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## **Analyzing Soft Law and Hard Law in Climate Change**

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### **Abstract**

Climate change has become one of the most important aspects of the world. Regulating Greenhouse gas levels has become one of the primary focuses in international relations. The negative impact of Greenhouse gases is devastating human lives and the environment. It has become a global challenge to collectively solve this problem and limit the external factors affecting the environment. But, addressing the problem of climate change is complex and has to be dealt with by all the countries with collective rules and regulations. Both domestically and internationally, there have been a set of rules put forward to save the environment and prevent it from further devastation.

Here, in this paper, we explore the international institutions and laws that were made for climate change in both distinctive ways. Most international law is regarded as ‘Soft law,’ and some are regarded as ‘Hard law,’ which is legally binding, whereas soft laws are flexible and not legally bound. The impact of hard law and soft law on global climate governance would give different perspectives of how the international community has to cope with these laws, which are considered advantageous in their perspectives and also have wide criticism from international researchers and international political scientists due to discarding action of most laws as they were not legally bound. We would also discuss the implementation of these laws in climate governance and stress why domestic laws are essential in the first place to make the battle against climate change and global warming much more effective.

**Keywords:** Climate, governance, hard law, soft law, states, greenhouse gases



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## Objectives:

- 1) To explore the association between climate change and law 2)Analysing Soft law and Hard law in climate change
- 3) Unravelling the Implementation of climate governance.

## Introduction

Climate change is a global issue because we all share the same atmosphere and planet. However, the effects and causes of climate change are frequently constrained by borders with some bound entities. International climate governance has grown and evolved into a critical and highly specialized area of international law and policy. Climate change is a global issue because we all share the same atmosphere and planet. However, the effects and causes of climate change are frequently constrained by border governance. Given the complexities of the climate change problem, the legal activity surrounding climate change has taken various forms. Governments dealing with climate change can no longer rely solely on traditional approaches such as national government and international negotiations to address the problem. We must recognize that dealing with climate change is a complex issue that individual countries cannot solve. This is why the issue has resulted in the emergence of intertwined transnational climate governance, in which nations collaborate on the legal aspects of the climate change problem.

There are various forms and types of legalization in international governance, but most international law is soft in various ways. All agreements, declarations, and principles that are not legally binding are referred to as soft law. The majority of UN General Assembly Resolutions are examples of soft law. Despite the fact that soft law is not a legally binding obligation, it is a precursor to a binding norm or obligation. So, by the time it becomes a hard law, it is only a soft law. The term "hard law" refers to legal obligations that are binding on the parties and can be legally enforced in court. To combat climate change, governments must go beyond the traditional activities of national governments and international treaties and negotiations. We must acknowledge this fact, which has resulted in the emergence of increasingly intertwined transnational climate change, requiring international cooperation to combat the monster known as climate change.

## Climate Change and Law

The international climate regime has grown significantly and evolved into a critical and specialized international law and legal expertise area. Climate change's evolution has increased its influence and significance at the national, international, subnational, and transnational levels. Climate change policy has typically focused on



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adaptation, mitigation, technology, finance, and capacity building, which are critical key elements. The United Nations Framework Convention on Climate Change (UNFCCC) is a major international environmental treaty that deals with climate change. Parties to the Convention are the 197 countries that have ratified the Convention. The ultimate goal of the UNFCCC is to prevent "dangerous" human interference with the climate system.

Given the complexities of the climate change problem, legal activity in the area has seen a wide range of innovative approaches to climate change. Various legal approaches to climate change have been formed through various agreements and treaties, such as greenhouse gas mitigation, emissions trading, taxes, and finance schemes. Meanwhile, the impact of climate change is visible as the average global temperature rises, affecting the environment in various ways. This challenge also brings to light climate change, biodiversity, and human rights issues.

This paper investigates the connection between climate change and the law. Is climate change law becoming an important legal discipline? If so, what are its common objectives, principles, and other shared categories? What is the relationship between climate change law and other areas of law? This paper answers these questions by delving into the various international, regional, national, sub-national, and transnational legal responses to climate change. Given the global climate change challenge, various nations use climate law to influence the behavior of other actors.

## **2. Implementing Climate Governance**

### **2.1 Instrument Choice, considerations, and climate law**

The vast majority of greenhouse gases are produced and consumed due to energy production and consumption. As a result, climate policy invariably affects larger and more important areas of society. It would alter societal behavior patterns and impact economic activity, which is an important issue that must be addressed. As a result, policymakers would embrace any alternative flexible policies that allow for market flexibility and do not completely halt economic activity. This represents a significant shift in the conception and focus of environmental regulation. Economic considerations play a significant role in decision-making, and policy efficiency has resulted in various flexible markets and more consistent performance.

According to David Hunter (2010), rather than adopting "a detailed, binding framework for furthering global climate cooperation," the international community has instead embraced "a general political statement that privileges the voluntary actions of states and devalues the role of international law and global climate governance."

Many of these domestic policy portfolios have been hampered by such difficulties in their development and implementation. Another challenge is disagreement among governments about



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which policies to ascribe and sometimes rivalry between balancing international commitments, domestic legal policies, and political realities. With various demands and challenges concerning this issue in a politically exposed area, administrators and legislators have been tasked with developing an operational regime for previously unregulated work or activities. The stakeholders were affected by the need for coherence and systematization of climate law and policy and the confusion of understanding the complex issue and widespread misinformation. Nonetheless, the field of law strives and has already made efforts to bring diverse streams together through common objectives, agendas, definitions, and methods while referencing previous acts passed by legislation.

Against the backdrop of efforts in several national jurisdictions to systematize the diversity of environmental statutes, agreements, ordinances, treaties, and other related sources of climate law in a uniform code, it should come as no surprise that suggestions have been made to harmonize climate policy under a single legal system, which would be more efficient to work up on integrated management of the atmosphere rather than piecemeal regulation.

Several countries have followed this path, demonstrating the systematic coherence of a very specific area of law. International nations seeking to collaborate on climate change have always had the right to walk a fine line between substance and process. Many of the most fundamental issues have been divisive, and progress has only been possible at the expense of specific binding normative outcomes. As negotiations and discussions on future climate change unfold, it is clear that international cooperation and system are undergoing fundamental change.

Mehling M. (2013) explains that high levels of normative and analytical uncertainty, the complex nature of interrelated issues, and the substantial costs associated with any meaningful policy efforts have all strengthened the role of actors beyond the nation-state, prompting Mehling M. (2013) to explore innovative approaches to climate governance, such as by harnessing market instruments.

Jacob Werksman and Kirk Herbertson (2010) detail how evolution is also far-reaching regarding forming a legal process for climate law. They emphasized that if current trends continue, the global response to climate change

beyond 2012 will shift from binding obligations to more loosely organized coordination and facilitation in a system based on voluntary pledges. National policy developments will supplant negotiated agreements as the new benchmark of climate efforts.



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## **World Economic Forum Governance Initiative**

The WEF has developed certain climate governance principles for boards of directors, with the goal of allowing non-executive directors to focus on coordinating and developing skills, incorporating climate considerations into the board, and understanding and acting on the problems, risks, and opportunities that a climate emergency poses for long-term flexibility while also taking stakeholders into account and leading to a successful business. To fulfill their organizational duties for the long term, boards must emphasize the implications of climate change and commit to stewarding their companies through the challenges that climate change brings to integrate it into their companies' strategic planning. This Climate Governing initiative is a critical initiative for national governments to promote the principles of climate governance and understand how to act accordingly by mobilizing and coordinating non-executive directors, whether local or on boards, to provide a wide range of opportunities to promote and act on this area of climate governance, which is critical to the economy and standard of living. This initiative is already underway in several countries, including the United Kingdom, Italy, France, Switzerland, and a few others.

Multiple Climate Governance is a broad and complex concept that involves ongoing discussions and negotiations with various levels of government, and international organizations, including non-state actors and non-governmental organizations. Multiple governments' main function and purpose is to promote opportunities and take decisive action to address global climate change. The entire discussion and decision-making process can be informal or formal, adaptive or consistent, or change, and it can occur at various levels, such as international, national, local, or regional.

With a wide range of approaches and instruments, climate governance necessitates a dependable guide system to justify the selection process for various climate governance approaches. While there is no single common approach or model that can be considered a fundamental model for all regulatory approaches to climate governance.

A set of criteria has gradually evolved in various academic disciplines to form an idea of specific individual instruments and coordinated portfolios in their combination. At an appropriate level of abstraction, the following criteria have been proposed.

1. Environmental effectiveness: How well does a policy instrument achieve its desired outcome or the result of an environmental goal? How certain is the level of environmental impact?
2. Cost-effectiveness: Can a policy achieve its goals at a lower cost than other policies? Are there an opportunity and revenue streams that can be reinvested?
3. Distributional considerations: How does a policy affect consumers and producers? Is it fair and impartial?
4. Institutional feasibility: Is the policy considered legal, does it gain political acceptance, is it adapted, and is it finally implemented?



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## **GREENHOUSE GAS MANAGEMENT ACT**

A greenhouse gas management act is made up of basic shared norms, definitions, and principles, as well as a specific section focusing on individual sectors, streams, and issues within the same area of scope that is limited to the fundamental goals of greenhouse management.

The legislator generally focuses on the mitigation commitments entered into under international law and establishes a specific greenhouse gas reduction target, breaking down this overall goal into different sectors and activities.

The fundamental obligation to take protective and preventive action against climate change and the obligation to use energy efficiently are examples of general principles.

The main goal of selecting a number of suitable instruments should be to lead to the point of combining different instruments capable of influencing an individual and unanimous allocation of decisions in line with the previously defined objectives and forwarding all the sources of greenhouse gas emission within the substantive and geographical scope of the Greenhouse Gas Management Act.

All of the various tools currently in use or being discussed for mitigating global warming are theoretically available as follows:

1. Regulations and standards specifying mandatory technologies that are subsidized or pollution output that must be kept to a minimum.
2. Taxes and charges levied on enviable activities by source tradable permit schemes that set a limit on aggregate emissions from specified sources and allow for trade among them;
3. Voluntary agreements between two governments and one or more private parties to achieve emission reduction targets while adhering to regulatory obligations.
4. Incentives, rewards, and subsidies given to an entity in exchange for completing a specific action.
5. Environmentally related information instruments that necessitated public closure, such as labeling programs and other certification and rating systems.
6. Government funding for research and development activities, as well as investments in innovative approaches to mitigation or infrastructure required to reduce emissions.

Planning and impact assessment are additional tools, as are liability rules and criminal sanctions. However, in order to avoid conflicts, inconsistencies, and regulatory overlaps, it is critical that these instruments be carefully scrutinized and screened on the basis of adequate and appropriate criteria prior to their incorporation into the Greenhouse Gas Management Act. This is the most difficult stage of arranging a suitable mix. Typically cited policy choice criteria, such as those highlighted by the (Intergovernmental Panel on Climate Change) IPCC in successive Assessment Reports, are



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generally too formal and abstract in nature to allow for contextuality in the selection process and the manner in which policy instruments are formulated and then implemented with a sophisticated matrix of procedures, interests, and institutional mandates, including legal material constraints. Appropriately, criteria such as environmental effectiveness, cost-effectiveness, distributional considerations, and institutional feasibility may provide preliminary guidance, but they cannot specifically access the outcome of any selection process. In that sense, scholars and decision-makers will arguably face their most difficult task when it comes to identifying appropriate selection criteria based on the actual needs at hand and engaging in interdisciplinary and practically relevant discourse.

### **Instrument Choice at the International Level \**

In recent years, there has been a rapid increase in the number of international treaties and agreements concerning the environment and climate change. The emphasis on the environment and climate change has increased, both institutionally and academically, in search of an effective solution to the world's most pressing problem.

Over time, the focus and attention in international agreements concerning the environment and climate change has evoked a number of academic researchers, institutions, and policy think tanks, yielding nearly satisfactory results and sparking heated debate.

In effect, the importance and consequences of international treaties, agreements, treaties, and regimes have become very dominant in the study of international relations, specifically emphasising the importance of coordination among nations to address the common environmental problem of climate change.

With much of the literature on the environment and climate change focuses specifically on the regime's or government's performance and more dedication to questions involving effectiveness, followed by equally important aspects such as economic impacts, equity, and fairness. Despite these narrowed and reduced categories, terms, and definitions have "elusive" concepts involving "daunting evaluative and analytical problems" that have given rise to much "disagreement, both in method and approach and in substantive views."

Because of significant differences in the focus of study, as well as different intellectual backgrounds and orientations of their authors, different approaches, outcomes, and impacts have emerged. In general, there is some doubt that our understanding of international environmental agreements has progressed from the earliest levels or stages of diplomatic negotiations to the final application and enforcement of individual agreements.

However, studies of regime performance have yet to produce clear and robust generalizations about the norms and conditions of effective environmental governance. concerning the prerequisites for effective environmental governance In the absence of large integrated networks,



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aspects other than effectiveness and compliance, such as legitimacy, fairness, and economic impacts, have received less specific consideration.

Future work will almost certainly address such remaining gaps by improving and bringing more clarity and transparency to the analysis. The research agenda remains diverse, highlighting the earlier assumption that no single approach has captured all the diverse ways of looking at international cooperation, instead working on it case by case determination of appropriate evaluation of criteria. Existing surveys of alternative approaches to international climate governance have already devoted significant intellectual effort to determining the general appropriate applicable criteria for evaluating cooperative frameworks. Still, the criteria that have been proposed and published in the literature are more heterogeneous.

Only one criterion, environmental effectiveness, is shared by all proposals, and even that is described by differences in terms, definitions, and conceptual understanding. Other criteria, such as fairness, equity, economic impacts, and considerations, were mentioned and prominently featured in the majority of the studies. However, their material content would be significantly different and varied. Another issue is that comparing survey results has become impossible.

### **Role of UNFCCC in Climate Change Law and Governance**

International law and organizations have been critical in the development of climate law. Climate change was first recognized as a global concern by the United Nations General Assembly in 1998. It was agreed that proper, timely action should be taken

as soon as possible to address climate change within a global framework and that nations should exercise caution on this issue internationally. The United Nations Framework Convention on Climate Change, adopted in 1992, has 195 parties; due to the large turnout, it has become widespread and considered universal in scope. It laid the foundation for a more dynamic and evolving international legal regime.

The most important reason to support climate change cooperation is that it addresses the global problem of free riding while also lowering the costs of both mitigation and adaptation. Furthermore, no two countries will face similar problems and face the exact situation in terms of impact, costs, and benefits, and no single country can take effective action to control the risks as they should collaboration and help from other countries. In terms of economy, finance, and technology, the risks they face cannot be resolved by a single country on its own. Because countries must cooperate with one another, no country in the world can function independently.

The fundamental concerns that arise in an international legal response to climate change are justice, equality, fairness, and equity. Countries that contribute the least to the problem of climate change are very likely to suffer the most deadly consequences of climate change, particularly





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very small developing island states such as some African countries and the world's least developed countries. The UN Framework Convention on Climate Change (UNFCCC) is the most important climate change convention, with very high legitimacy as a negotiating forum and legal framework on climate change. With the intention of bringing together the responsible members as well as those who are suffering serious consequences at the same negotiating forum for discussion in order to resolve the problems and issues through collective collaboration of ideas.

Despite the fact that the United Nations Framework Convention on Climate Change (UNFCCC) has been in place for the past 20 years, it has yet to deliver the desired outcomes, as stated in article 2 of the convention, which is avoiding harmful anthropogenic climate change and also a global long-term goal of limiting temperature increase to 2 degrees, which was adopted by the United Nations Framework Convention on Climate Change (UNFCCC).

The effectiveness of the United Nations Climate Change has been called into question several times due to its inability to include important and key countries in a successful mitigation action to combat climate change. Following the United Nations

Climate Change Conference in Copenhagen in 2009, many venues for international climate change cooperation emerged. Despite the fact that only negotiations and arguments were held among the 195 parties, no common consensus was reached. It was also emphasized that efforts to mitigate climate change should focus on major emitters and key countries.

### **Objectives of Climate change regime**

The ultimate goal of the Climate Change regime is mentioned in Article 2 of the United Nations Framework Convention on Climate Change, which requires the stabilization and limitation of greenhouse gas concentrations in the atmosphere at a level that prevents anthropogenic interference with climate change. It should happen at a level where the ecosystem naturally adapts to climate change while also ensuring that it does not have an impact on economic development and poses no threats to food production. Article 2 ensures that the goal is applicable not only to the Convention but also to any related mechanism or instrument that the Conference of the Parties (COP) adopts. The members who have signed the United Nations Framework Convention on Climate Change are referred to as the Conference of the Parties. This results in a single, focused goal for the climate regime, which is addressed through various legal policies, negotiations, instruments, and measures. Environmental quality standards are developed and regarded as an important goal. Actually, it does not completely prohibit greenhouse gas emissions; rather, it emphasizes the importance of limiting and restricting greenhouse gas emissions to avoid exceeding a harmful threshold that increases anthropogenic interference. The goal should also be to ensure that environmental standards are met in such a way that they do not jeopardize food security, ecosystem adaptation, and economic development, all of which should occur in a sustainable manner.

During the drafting process, some parties to the United Nations Framework Convention on Climate Change (UNFCCC) specifically requested ( Canada, New Zealand, Australia, and European Countries). Various acid rain and ozone depletion problems are addressed using such approaches,



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and they were recommended for addressing greenhouse gas emission concerns on this basis. The United States, Japan, and the former Soviet Union, on the other hand, argued that setting specific targets, goals, objectives, and timetables was too rigid, given the lack of scientific certainty and certainty, on this basis, emphasized the need for additional scientific research as well as the development of national strategies that are opposed to international targets. Few developing countries in the process of industrialization, such as India, Brazil, China, and oil-rich countries in the Middle East, are questioning the science of climate change and arguing that the measures that will be implemented should not interfere with their fundamental sovereign rights to development.

Article 1 of the United Nations Framework Convention on Climate Change (UNFCCC) contains a slew of definitions pertaining to the goal's comprehension. There is no single definition given to describe 'dangerous anthropogenic interference,' and the guidance and definition of this concept of anthropogenic interference can be found in the assessment reports of the Intergovernmental Panel on Climate Change (IPCC).

The closest definition provided within Article 1 of the United Nations Framework Convention on Climate Change (UNFCCC) related to the concept of “dangerous anthropogenic interference” is a definition of “the adverse effects of climate change,” which are defined to mean “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.”

The Intergovernmental Panel on Climate Change (IPCC) examined the concept of "dangerous anthropogenic interference" with Climate Change in its Third Assessment Report (TAR).

The (Intergovernmental Panel on Climate Change) IPCC (Third Assessment Report) TAR identified five important and broad categories of reasons for concern related to Article 2 of the (United Nations Framework Convention on Climate Change) UNFCCC:

1. Risks to unique and threatened systems
2. Risks from extreme climatic events
3. Regional distribution of impacts
4. Aggregate impacts
5. Risks from large-scale discontinuities.

The Intergovernmental Panel on Climate Change (IPCC) Third Assessment Report (TAR) did not provide a definition of dangerous anthropogenic interference but rather a set of criteria and a scientific assessment of each of these criteria that policymakers could use to develop a definition of anthropogenic interference. However, the Intergovernmental Panel on Climate Change (IPCC)



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stated in its Fourth Assessment Report that defining "dangerous anthropogenic interference" is a complex task that can only be partially informed by science because it also involves economic, ethical, and legal judgments.

### **Mitigation Objectives of Climate Change Regime**

The Kyoto Protocol and the other two working groups that seek to advance the Kyoto Protocol under this convention can further understand and analyze the mitigation objectives. The Kyoto Protocol's Article 3(1) defines and establishes the first commitment period of the climate regime as running from 2008 to 2012. To fully grasp the objectives, principles, and methods of a post-2012 regime, the entire focus is directed toward two decisions reached at the 2011 Durban (COP) negotiations. The decision of COP/MOP 7 on the Outcome or result of the Ad Hoc Working Group on Further Commitments for Annex I Parties creates and leads to a second commitment period of the Kyoto Protocol, binding only the original and ratified Kyoto Protocol parties. Decision CP on the formation of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, which establishes a process as well as a specific and unique timeline for developing a new legal instrument to be implemented beginning in 2020 and applicable to all parties to the United Nations Framework Convention on Climate Change (UNFCCC).

The Kyoto Protocol is the primary vehicle through which the UNFCCC-created mitigation obligations and duties are operationalized. The Kyoto Protocol's main goal is stated in Article 3, which calls for "greenhouse gas stabilization and reduction commitments for industrialized (Annex I) countries amounting to a 5% reduction in aggregate greenhouse gas emissions compared to 1990 levels." 13 In Annex B to the Kyoto Protocol, 37 industrialized nations and the European Community set legally binding emission reduction targets.

The normal range of the targets varies with the European community, where the European countries adopted the most stringent reduction of 8%, while other countries such as Australia and Iceland were able to increase their greenhouse gas emissions by 8% and 10%, respectively, from 1990 levels. The delay between the drafting of this agreement in 1997 and its entry into force was caused by a shift in domestic politics (leadership) in the United States of America. The Clinton administration signed the Kyoto Protocol, but when the George W. Bush

administration took office, it stated its intention to withdraw from the agreement. According to Article 25 (1) of the Kyoto Protocol, the protocol will enter into force after not less than 55 Parties to the Convention have deposited their instruments of ratification, acceptance, approval, or accession before the agreement enters into force, with at least 55 percent of total carbon dioxide emissions as of 1990 levels. The United States of America's positional and leadership change has left the agreement in a precarious position, as every other Annex I party is now required to ratify the instrument. Following the Russian Federation's ratification, the Kyoto Protocol entered into force on February 16, 2005. According to Article 3 of the Kyoto Protocol, the first commitment period of the agreement runs from 2008 to 2012. Parties are required to demonstrate compliance with their individual mitigation pledges contained in Annex B of the Protocol during the first

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commitment periods.

A COP decision from the Durban COP negotiations determines the Kyoto Protocol's second commitment period. This decision establishes that the Kyoto Protocol's second commitment period will begin in January 2013 and end on either December 31, 2017, or December 31, 2020 (the expiration date will be determined at the 2012 COP negotiations in Qatar). The goal of the second commitment period is to "ensure that aggregate greenhouse gas emissions by Annex I parties are reduced by at least 25–40% below 1990 levels by 2020." The new individual pledges of the agreement's Parties are detailed in Annex I. In a show of leadership, the European Union has pledged to jointly meet a target of 20–30% quantified emission limitation or reduction objectives (QELROs) during the second commitment period. Other countries' pledges, such as Australia and New Zealand, come with a number of caveats and conditions and do not yet specify QELRO. Meanwhile, other countries, including Canada, Japan, and the Russian Federation, have refused to accept QELROs for the second commitment period, undermining the regime's ability to deliver globally coordinated mitigation measures.

### **Adaptation Objectives of Climate Change Regime**

The reference to the United Nations Framework Convention on Climate Change (UNFCCC) and the Cancun Adaptation Framework clarifies the climate adaptation regime. The second part of the objective derived from Article 2 of the Convention is specifically related to the adaptation regime. The time-bound component of the goal aims for "ecosystems to adapt naturally to climate change, ensuring that food production is not jeopardized, and allowing economic development to proceed in a sustainable manner." Mitigation measures to reduce emissions are implemented with the goal of lowering emissions so that ecosystems can naturally adapt to climate change. Adaptation measures are more proactive in ensuring that ecosystems remain functional by implementing measures that involve human intervention to protect or enhance vulnerable ecosystems.

Article 4 (1) (b) of the UNFCCC requires parties to "formulate, implement, publish, and regularly update national... measures to facilitate adequate adaptation to climate change." This provision requires parties to develop national adaptation measures to address domestic country-specific adaptation concerns. Article 4 (1) (e) directs parties to "cooperate in preparing for adaptation to the impacts of climate change, develop and elaborate appropriate and integrated plans for coastal zone management, water resources, and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods."

### **Analysing Hard Law and Soft Law in Climate Change**

There are relatively widely accepted legal definitions of hard law, including its sources (treaty and custom) and the implication of the general obligation imposed on states (*pacta sunt servanda*) to follow them. International customary law is a well-established category that emerges from state practice and is not always explicitly designed or formally codified. As a result, it will not be discussed further in this essay. The first international discussions about soft law took place in the



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late 1970s. At the time, the term was usually surrounded by quotation marks. By the late 1980s and early 1990s, the concept had gained traction, and the analysis not only recognized and described an empirical phenomenon but also reflected on its implications in relation to the binary terms of legal formalism (legal/illegal; binding/nonbinding), and, much to the chagrin of formalist-oriented scholars, "end up rejecting the binary code of law altogether." In contemporary literature, the term soft law is frequently defined in binary terms, usually in terms of what it is not. Soft laws are not legally binding on their own, do not exist in treaty form, and do not fall under the purview of customary law.

### **Hard-Soft Law Dynamics**

Over time, the dynamic of legal characteristics operates. For example, a soft agreement may gain enough legitimacy to be converted into hard law. The soft-hard law dynamics are at work in the process of operationalizing softer framework conventions into harder legal instruments and decisions through multilateral negotiations at the level of practical politics within the field of global environmental governance. This approach has been used with the ozone regime, the biodiversity regime, and the climate regime, among others. Framework conventions are formal, ratifiable, and legally binding treaties in international environmental law. However, framework conventions do not typically contain clear, detailed, or specific rules that could be easily implemented in domestic legislation. In contrast to the generality of framework conventions, the protocols or other legal instruments developed within their regime, as well as decisions adopted by the regime's decision-making bodies, typically provide very specific rules and mechanisms.

### **Conclusion**

In general, there has been a shift from a focus on mitigation in the past to adaptation in recent legal developments, with many countries signaling adaptation as their top priority due to the frequent occurrence of disasters that have caused human and economic losses. Nonetheless, mitigation, which was initially focused on regulations for the implementation of CDM projects, continues to account for the majority of climate-related regulations, with many countries adopting economy-wide mitigation targets or aspirational goals.

Finally, the layers formed by national strategies and action plans are intersected and overlapped – and frequently enriched – by subnational legislation, indicating increased levels of activity in climate change regulation. A slew of initiatives is underway at the subnational level, with some cities in the region (including Buenos Aires, São Paulo, and Mexico City) adopting specific targets for climate change mitigation.

At the international level, many countries participate in sub-regional organizations that have adopted strategies for subregional cooperation on climate issues, adding to the colorful picture. In terms of implementation, the picture could be clearer, with most policymakers reporting severe shortages of funds from national budgets for climate-related strategies. However, Brazil, Mexico,



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and Colombia provide interesting examples of frameworks that intend to provide adequate funds for climate change. In essence, climate change legislation in Latin America, which has been developed over the last decade, is still in the programmatic stage. Still, it is moving forward steadily at both the national and subnational levels. While initially emphasizing mitigation, it is now shifting to disaster prevention and adaptation. However, operational clauses or binding obligations that could trigger enforcement measures for mitigation or adaptation are scarce.

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