

Climate warming narratives often focus on the difference between +1,5°C, +2°C, +3°C. In the eyes of the common reader, such difference may be marginal. Still, it is meant to cause enormous effects on our lives. Detrimental effects of human activities have a considerable impact on the environment and many are the factors that can change this: cultural and legal as well. The present dissertation will focus on the constitutionalization of the environment within the European Union through an inductive approach. Within the first pages I have tried to underline the difficulties in finding a *legal* definition of the environment, which notion is enriched by several philosophical branches. By taking into consideration the existence of many ecosystems, which are inter and intra-related, the environment may be understood in an “all-encompassing” manner which produces two main understandings of the topic within the legal field: a monist as well as a pluralist understanding. Afterwards, without any presumption of completeness, I have tried to summarize and concentrate the history of environmental law and its role at the international level, applying in particular the subdivision into phases of the process of birth of *new* human rights proposed by Kerstin von der Decken and Nikolaus Koch. In so doing, I have tried to emphasize the indented development of environmental law. Within the second chapter, I narrowed down the topic, focusing on a comparative research of European law and the communitarian influence on some European constitutions. In particular, I have engaged with the constitutions of Hungary, Poland, Slovakia, Slovenia, Romania, Portugal, Spain, Greece, France, Germany, Finland and the Netherlands. The analysis led me to outline six models through which the environment can be constitutionalized. In light of the European framework, the third chapter delves deeper into the Italian system of environmental protection, bearing in mind the most recent constitutional reform of Articles 9 and 41.

*“Tentiamo di raggiungere tutte le fibre intime della terra (...) meravigliandoci che talvolta essa si spalanchi e si metta a tremare” (Plinio) **

I. Introduction

Questions of etymological accuracy ¹

At an etymological level, in Europe, the environment has always been understood as entailing everything which surrounds the individual. This position reflects an anthropocentric view which seems to pertain the European cognitive and historical paradigms. For instance, in Italy, the word “environment” (“ambiente”) comes from the present participle “ambiens” of the Latin verb “ambio, ambire”, which means “to surround”. The same Latin root is present in the Portuguese word “ambiente” and the Spanish “ambiente” which are both translated in English as “environment”. In German, “Umwelt” can be divided in two parts: “Um” meaning “around” and “-welt” meaning “world”, that is it can be translated as “the surrounding world” or, more generally, as “environment”; it has its roots in the Danish word “omverden” which has the same meaning². The French word “environnement” comes from the Middle French “environ” (in conjunction with the suffix *-ment*), translated as “to enclose”. Similarities between French and English are not fruit of a fortuite circumstance: indeed, English was deeply affected by the Norman Conquest (Rothwell; 1991; 173-196) and this explains the language borrowing of the word “environment”.

Indeed, language is a mirror of society and words tend to have many meanings and to indicate different concepts based on the context in which they are expressed. There is therefore a scientific notion of environment as well as an anthropological one or even psychological one. For us it is important to reach a legal notion of the environment, in order to characterize it as a legal asset worthy of protection. It must also be underlined that notions may change according to the

*Plinio, 1988, “Naturalis Historia” in Plinio, *Storia Naturale. V: XXXIII*, 1, 1. Torino: Einaudi.

¹ This paragraph grows out of my previous studies and personal interests. On this topic, see Cobley, P. (ed), *The Routledge Companion to Semiotics*, Routledge, London and New York, 2010 ; Traiana, A & Giorgio Bernardi Perini, *Propedeutica al latino universitario*, Marangoni, C. (ed), Patron Editore, Bologna, 1996.

² On the semiotic use of the word “Umwelt”, see Kull, K., “On semiosis, Umwelt, and semiosphere”, *Semiotica* vol. 120 No. 3, 1998, pp. 299-310; also see, Deely, J., “Umwelt”, *Semiotica* vol 134 No. 1, 2001, pp. 125 - 135.

language and culture taken into account, as a result I will investigate the English definitions of the word “environment” and, for doing this, contemporary dictionaries can provide us a valid clue.

According to the Britannica Language Dictionary, the environment is firstly defined as *whatever encompasses* and only thirdly as *one’s surroundings or external circumstance*. The Collins Dictionary of English defines the word “environment” as *all the circumstances, people, things, and events around them that influence their life*. The Oxford English Dictionary provides a much more articulated definition according to which “environment” means *the area surrounding a place or thing, or the physical surroundings or conditions in which a person or other organism lives, develops, etc.*; if preceded by “the” it means *the natural world or physical surroundings in general, either as a whole or within a particular geographical area, esp. as affected by human activity*³.

However, it is crucial to consider what are the definitions provided by legal dictionaries. The 6th edition of the Black’s Law Dictionary defines the environment as *the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples’ lives*⁴. This definition, which dates back to the 1990s, properly reflects the Western history of the word “environment”, which has often been understood in relation to three main elements: property, human health and economy. If taken in comparison with the definition provided in 2008 by Mark Stallworthy in the New Oxford Companion to Law, a sort of evolution may be noticed:

(...) the idea of environment can be separated neither from ecological notions of oneness and inter-dependence of species, nor from the related idea of ecosystems, expressing the dynamics of existence, especially as to how life forms react with one another.

Compared to the more sparse definitions listed above, this quotation presents numerous additional elements such as ecology, the interdependence of species, and the greater idea of ecosystems. In this way, with the evolution of environmental law, an all-encompassing definition of the environment seems to emerge. According to such definition, the environment is an assemblage of several ecosystems. (Salvemini; 2019: 4).

³ “Environment, n.” OED Online, Oxford University Press, March 2022 (Accessed on 11 March 2022).

⁴ Campbell, H. & Black (eds), *Black’s Law Dictionary*, 6th ed, 1990, West Publishing Co., St. Paul, p. 534.

The word “ecosystem” was created in 1935 by A.G. Tansley in order to address the set of biotic and abiotic elements and entities that live in the same physical or geographical area⁵; they live in balance with each other and they are linked through a network of interdependent relations (Tansley; 1932; Smith; 2015).

Ecosystems are intra-connected (as they are made of internal relations) as well as inter-connected (that is, ecosystems are connected one another), therefore the environment is not a single entity which can be defined *ipso facto*, rather its definition shall take into account the relations of which it is made. In this concern, Article 3 of the European Directive 85/337/EEC ⁶, which has been repealed in 2011 by the Directive 2011/92/EU ⁷, is of particular interest. Here, the environment emerged as a system made of elements such as living biotic entities (human beings, fauna and flora) as well as abiotic elements (soil, water, air, climate and landscape) in addition to their inter-relation and cultural heritage which comes from it.

Two readings can be applied to such all-encompassing definition of environment: a pluralist reading, which divides the environment, taken as a legal matter, into several subsections addressing all the individual elements that make it up (for example, there will be a branch of environmental law that finds its object in the protection of the territory versus a branch which object is the protection of aquatic/marine resources); or a monist reading, that considers the environment as a complex of things which constitute a large and unique whole, worthy of legal protection on its own. Hence, the environment acquires an autonomous meaning - this vision seems to be reflected, for instance, in the legal vindications aimed at recognizing and protecting a human right to the environment. (Salvemini; 2019: 10-45).

Legal definitions of the environment can be searched for in environmental treaties and conventions, but it must be noted that the notions provided by such instruments are very general and broad; sometimes, legal tools of environmental protection do not even define the environment, as it happens with the 1982 UN Convention on the Law of the Sea (Sands & Peel; 2018: 14-15).

⁵ Arthur Tansley introduced his theory of ecosystems in 1932 before the Magdalen Philosophy Club of Oxford University. A written version, edited by Anker Peder, was published in 2002 by the journal *Ecosystems*. See, Tansley, A., “The Temporal genetic Series as a Means of Approach to Philosophy”, *Ecosystems* vol. 5 No. 7, 2002, pp. 614-624; see also Gignoux, J., Davies, I., Flint, S. & Zucker, J., “The Ecosystem in Practice: Interest and Problems of an Old Definition for Constructing Ecological Models” *Ecosystems* vol. 4, No. 7, 2011, pp. 1039-1054; Anker, P., “The Context of Ecosystem Theory”, *Ecosystems* vol. 5, No. 7, 2022, pp. 611-613.

⁶ Council Directive 85/ 337/ EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, 1985, OJ L 175/40.

⁷ European Parliament and Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, 2011, OJ L 26/1.

Questions of philosophy

At a philosophical level, the environment has generally been understood under an anthropocentric perspective. Anthropocentrism proponents argue that human beings are at the center of most narratives, being the *most significant entities in the world*⁸. Nonetheless, it has been argued that a branch of environmental ethics has been developed by scholars and philosophers who believe a shift in paradigm would enhance our understanding of the world we live in⁹. As a matter of fact, from an epistemological point of view, some believe that human beings should be re-positioned in a more realistic manner into the natural hierarchy. In so doing, different philosophical approaches have been developed. For instance, ecocentrism, biocentrism and the Deep Ecology movement stand out among others. (Porciello; 2022: 28-85).

Two philosophers in particular introduced ecology in the philosophical narrative of the 20th century, that is Nicolai Hartmann and Hans Jonas, as a result of the scientific denial of anthropocentrism in the 19th century caused by the groundbreaking theories of Charles Darwin - indeed, Darwin himself did not want to stand against an anthropocentric understanding of the universe, however his evolution theory repositioned the humankind in a wider theater of living beings. Darwin's studies were truly influential on Hartmann's philosophy, that was primarily concerned with the philosophical branch of Ontology and was deeply pivoted on the idea that human beings shall be conceived in light of the natural world they live in. As a result, in Hartmann's opinion, philosophy shall be considered similar to natural sciences and shall study the concrete world, since it has a rationale on its own - that is, world's rationale is not linked to someone or something in particular, the world pre-exists anything and anyone - it shall be seen as completely autonomous. Hartmann gave a strong input to ecocentric theories, which indeed have as their main assertion the autonomous nature of the universe, which value is completely detached from humankind's needs.

Hans Jonas's philosophy was deeply critical of the so-called cosmic nihilism, which is a strong position as he was one of Heidegger's mentees. According to Nihilism, nature is particularly indifferent to the life or death of human beings, meaning that a man is the only actor and author of his making in the world. Individual's actions are influential for anyone but for him or herself. In contrast, Jonas's thinking is pivoted on the concept of "purpose", that is the world and the universe have an *intrinsic* purpose, which is the creation of life - such purpose has nothing

⁸ Boslaugh, S. E., "anthropocentrism", *Encyclopedia Britannica*, 11 January 2016, available at <https://www.britannica.com> (Accessed 17 February 2022).

⁹ On environmental ethics in general, see Brennan, A., "Environmental ethics", *Stanford Encyclopedia of Philosophy*, 2008, available at <https://seop.illc.uva.nl> (Accessed to 22 march 2022).

to do with the humankind. Hence, it is clear the great impact that Jonas' thinking had on biocentric legal theories: human actions can be judged on the basis of the degree in which they are in line with the world's purpose of creating and protecting life.

Along the lines of biocentric positions, the Scandinavian Deep Ecology¹⁰ movement promotes *biospheric egalitarianism* (Næss; 1973: 151-155). A perspective according to which all living creatures have an intrinsic value that must be respected, refusing, in so doing, any form of individualism. In Næss opinion, individualism promotes selfishness towards other human beings and nature. Arne Næss, founder of the movement, believed that by identifying herself with nature, an individual could actually enlarge her boundaries and understand the *relational* geography of the world, whereby organisms' identity is in constant relation with that of other entities. To protect and respect other organisms' identity means to protect and respect our own identity. (Brennan; 2008).

In conclusion, anthropocentrism seems to be widely implemented in economy and case-law, as well as in the daily lives of European citizenship. It shall be noticed a trend towards the differentiation between *strong* anthropocentrism and *weak* anthropocentrism. Some scholars firmly believe that, as human beings, our way of addressing environmental problems will always be centered on our needs, this may be the case of animal rights and the so-called "*specism*". Others, on the contrary, tend to make a differentiation between a "human" point of view and an "anthropocentric" attitude, underlining that the two cannot be taken as synonyms¹¹. Some are concerned that whether strong or weak, anthropocentrism will never allow for true ecological developments, whereas other sustain that a *weak* anthropocentric attitude is enough to bear with environmental damages in an ethic way¹². (Porciello; 2022 : 50-55).

***Silent Spring*¹³ and the birth of the environmental movement**

¹⁰ On the Deep Ecology movement in general, see Drengrson, A., "The Deep Ecology Movement", *The Trumpeter. Journal of Ecosophy* vol. 12 No. 3, 1995, available at <http://trumpeter.athabascau.ca> (Accessed to 22 march 2022).

¹¹ On the matter, Andrea Porciello highlights: "(...) *una cosa è guardare al mondo da un punto di vista antropocentrico (nel senso umano), che di fatto è l'unico che in quanto esseri umani abbiamo a disposizione, altra cosa è giungere alla conclusione, a partire da quel punto di vista, quello sì inevitabile, che l'umanità sia necessariamente più importante, centrale e alta rispetto a tutto il resto (...)*". Porciello, A., *Filosofia dell'ambiente. Ontologia, etica e diritto*, Carocci editore, Roma, 2022, pp. 50-51.

¹² On this ongoing debate, see Norton, B. G., "Environmental ethics and weak anthropocentrism", *Environmental. Ethics* 6(2), pp. 131-148, 1984, doi: 10.5840/enviroethics19846233 ; Deckers, J., "Christianity and Ecological Ethics: The Significance of Process Thought and a Panexperientalist Critique of Strong Anthropocentrism", *Ecotheology* 9, 2004, pp. 259-287, doi: 10.1558/ecot.9.3.359.59073.

¹³ - Carson, R., *Silent Spring*, 1962, Houghton Mifflin Harcourt, Boston.

“ Hey, farmer farmer, put away the DDT now/ Give me spots on my apples, but leave me the birds and the bees”¹⁴ used to sing Joni Mitchell in the 70s, as the DDTs pesticides were one of the main targets of the environmental movement of the decade between 1960 and 1970, which lead to important achievements and echoes that endure until our days.

The historical data of greatest importance, which caused the wave of interest in environmental matters in the second half of the 20th century, was the publication, in 1962, of the book entitled *Silent Spring*, by Rachel Carson (Carson; 1962) combined with a series of environmental catastrophes, such as the 1952 Great Smog in London or 1967 Torrey Canyon oil tanker case in Cornwall. This was a groundbreaking publication as it highlighted the growing deterioration of the natural world through six-year-long research on how pesticides and DDTs impact on nature. *Silent Spring* became immediately a best-seller because of the fruitful and stimulating thoughts on how democracies and liberal societies were acting (and continue to do so, at present days)¹⁵. Joining the wave of newborn awakening of social and civil consciences of the 1960s, *Silent Spring* became the *manifesto* of the environmental movement, which lead to the formation of the phase of environmental rhetoric during the 1970s¹⁶. As a matter of fact, the importance of *Silent Spring* lies in the fact that (a) it contributed to the general understanding of the urgency of environmental matters and (b) it highlighted the impact environmental rights would have if they existed. (Boyd; 2012 : 12).

It must be noted that Rachel Carson was not the only one to have an influence on the development of consciousness on environmental matters, in fact authors such as Thoreau, Marsh

¹⁴ - Mitchell, J. , *Big Yellow Taxy* [Recorded by Joni Mitchell] on *Ladies of the Canyon* (1970) [LP]

¹⁵ On the history and scholarly response to the publication of *Silent Spring*, see Hawkings, T. R., “ Re-releasing Silent Spring”, *Environmental Health Perspectives* vol. 102, No.6/7, 1994, pp. 536-537, available at <https://www.jstor.org>. (Accessed to 8th March 2022). ; Lear, L. J, “Rachel Carson’s “Silent Spring””, *Environmental History Review* vol. 17, No. 2, 1993, pp. 23-28, available at <https://www.jstor.org> . (Accessed to 8th march 2022).

¹⁶ Several scholars have divided the history of the environmental movement into different phases. In particular, see Lorenzetti, R.L., & Lorenzetti, P., *Derecho ambiental*, Rubinazal Editores, Buenos Aires, 2018, in particular chapter 1. According to Lorenzetti & Lorenzetti, the environmental movement is based on the paradigm shift (*cambio de paradigma*) based on three main phases: a rhetorical one, that took place in the decades between the 1960 and the 1980, and laid the foundations of the environmental thought; and analytical phase and, lastly, a paradigmatic phase. If in the rhetorical phase the theoretical presuppositions of the paradigm change were pose, during the analytical phase problems were identified and models were developed to address them - this is where the shift in the environmental paradigm appears in the legal field, leading to the review of international treaties and the creation of new legal hypotheses. Finally, the paradigmatic phase would seem to include our times, the environment finally acquires a legal nature and even give birth to a new discipline. This is what the authors define as an epistemological change in environmental law.

and Pinchot similarly adopted a perspective aimed at analyzing the impact of man on the environment. (Mangiameli; 2018: 335-360).

The phase of emergence of a 'rhetoric of the environment' must not be underestimated as it gave the initial push towards the development of a jurisprudential discipline of environmental law: rhetoric plays indeed a fundamental role in the development of *new* human rights. (von Arnould and Theilen; 2020: 34-49). Concerning the emergence and recognition at the international level of *new* human rights, under which category environmental rights seem to fall, I have found particularly interesting the analysis brought on by Kerstin von der Decken and Nikolaus Koch in the introductory chapter to *The Cambridge Handbook of New Human Rights*. It must be said that such analysis has a very general and broad character and that more often than not events do not tend to follow a specific pattern or a straight path. However, in light of such analysis, I would like to similarly investigate the emergence of international environmental law and environmental rights during the 20th century.

As underlined by von der Decken and Koch, *new* human rights emerge as the result of a legal vacuum. It is the absence of legal protection of particular interests that ignites the spark of recognition among scholars and politicians. During what can be considered the first phase of emergence of a *new* human right, scholars, politicians and activists are the very first actors who discuss the need for the introduction of a *new* right, creating and developing a rhetoric of the *new* human right in question. Activists will enhance the political weight of such new narrative, conducting the discourse towards political recognition. Political recognition is fundamental and brings the discourse before international actors, such as states and human rights tribunals - this can be considered the second phase of emergence of the *new* human right, and generally leads to the adoption of *soft law* tools at an early stage, followed by the creation of *hard law* tools during an advanced phase. The ratification of *soft law* tools is of great importance and sometimes it paves the way for the ratification of more traditional *hard law* tools. In fact, it should not be taken for granted that governments are willing to bind themselves to new sets of obligations, indeed, more often than not, they are not willing to do so. At the same time, *soft law* tools ratification means that nation states are acknowledging the existence of the issue in question. The ratification of *hard law* tools traditionally means the ratification of a new treaty or convention, as they provide legal certainty and are based on overall consensus among the parties, providing the strongest form of recognition of the *new* human right. However, other two approaches of recognition may be applied: the *customary international law* approach - which reflects widespread consensus on practical jurisprudence, that is translated in full recognition of the right "in practice" - and the *derivation* approach - through which the *new* human right is actually derived from an already

existing human right and becomes automatically part of the *lex data*. At the end of this process, which is indeed very general and abstract, the *new* human right in question goes through the third phase of its emergence and legal recognition in the international arena: it is now part of a treaty or a convention, or it is granted through customary international law or entailed in the legal protection granted to another human right - now the *new* human right is part of the international legal system and States should abide by (von der Decken and Koch; 2020: 7-20).

It has been unanimously accepted that the period of rhetorical development of international environmental law took place in the decade between 1960 and 1970, however it must be said that already in the first mid-20th century three important legal principles had been developed through two main cases.

As a matter of fact, the phase prior to 1960-1970 is mostly remembered for the international emergence of the principle of prevention of transboundary damages as a consequence of the exploitation of a country's natural resources. This principle was identified with the *Trail Smelter Arbitration*¹⁷. Furthermore, the *Trail Smelter* case was the first example of the application of the "polluter pays" principle.

In addition to the *Trail Smelter* case, the principle of prevention of cross-border damage was confirmed with the ICJ's *Corfu judgement*¹⁸, placing the accent on another principle which is almost a consequence of the prevention of transboundary damages one, namely the principle of cooperation between nation states.

These are principles of *soft law*, and here the comparison of the first stages of international environmental law with von der Decken and Koch's analysis underlines a fundamental aspect: *id est*, the history of international environmental law does not follow a linear evolution, as the shift from the Kyoto Protocol to the Paris Agreement shows, and relies mostly on *soft law* tools, at an international level, and on the *derivation* approach, at a national level. As a matter of fact, often times environmental protection has been granted through property or human health legislations - Italy is the perfect instance in this regard.

Furthermore, international law remains mostly at the mercy of the sovereignty of individual nation and this creates some dilemmas on the uncertainty and instability of international law itself,

¹⁷ United States of America v. Canada, *Trail Smelter Arbitration*, Reports of International Arbitral Awards, vol. III, 1938 and 1941, pp. 1905-1982, available at <https://legal.un.org> (Accessed to 9th March 2022).

¹⁸ United Kingdom v. Albania, *Corfu Channel*, Judgement Merits, ICJ GL No. 1, 1949, available at <https://www.icj-cij.org> (Accessed to 9th March 2022).

which is based on the willingness of countries to respect obligations and duties. In this sense, an important role is played by organizations such as the United Nations, founded in 1945.

The aforementioned institution of the United Nations confirms the importance of the entry of new players at the international level already underlined by the analysis of von der Decker and Koch; the foundation of the UN led to the creation of FAO and UNESCO. In particular, between the 70s and the 90s, UNESCO gave a great boost to scientific research in the environmental field, tracing the transition from the first phase of the rhetorical birth of environmental law to the second phase, of more general acceptance through *soft law* and *hard law* tools.

The scientific research carried out by UNESCO focused on the protection of ecosystems and biodiversity but also of the aesthetic and cultural values of the landscape and resulted, for example, in the ratification of the Convention for the Protection of the World Cultural and Natural Heritage of 1972¹⁹ or of the Man and Biosphere Program of 1971²⁰.

Three further declarations have been produced which are of greatest importance, namely the Stockholm Declaration of 1972^{21,22}, the Rio Declaration of 1992^{23, 24} and the Johannesburg Declaration of 2002, interspersed with the compilation of the Brundtland Report, "*Our Common Future*"²⁵, drawn up in 1987, which formulated very important guidelines of conduct in the environmental field.

The 1972 Stockholm Declaration became the milestone of environmental law as it introduced, in the international arena, environmental protection as a duty of the whole humankind. In particular, the Declaration formalized the principle of prevention of transboundary damage and the principle of cooperation among states in Principle 21 and Principle 24. Furthermore, the Stockholm Declaration gave birth to the United Nations Environmental Programme (UNEP) which aims at providing assistance to nation state in the drafting of environmental legislation as well as promoting environmental action (Salvemini; 2019; 60).

The advanced stage of recognition of environmental law led to the Rio Declaration of 1992, stemmed from the United Nations Conference on Environment and Development, which counted

¹⁹ UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Concerning the Protection of the World Cultural and Natural heritage, 16 November 1972, available at: <https://www.refworld.org/docid/4042287a4.html> Accessed 19 March 2022.

²⁰ UN Educational, Scientific and Cultural Organization (UNESCO), Man and Biosphere Program, 1971.

²¹ UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994 available at: <https://www.refworld.org/docid/3b00f1c840.html> Accessed 19 March 2022.

²³ UN General Assembly, Rio Declaration on Environment and Development, 12 august 1992, A/CONF.151/26 vol. I, available at <https://www.un.org>(Accessed to 19 March 2022).

²⁵ Report of the World Commission on Environment and Development, *our Common Future*, 1987.

179 nations, brought together in order to establish an international agenda. The Earth Summit produced five documents, among which the Agenda 21 represented the official plan of action. The Earth Summit concluded also that one of the main goals of environmental efforts should be that of sustainable development, which later on became a key principle of international environmental law, which was finally recognized as a jurisprudential field in 1996 with the ICJ's Reports number 226 and 242 ²⁶. (Sands & Peel; 2018; 4-5).

Finally, the Johannesburg Declaration, adopted during the Earth Summit in 2002, validated the importance of the concept of sustainable development and highlighted the need to balance social and economic development with environmental protection.

With the establishment of Agenda 21 and of the Conferences of Parties (COPs), great strides have been made, especially in identifying environmental problems and creating time limits within which nation states need to achieve the most realistic goals possible. Two COPs in particular are worth mentioning, as they have had a pivotal role in the concretization of international environmental law: the COP3 and the COP21.

The Kyoto Protocol and the Paris Agreement ²⁷

The COP3 gave birth to the Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC). The UN Framework Convention on Climate Change was adopted during the 1992 Rio Earth Summit, which produced also the Convention on Biological Diversity and the Convention to Combat Desertification. The Kyoto Protocol to the UNFCCC was adopted in 1997 and it was mainly pivoted on the reduction of greenhouse gas emissions (GHGs), underling the differentiation between industrialized and developing countries which is translated in the principle of common but differentiated responsibilities (CBDR), a principle firstly introduced by the Rio Summit. The Kyoto Protocol is particularly pivoted on the importance of sharing

²⁶ ICJ Report No. 226 and No. 242 on the legality of nuclear weapons. In the Advisory Opinion of 8 July 1996, the ICJ, at paragraph 31, noted that “*Article 35, paragraph 3, and 55 of Additional Protocol I provide additional protection for the environment. Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long-term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals (...)*”. The ICJ made also reference to the General Assembly’s Resolution 47/37 November 1992 on the Protection of the Environment in Times of Armed Conflict, whereby environmental considerations are one of those elements to be taken into account in humanitarian law. See, International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1. C.J. Reports 1996, p. 226.

²⁷ Fraser, T., “A comparative architectural analysis of the 1997 Kyoto Protocol and the 2015 Paris Agreement and other ways to counter environmental ‘ratification fatigue’”, in Popovski, V. (ed), *The Implementation of the Paris Agreement on Climate Change*, Routledge, Oxon and New York, 2019, pp. 42-56; Popovski, V., “‘Hard’ and ‘soft’ law on climate change”, in Popovski, V. (ed), *The Implementation of the Paris Agreement on Climate Change*, Routledge, Oxon and New York, 2019, pp. 19-41.