

## Preface (Volume 52, Issue 5-6, 2022)

---

# The Climate Change Conundrum

The UN Framework Convention on Climate Change (UNFCCC) was adopted at the UN headquarters (UNHQ) on May 9, 1992. It opened for signature at Rio de Janeiro during June 4–14, 1992, and thereafter at the UNHQ on June 20, 1992. Hence, on June 4, 2022, UNFCCC attained the age of 30 years. It coincided with the Stockholm+50 Conference (June 2–3, 2022). With 197 Parties, the UNFCCC has been designed as a ‘framework convention’. It became one of the first global instruments that designated climate change as a *common concern of humankind*. With subsequent two instruments, 1997 Kyoto Protocol and 2015 Paris agreement, the climate change regime now comprises three legal instruments that seek to address the global climate *problematique*.

### *Climate Change: A Planetary Crisis*

The completion of full three decades (1992–2022) of the UNFCCC provides a unique opportunity to look back at the journey of global climate change regulation so as to look ahead for attaining the objective (Article 2) of “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. In April 2022, the IPCC AR6 explicitly stated: “Total net anthropogenic GHG emissions have continued to rise during the period 2010–2019 . . . about 12% (6.5 GtCO<sub>2</sub>-eq) higher than in 2010 and 54% (21 GtCO<sub>2</sub>-eq) higher than in 1990”. In view of this, the near future regulatory goal has been pegged at the 1.5°C global warming by 2050. The UN Secretary-General, in an address at the Stockholm+50 Conference (June 02, 2022) gave a clarion call for addressing climate change as one of the “triple planetary crises”. Now UNEP’s *Emissions Gap Report* on October 27, 2022 has reinforced the global concerns that “the international community is falling far short of the Paris goals, with no credible pathway to 1.5°C in place. Only an urgent system-wide transformation can avoid climate disaster”. Cumulatively, this prognosis and the projections, have set the stage for the climate action trajectory in the coming years.

In this backdrop, the annual ritual of the UNFCCC COP27 was held at Sharm el-Sheikh in Egypt (November 06–20, 2022). There have been warning signs about “shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale”. It witnessed calls for “payment overdue”, sharp divisions, posturing and haggling among the different groups of countries to attain national interests rather than common interest. Even as the stalemate continued and thousands of assembled delegations petered out of the conference venue, on November 19, the feisty UN Secretary-General (UNSG) Antonio Guterres stepped in to renew his call for an urgent action and nudged the negotiators that: “Instead of a burning bush, we face a burning planet. This conference has been driven by two overriding themes: justice and ambition. Justice for those on the frontlines who did so little to cause the crisis . . . Ambition to keep the 1.5°C limit alive and pull humanity back from the climate cliff.” The final outcome emerged (November 20) only after protracted negotiations spilled over extended hours, beyond the official deadline of November 18.

### *EPL Special Issue: UNFCCC@30 and Beyond*

In the above context, it is pertinent to mention EPL’s ideational trajectory as a global journal. It has entailed publication of 43 cutting-edge scholarly contributions during 2020–2022 in the EPL two batches of special issues: (i) 50 (6) 2020 and 51 (1–2) 2021; (ii) 51 (6) 2021 and 52 (1–2–3–4) 2022. Adding a special value to these outstanding contributions, IOS Press has published these articles in two back-to-back books: (i) *Envisioning Our*

*Environmental Future: Stockholm+50 and Beyond* (2022); and (ii) *Our Earth Matters: Pathway to Our Better Common Environmental Future* (2021).

Thus, it became natural to address global climate regulatory process in the scholarly realm through a special issue upon the UNFCCC reaching the milestone of 30 years (1992–2022). The EPL's scholarly quest to find ideas for the decision-makers, within the limits of time and space, has culminated in this EPL special issue (vol.52, no.5-6, 2022). It comprises scholarly contributions on the occasion of UNFCCC@30 and beyond. The EPL special issue articles have been organized in four parts: I. *Climate Crossroads* (Bharat Desai, Meinhard Doelle; Miguel Angel Marmolejo Cervantes et al.); II. *Paris Conundrum* (Eckard Rehbinder; Mathilde Hautereau-Boutonnet et al.; Oliver Ruppel et al.); III. *Gender Factor* (Bharat Desai et al.; Rowena Maguire et al.; Elisa Morgera et al.); IV. *Backtracking and Climate Justice* (T. S. Tirumurti; Kirk Junker et al.).

Part I deals with issues of taking the global climate change regulation from a common concern to a planetary concern; a stocktaking and trusting the UNFCCC regime at the age of thirty and examining the climate regulation from the prism of *jus cogens* norm. Part II comprises different facets of the 2015 Paris Agreement such as ambition as a legal concept and climate litigation; employing combination of tools and actors for better enforcement and the symbiosis of human rights and climate change. Part III addresses seminal issues of the gender factor such as the cost of climate change heightened sexual and gender-based violence; repositioning the gender in the climate discourse and the UNCRC General Comment No.26. Finally, Part IV has two aspects of concerns about backtracking on climate action and the quest for a reparative climate legal regime. One more contribution by Daniel Bodansky, providing a retrospective and assessment of the UNFCCC@30, will be published separately in EPL 53 (1) 2023.

### ***The Road Ahead***

Since 1988, the UN General Assembly (UNGA) has been the original conductor of the grand climate change orchestra. It invoked the normativity of *common concern* as well as brought into being the UNEP-WMO joint mechanism of IPCC (UNGA resolution 43/53 of December 8, 1988). In turn, it triggered the process for climate negotiations (1990–1992) resulting in the UNFCCC. Therefore, in the wake of climate crisis assuming the planetary scale, it is high time the UNGA takes a considered view for placing climate change from a *common concern* to the higher pedestal of a *planetary concern*. In view of the gravity of the climate challenge, the UNGA needs to take charge by adopting an appropriate normative resolution during the 77th session and beyond to provide a future direction to the UNFCCC and the Paris Agreement processes. The COP27 (2022) has left nagging questions as regards the 30-years old global climate change regime, the in-built law-making processes, sincerity of the state parties in taking the growing scientific evidence of human imprint on the climatic changes seriously and effectiveness of the tools and techniques employed to address the challenge.

Even as the COP27 adopted the decision on “loss and damage” funding for vulnerable countries hit hard by climate disasters, it will take years to flesh out the mechanism and ensure requisite funding by the concerned countries. The previous experiences of such climate funding commitments do not augur well. Still, one needs to hope against hope for some sanity and wiser counsels to prevail. As we look ahead, the future trajectory of the climate change regulatory process remains uncertain. It presents an ideational challenge for the international law scholars, the UNGA and the UNFCCC regulatory process to earnestly make it work by elevating the normative ambit of climate change regulation as a *planetary concern*. The forthcoming *Summit of the Future* (UNGA resolution 76/307 of 8 September 2022), to be convened by the UNGA in New York during September 22-23, 2024, may possibly provide an opportunity for a decisive course correction to avert the planetary scale climate crisis.