioned choices were made. In a second part, the Convention itself is analysed, with greater emphasis on the normative elements that emerge from it, such as its principles, its fundamental obligations and the mechanisms that still constitute the regime's normative vectors. The conclusions discuss these results and speculate on the role that the Convention could still play, especially in the light of recent developments in the field of international environmental and climate law.

## 2. The forked road to Rio: the debates prior to the Framework Convention

The so–called "road to Rio" [Goldemberg 1994] is often described as an intense process of activities that took place on the international stage involving different bodies, forums and individuals affiliated with different epistemic communities, responsible for building scientific consensus on the effects of climate change, as well as the possible lines of international action to tackle it. Above all, this is a thickening of the legal dimension and thickness of the international environmental debate in which, of course, different positions have been formulated over time. The aim of this session is to present these initiatives, as well as to identify the different positions that existed before the Framework Convention was drawn up, in order to see how, in the face of a complex scenario full of conflicting positions, the Convention itself emerges as a consensus–building process – and is therefore leaning towards solidifying itself as the basis of the legal regime. Three issues will be analysed: (a) the emergence of a scientific consensus in the post–Stockholm period, briefly; (b) the main international legal initiatives that preceded the signing of the Framework Convention and; (c) the different positions on the matter at the time of its negotiation.

Although other previous initiatives aimed at protecting environmental values in different contexts of general international law [Dupuy 1985; Weiss 2011; Sand 2008; Sand 2015; Silva 2002; Corrêa do Lago 2007; Del Vecchio, Dal Ri Jr. 2005] and particular

[3] Much has been authoritatively written about the Framework Convention. Reference is made here to the main works consulted for this article: [Mayer 2022; Bodansky 2001:505; Bodansky 1993:451; Foo 1992:347; Mayer 2021; Yamin F., Depledge J. 2004; Sands P. 1992:270; Sands P.J. 1989:393; Sands P. 2017:114-134); Sand P.H. 1993:377; Lima L.C. 2023:13-48].

international law are not unknown – and the history of this international environmental law has yet to be written – a common starting point for the international debate is the Stockholm Conference on the Human Environment, which took place in June 1972[4]. Stockholm not only led to the inclusion of environmental issues on the international agenda, but also (in accordance with Principle 24 of the Stockholm Declaration)[5] the efforts to make it happen through international co-operation and legally co–ordinated initiatives. An equally important fruit of this meeting was the establishment of the United Nations Environment Programme (UNEP), which to this day remains the UN's arm in the field [Mahmoudi 1995:175; Petsonk 1990:351]. From this initial impetus emerged many multilateral and regional environmental agreements, as well as UN programmes and a wide range of documents of varying normative calibre.

The effects of this initial stimulus can be seen in the field of international law in particular, specifically with regard to the conventional rules governing international trade, especially since the Uruguay Round and the events of the late 1980s and early 1990s, through a growing concern with the issue of the environment – even assuming that the GATT/WTO system [Dal Ri Jr., Andrade 2016:194; Dal Ri Jr., Andrade 2017:295] and the regional integration systems [Dal Ri Jr., Noschang 2014:45; Moura, Posenato 2021] are not suitable spaces for debating or regulating the issue. What can be observed in these fields is, above all, the expansion of strategies aimed at monitoring and conditioning possible impacts of the domestic environmental protection policies of member countries on multilateral and regional trade systems. These strategies have undergone significant changes in perspective over the decades, especially since the end of the last millennium, abandoning an approach that saw environmental policies as an obstacle to free trade and moving on to investigate how international agreements and domestic measures aimed at the legal protection of the environment could interact in a healthy way with these systems, becoming functional to them.

In the field of general international law, on the other hand, there are at least three initiatives that have a profound influence on the international legal regime on climate change: the dissemination of the concept of sustainable development, which will form the backdrop to the 1992 discussions; the legal regime relating to the protection of the ozone layer; and resolution 43/53 of 1988 adopted by the General Assembly.

As is well known, the notion of sustainable development gained particular prominence in international law [Schrijver 2009; Viñuales 2021:285-301; Barral 2015:41; Lowe 1999:19; Sands 1994:303] from the moment the United Nations Commission on Environment and Development issued the report *"Our Common Future"*, also known as the "Brutland Report", in which the use of this notion indicated the objective of "meeting the needs of the present without compromising the ability of future generations to meet their own needs"[6]. The concept tries to strike a balance between two other compelling ideas that states consider equally necessary: the right to development of every state, which relates to the use of its natural resources on its territory (epitomised by General Assembly Resolution 1803/27)[7] and environmental protection. Naturally, because it is an elusive concept, the notion of sustainable development is still open to interpretation in some respects. However, there seems to be a consensus that protecting the environment no longer leaves room for exceptionalism in the face of states' right to growth and development.

The international rules governing the protection of the ozone layer are recognised as one of the most effective regimes created at international level to deal with a problem that is eminently transnational in nature. These are mainly found in the 1985 Vienna Convention for the Protection of the Ozone Layer

[4] UN: Report of the United Nations Conference on the Human Environment. A/CONF.48/14/Rev.1. Stockholm. 5-16 June 1972.

[5] Principle 24 of the 1972 Stockholm Declaration: "International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big and small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States".

[6] WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT. Our Common Future. Oxford: Oxford University Press. 1987.

[7] GENERAL ASSEMBLY OF THE UNITED NATIONS ORGANISATION. Resolution A/RES/1803/XVII. Permanent sovereignty over natural resources. 14 December 1962.

and the Montreal Protocol on Substances that Deplete the Ozone Layer. The fact that the treaties have been universally ratified is one of the first indicators of their success, as are their undeniable effects on reducing the deterioration of the ozone layer. There are two important elements, in particular, that this set of international regulations aimed at protecting the ozone layer brings to the climate change legal regime. The first is the logic of the structure between the framework convention and the protocol, in which a subsidiary treaty is presented with the function of specifying and detailing the matter governed by the first. With this normative design, the negotiating parties to the Framework Convention on Climate Change were able to negotiate a general regime in the knowledge that there would soon be a second treaty that could complement it – a phenomenon that exactly materialised. In this way, by incorporating notions from the most varied scientific fields into its legal framework, the ozone layer protection system established the logic of monitoring followed by specific limits that were very quickly and rapidly updated under the Montreal Protocol. This dialogue between scientists, diplomats and international lawyers has been highlighted doctrinally:

Another important lesson of the Montreal Protocol is the role of the scientists, and, over time, diplomats who develop a high level of expertise through their active involvement in the process. The emergence of an epistemic community of atmospheric scientists and expert diplomats played a primary role in gathering information, disseminating it to governments and ODS manufacturers, and helping them formulate international, domestic, and industry policies regarding ODS consumption and production [Johnston 2021:254].

The success of this specific set of rules has therefore opened up the possibility for states to use international co-operation instruments, targets and ongoing co–operation to find solutions to the climate problem.

Parallel to the meeting in Vienna, which debated the protection of the ozone layer, there was also the so–called Villach Conference, one of the first events aimed solely and exclusively at the climate issue, which reached a scientific consensus. In 1979, the World Climate Conference in Geneva consolidated the initiatives of the 1972 UN Conference on Human Development, culminating in the creation of the World Climate Programme. The partnership between the World Meteorological Organisation, the United Nations Environment Programme and the International Council of Scientific Unions resulted in a series of meetings known as the 1985 Villach Conference. On this occasion, although no international treaty was adopted, significant attention was drawn by governments to the climate issue, which was later taken up at the Hague Summit in 1989 – where the possibility of creating an organisation with global authority to monitor the issue of global warming was mooted – and the ministerial meeting in Noordwijk in 1989.

Faced with these two movements, the international concern to offer responses to climate change in the light of the growing scientific evidence that was emerging on the matter led the International Community to quickly organise initiatives to start dialogues.

One of the first multilateral documents adopted in anticipation of the Earth Summit was Resolution 43/53 of 1988, issued by the United Nations General Assembly.[8] In this resolution, incorporating the scientific evidence available to date, an important call was made to establish that

*"the emerging evidence indicates that continued growth in atomospheric concentrations of 'greenhouse' gases could produce global warming with an eventual rise in sea levels, the effects of which could be disastrous for mankind if timely steps are not taken at all levels"* [9].

Against this backdrop, the Resolution adopted by the General Assembly took an important step by recognising "that climate change is a common concern of humankind, since climate is an essential condition that sustains life on earth". Although there is criticism that the notion of "common concern" is less forceful than the legal notion of "common heritage", used in the 1982 United Nations Convention on the Law of the Sea to characterise the seabed, this recognition cannot be underestimated. The notion of the common concern of humankind is important insofar as it places the climate issue within the scope of the general interests of the international community, moving away from the merely bilateral logic

[8] GENERAL ASSEMBLY OF THE UNITED NATIONS ORGANISATION. Resolution A/RES/43/53 "Protection of global climate for present and future generations of humankind", 6 December 1988.

[9] General Assembly of United Nations. Protection of global climate for present and future generations of mankind. A/RES/43/53. 6 December 1988.

that dominates other areas of international environmental law – such as, for example, the issue of transboundary harm, hitherto used to govern the field of transnational pollution.

Once the climate issue has been identified as a common concern, the Resolution does not hesitate to call different subjects to action insofar as "urges Governments, intergovernmental and non–governmental organisations and scientific institutions to treat climate change as a priority issue, undertake and promote specific, cooperative and action–oriented programmes and research in order to increase understanding of all sources and causes of climate change".

The same resolution also calls on "all relevant organisations and programmes of the United Nations system to support the work of the Intergovernmental Panel on Climate Change", in a clear *internal corporate* measure to outline a course of action for the UN. Finally, Resolution 43/53 also "Calls upon Governments and intergovernmental organizations to collaborate in making every effort to prevent detrimental effects on climate activities which affect the ecological balance, and also calls upon non–governmental organizations, industry and other productive sectors to play their due role".

These excerpts from the Resolution are eloquent in that they do not only address action to states, but also to international organisations and entities that are directly related to the causes and effects of climate change. It seems no exaggeration to say that the General Assembly Resolution adopted by a significant majority set the tone for what would later become the Earth Summit by characterising the urgency of the problem that has become an indelible fixture on the international agenda.

As mentioned, the UN General Assembly Resolution, followed by the meetings held in The Hague and Noordwijk, put the climate issue firmly on the agenda of governments, emphasising the need for coordinated action to deal with the problem of global warming due to climate change. Not by chance, and in line with other initiatives in different environmental fields, these issues were discussed in Rio de Janeiro in 1992 at the great environmental meeting that was the Earth Summit.

It is possible to identify at least three distinct positions among the groups of states that negotiated the Framework Convention in Rio de Janeiro – although a series of meetings preceded the final discussion on the Convention. In the meantime, since 1988 the Intergovernmental Panel on Climate Change had been studying the issue and providing the international community with solid scientific evidence of the scale of the problem.

A first position is represented by the developing countries, then called the Group of 77. Their official position was that the substantial emission of greenhouse gases had historically been attributable to industrialised countries. They did not ignore the fact that developing countries should also follow a line of action aimed at reducing gas emissions, but they advocated a differentiated regime in relation to developed countries through the notion of common and differentiated obligations and the creation of a special regime for developed countries. This position was inspired by the 1987 Montreal Protocol for the ozone layer. The second position is that identified by the developed countries that were associated with the then European Community and that wanted effective control of emissions through clear commitments to reduce gases. This position contrasted with that defended by the United States government, a third position, which, despite recognising the challenges of climate emissions, had no interest in fixing emissions from top to bottom, assuming clear international obligations that could eventually be subject to liability.

The three positions can be found in different parts of the Convention, both in the creation of a regime of differentiation between developed and developing states, in the adoption of specific obligations with the aim of reducing greenhouse gases, while at the same time creating a normative framework for the assumption of future reduction obligations. To better understand the scope of this commitment between positions, it is necessary to understand the fundamental characteristics of the Convention.

### 3. The fundamental characteristics of the Framework Convention as the basis of the international climate legal regime

Article 2 of the Convention establishes the objective of the Framework Convention, which is "the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". To this end, the level must be "achieved within a sufficient timeframe" to allow "ecosystems to adapt naturally to climate change that ensures that food production is not threatened and that allows economic development to proceed in a sustainable manner". Three elements seem to emerge as legal goods protected by the Convention. Firstly, the climate system itself, a concept well defined in

its wording. The second protected good is food production, demonstrating the connection between the debates on climate protection and food security. Finally, the notion of development is included in the objective – however, with the intention of not impeding the continuity of economic development, once again reflecting the *spirit of* Rio.

In dialogue with the Rio Declaration on Environment and Development, the Framework Convention establishes the principles that will guide it and, consequently, the entire legal regime on climate change that derives from its Article 3. The five paragraphs of the article can be broken down into the following principles: a) climate protection for the benefit of present and future generations of humanity; b) common but differentiated responsibilities and respective capabilities; c) as a consequence of the above, the obligations of developed countries to take the initiative in combating climate change; d) the notion of climate vulnerability generating specific needs and special circumstances; e) the principle of prevention; f) the precautionary principle, when there is a lack of full scientific certainty; g) the principle of co–operation to tackle climate change; h) the recognition of the right to sustainable development as a principle, establishing that economic development is essential to the adoption of measures to tackle climate change. Although some of these principles have been developed since the Stockholm Declaration, it was only with the notion of sustainable development, crystallised in 1987 and made law in 1992, that they were definitively incorporated as a framework for the international climate legal regime.

The inclusion of these principles in the text of the Framework Convention, together with the adoption of the 26 principles contained in the Declaration on Environment and Development [A. De P, Lima 2023], is not an irrelevance. The principles contained therein constitute a true framework that delimits the entire international climate legal regime to be adopted later, both in the negotiations of the conferences of the parties, the Kyoto Protocol and later, in the Paris Agreement. These make up the fundamental normative framework on which the entire architecture of the regime will be built and, with rare exceptions and nuances, will not be abandoned by states and international organisations in their implementation. As was observed doctrinally at the time, "[t]he Principles provide a set of standards by which the behaviour of parties may be measured by other parties, non–governmental organisations (NGOs), and the rest of the international community" [Goldberg 1993]. What's more, the principles have been consolidated in the legal system, constituting, for the most part, norms of customary international law. It's true that some of these will be contested. This is the case, for example, with the division in the international community that seems to exist over the scope of the principle of common but differentiated obligations and how certain developing states, such as Brazil, China and India, should benefit from differentiated treatment in the current debates on greenhouse gas emissions [Boyle, Ghaleigh 2016]. Furthermore, the precautionary principle seems to have a limited scope of application insofar as the field of climate change is substantially irrigated by indisputable scientific data provided by the IPCC and the scientific community, with the principle of prevention taking centre stage.

Much of the criticism of the "softness" of the Framework Convention or of some aspects relating to "soft law" centres around the obligations contained in the Convention, which are set out in Article 4. Firstly, it should be reiterated that Article 4 provides a binding norm that imposes obligations on the signatory states. If the contents of the obligations are not effective or efficient in addressing the problem of climate change, that is another problem. The use of the expression "shall" in the *heading* is unequivocal as to the binding nature of the provision.

The ten obligations in Article 4.1 do not impose direct actions, with results that must be implemented by the states. It is mainly a framework for co–operative action on climate change. This conclusion is drawn mainly from the verbs used in the obligations. Just to mention a few examples, the obligations in Article 4 focus mainly on "Drawing up national inventories of anthropogenic emissions by source" (a), "formulating, implementing, publishing and regularly updating national programmes (...) that include measures to mitigate climate change" (b), "promoting and cooperating for development" (c), "taking into account, to the extent possible, factors related to climate change in their social, economic and environmental policies and measures" (f), "promoting and cooperating in scientific research" (g). The obligations seem to have a dual role. Firstly, they are about establishing a framework for co-operation, information and monitoring with the Convention. In other words, states must jointly and transparently, in a co–operative space, be aware of carbon emission data and map climate science at national level. Secondly, the terms set out in the Framework Convention seek to incorporate good practices on climate change into states' domestic

laws, especially considering that many states in the 1990s were not yet aware of these needs. For some, these obligations might have seemed disappointing and unsound, or even ineffective given the scale of the problem and the scientific awareness that was already clear at the time. The innovation, however, lies precisely in the fact that, at the same time as establishing a co-operative framework, it influences the national policies of states due to the awareness of the problems and the need to implement actions at national level to combat climate change. In this sense, Article 4.j seems particularly relevant insofar as it establishes the international obligation to "transmit information on implementation to the Conference of the Parties". This is a non–simple obligation to disclose information, which is very detailed in Article 12 of the Framework Convention,[10] which even establishes a greater degree of information for developed countries, in honour of the principle of common but differentiated obligations. The logic of the rule is clear: developed countries are better able to map their anthropogenic emissions and therefore must inform other countries of their emission levels.

The Framework Convention's vocation to be a treaty with a national impact can also be seen in the obligation in Article 4.1.i, which establishes the obligation to "promote and cooperate in public education, training and awareness-raising in relation to climate change, and encourage the widest participation in this process, including the participation of non-governmental organisations", and is detailed in Article 6[11]. In this, different strategies are articulated, in a mandatory tone, in order to promote both the dissemination of knowledge at national level and transparency in access to information. The aim of the standard is to turn national environments, whether scientific or not, into laboratories for exchanging experiences and also to promote the work of non–governmental organisations, which have become catalysts for information, practices and actions[12].

Another important contribution to the international climate legal regime resulting from the Framework Convention is the creation of a Conference of the Parties (COP), described as the "supreme body of the Convention" according to Article 7. The rule establishes that "the Conference of the Parties shall keep under regular review the implementation of this Convention and of any legal instruments that the Conference of the Parties may adopt, and shall take, in accordance with its mandate, such decisions as may be necessary to promote the effective implementation of this Convention". It is interesting to note the reference to "any legal instruments that the COP may adopt", which also includes discussions on the Kyoto Protocol and the Paris Agreement – both adopted at the meetings of the parties in 1997 (COP3) and 2015 (COP21), respectively. A typical technique in international law, and especially in international environmental law [Roben 2010; Camenzuli 2019: 1; Lesniewska 2015:116-142; Rajamani 2001:201-238], the advantage of the conference of the parties is that it provides enhanced governance

[10] Article 12. 1. In accordance with Article 4, paragraph 1, each Party shall transmit to the Conference of the Parties, through the Secretariat, the following information: (a) a national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the best of its ability, using comparable methodologies developed and approved by the Conference of the Parties; (b) a general description of the measures taken or envisaged by the Party to implement this Convention; and (c) any other information that the Party considers relevant to the achievement of the objective of this Convention and suitable for inclusion in its communication, including, if possible, data relevant to calculations of global emissions trends.

[11] Article 6 Education, Training and Public Awareness. In fulfilling their obligations under Article 4, paragraph 1, subparagraph (i), the Parties shall: a) Promote and facilitate, at the national and, as appropriate, subregional and regional levels, in accordance with their national laws and regulations and their respective capacities: I) the development and implementation of educational and public awareness programmes on climate change and its effects; II) public access to information on climate change and its effects; III) public participation in addressing climate change and its effects and in designing appropriate response measures; and IV the training of scientific, technical and managerial personnel. b) cooperate at the international level and, as appropriate, through existing bodies, in and promote the following activities: I) the development and exchange of educational and public awareness materials on climate change and its effects; and II) the development and implementation of educational and training programmes, including the strengthening of national institutions and the exchange or recruitment of personnel to train specialists in this area, in particular for developing countries.

[12] On this issue, see the classic Giorgetti [Giorgetti 1999:201], for whom "Non-governmental organisations (NGOs) have acquired an increasingly relevant status in the international policy arena. This prominence can be seen in the expanded role of NGOs in preparing and executing development projects, and in negotiating international legal agreements. NGOs also command influence at most levels of the international legal system, participate in the implementation and monitoring of international conventions, and serve as experts in governmental delegations". See also [Raustiala 2001; Morgan 2021].

of the object of the treaty without constituting its own autonomous will as an international organisation. As such, it facilitates dialogue and supervision of the instrument while respecting the sovereignty of states, avoiding centralised processes of norm formation, but facilitating its adoption through different standards of consent. [Brunnée 2005:101-126; Wiersema 2009: 231-287]

It doesn't seem an exaggeration to say that the precepts established within the framework of the Conference of the Parties to the United Nations Framework Convention on Climate Change have made a fundamental contribution to the governance of the international climate legal regime. [Churchill, Ulfstein 2000] Since their creation, the dynamics of the COPs have undergone a process of continuous expansion, with a growing increase in the participation of entities other than state representatives. This has created a continuous *ethos of* decision-making and governance of the regime, which allows it to update its own scientific perception, as well as redefine the vector lines of action of states' legal foreign policies – irrigated by a privileged debate within civil society and closely monitored by the media.

Although the Conference of the Parties has its functions limited by Article 7, which establishes its clear functions (and uses the expression "shall" to establish these functions), subparagraph "m" of paragraph 2 states that the COP shall "perform the other functions necessary to achieve the objective of this Convention, as well as all other functions assigned to it by this Convention". This wording makes it possible to identify the granting of broad powers to the COPs, to be exercised also in a residual manner insofar as it establishes the "other functions" for the realisation of the objective of the Framework Convention. The COPs can thus be interpreted as the current meetings that keep the Framework Convention alive and connected with the reality of the international community and, consequently, with the international climate legal regime itself.

Although the Convention has very specific regulations, two provisions deserve specialised analysis at this point, due to their importance within the regime. The first is a second element of institutionalisation, namely the creation of the Convention's Secretariat. The second is the dispute settlement procedure provided for by the Convention itself.

The secretariat was created in 1992, when the countries adopted the Framework Convention. Originally based in Geneva, since 1996 it has been located in Bonn, Germany. Little attention has been paid to the work of the Secretariat in the specialised literature [Michaelowa, Michaelowa 2017], although its work with more than 450 international civil servants is fundamental to strengthening the institutional basis of the international climate legal regime. Responsible for all sorts of administrative activities, the secretariat also has an essential function of facilitating the co–operation of states, as well as recording information sent by them. Although there is a tendency to neglect its activity, the secretariat's more than thirty years of operation at the heart of the COPs and activities relating to the Convention has made it a fundamental body for the actual implementation of the treaty, as well as for processing the data sent by the parties and dialogue with other international bodies, such as the IPCC. Within the international climate legal regime, it would not be daring to say that the secretariat acts as its institutional heart, assisting the COPs in their process of realising the objects and purposes of the treaty.

With regard to the resolution of disputes arising from the Convention, the normative text reflects the customary obligation to resolve them peacefully, also favouring the principle of free choice of means. Furthermore, a double option was adopted in Articles 13 and 14 of the Framework Convention, once again the result of the division between developing and developed states [MacKenzie 2012]. If, on the one hand, developing states were interested in a multilateral, non–compulsory mechanism, there was also the proposal to offer interested states an effective dispute settlement mechanism through the judicial modality. The balanced solution was to simultaneously offer the creation of a "mechanism for multilateral consultations, to which the Parties may have recourse upon request, for the settlement of questions relating to implementation" (Art. 13), and the possibility, through express declarations of consent, of recourse to the International Court of Justice or international arbitration (Art. 14). Unsurprisingly, this recourse was never activated, and the number of declarations recognising the Court's jurisdiction met with little success. At the time, it was hard to imagine litigation arising from a nascent regime that had unclear obligations regarding the reduction of greenhouse gases.

### 4. Conclusions: what is the current role of the Framework Convention?

At least three reasons explain the centrality and prominence of the Framework Convention in the climate regime. Firstly, as we have seen, it consolidated general principles in relation to a specific

legal regime for dealing with one of the global environmental problems. It also established specific procedures for building a continuous dialogue and improving the regime itself. It also facilitated dialogue between states and constituted a necessary axiological vector for the progression of the regime, adding other layers of legality such as the content of the COPs and other treaties – such as the Kyoto Protocol and the Paris Agreement. It's interesting to note how often the UNFCCC is used in climate disputes within the judiciaries of national states, as well as being a point of reference in all relevant international climate action. The Convention is a reference standard for understanding the international obligations assumed by states at the domestic level.

With the entry into force of the Convention, there are undeniable signs that a lasting legal regime has been established, and the normative framework it provides is still used by states in advancing and discussing issues relating to the global climate system. An important sign of its longevity is also the fact that it has never been subjected to denunciations or attacks – something that can also be explained by the fact that the obligations it imposes on states, although binding, are not too onerous compared to other treaties that have garnered less participation.

If it is possible to verify the centrality of the Framework Convention both in terms of the importance of its content and its use in domestic litigation, it is also possible to imagine that future climate advisory opinions requested before the Inter-American Court (IACtHR) of Human Rights [Lima 2025], the International Tribunal on the Law of the Sea (ITLOS) and the International Court of Justice (ICJ) will draw on it to identify international obligations and also as a point of dialogue for the interpretation of other international instruments. As a matter of fact, ITLOS gave substantial weight to the Framework Convention in its opinion rendered on 21 May 2024[13], mentioning it more than 50 times in order to identify obligations related to the protection of the climate system in the United Nations Convention on the Law of Sea.[14] Although the role it plays at the heart of the system has already been consolidated, it cannot be ruled out that it will still play an important role in the future of combating climate change, as well as in identifying new obligations that states, international organisations and other entities will have in a legal regime that has rapidly developed and which still constitutes the most effective opportunity for the international community to offer answers to "one of the greatest challenges of our time"[15].

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[13] INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. Advisory Opinion requested by the Commission of Small Island States on Climate Change and International Law. Case No. 31. 21 May 2024. P. 78. The Tribunal observed that "The UNFCCC and the Paris Agreement stand out in this regard as primary treaties addressing climate change".

[14] See: Roberto Virzo. Fondamento ed esercizio della competenza consultiva del Tribunale internazionale del diritto del mare: considerazioni a margine del parere del 21 maggio 2024. 79 (4) La Comunità Internazionale 603.

[15] GENERAL ASSEMBLY OF THE UNITED NATIONS ORGANISATION. Resolution A/RES/77/165 "Protection of global climate for present and future generations of humankind". 22 December 2022.

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**Информация об авторах**

**Лукас Карлос ЛИМА**
доктор философии по международному праву, профессор международного права, Координатор исследовательской группы по международным судам и трибуналам (Национальный совет по научному и технологическому развитию и Федеральный университет Минас-Жерайс), Федеральный университет Минас-Жерайс

Проспект Антонио Карлоса, 6627, Белу-Оризонти, Бразилия, 31270–901

lclima@ufmg.br
ORCID: 0000–0002–8643–6547

**Арно ДАЛ РИ Дж.**
доктор философии по международному праву, профессор теории и истории международного права, Координатор Ius Gentium – Исследовательской группы по международному праву (Национальный совет по научному и технологическому развитию и Федеральный университет Санта-Катарины), Федеральный университет Санта–Катарины

Инженера-агронома Андрея Кристиана Феррейра ул., Флорианополис, Бразилия, 88040–900

arnodalri@gmail.com
ORCID: 0000–0002–7734–0404

**About the Authors**

**Lucas Carlos LIMA**
PhD in International Law, Professor of International Law, Coordinator of Research Group on International Courts and Tribunals (Brazilian National Council for Scientific and Technological Development and Federal University of Minas Gerais), Federal University of Minas Gerais

Antônio Carlos Ave., 6627, Belo Horizonte, Brasil, 31270–901

lclima@ufmg.br
ORCID: 0000–0002–8643–6547

**Arno DAL RI Jr.**
PhD in International Law, Professor of Theory and History of International Law, Coordinator of Ius Gentium – International Law Research Group (Brazilian National Council for Scientific and Technological Development and Federal University of Santa Catarina), Federal University of Santa Catarina

R. Eng. Agronômico Andrei Cristian Ferreira, Florianópolis, Brasil, 88040–900

arnodalri@gmail.com
ORCID: 0000–0002–7734–0404