



HAL
open science

International environmental law (2021)

Sophie Gambardella

► **To cite this version:**

Sophie Gambardella. International environmental law (2021). Yearbook of international disaster law, In press. halshs-03899837

HAL Id: halshs-03899837

<https://shs.hal.science/halshs-03899837v1>

Submitted on 15 Dec 2022

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

International environmental law (2021)

Sophie Gambardella*

1. Introduction

As soon as we talk about the environment, the term "disaster" is recurrent in the discourse because the state of our planet is so alarming. The year 2021 has again been marked by natural disasters of unprecedented proportions, such as Hurricane Ida in the United States; numerous floods in Europe, India and Nepal; and fires in Canada, California and Greece. According to the International Organization for Migration, these environmental disasters are currently the main cause of population displacement and the situation is likely to continue to deteriorate.¹ Indeed, the latest IPCC reports are not very optimistic and remind us of the urgency to act.

Since January 2022, the second² and third³ parts of the IPCC's sixth assessment report have been published. According to J. Skea, co-author of the Report, "If we don't act now, it will be too late: we will not be able to limit global warming to 1.5°C (2.7°F). Without immediate and drastic emission reductions in all sectors, it will be impossible".⁴ According to the International Energy Agency, the nationally determined contributions announced by the States before COP 26 would, if they were implemented, only make it possible to limit temperatures to 1.8°C.⁵ However, COP 26, which took place in Glasgow in November 2021, gives us hope that the States have finally measured the scale of the disaster that is looming. In the Glasgow Pact,⁶ which was agreed at COP 26, countries agreed to review their ambitions to reduce greenhouse gas emissions by 2030. This is certainly the biggest breakthrough of the Pact. Other sticking points in the climate negotiations were also resolved on this occasion, in particular through the adoption of the rules for implementing the Paris Agreement.⁷

This disaster law practice report could certainly have been entirely devoted to the content of the Glasgow Pact, given the vast range of issues it covers (adaptation measures, carbon market, financing, transparency, deforestation, oceans, etc.), but it has already been widely commented on, particularly by climate specialists.⁸ This short contribution will

* CNRS Researcher, Aix-Marseille Univ, Toulon University, CNRS, DICE 7318, CERIC, Aix-en-Provence, France.

¹ In 2021, out of a total of 38 million internal displacements recorded worldwide, 23.7 million people were displaced by disasters. IDMC's 2022 *Global Report on Internal Displacement*. Available at: <https://www.internal-displacement.org/publications/2022-global-report-on-internal-displacement>

² IPCC 2022 : Climate Change 2022: Impacts, Adaptation and Vulnerability, *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* Available at : <https://www.ipcc.ch/report/ar6/wg2/>

³ IPCC 2022 :Climate Change 2022: *Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* Available at : <http://www.ipcc.ch/report/ar6/wg3/>

⁴ IPCC, 2022: Summary for Policymakers. In: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.001.

⁵ <https://www.iea.org/commentaries/cop26-climate-pledges-could-help-limit-global-warming-to-1-8-c-but-implementing-them-will-be-the-key>

⁶ Available at : https://unfccc.int/sites/default/files/resource/cma2021_L16_adv.pdf

⁷ Sur l'apport du Pacte voir: Lola Vallejo, Taking stock of Glasgow's COP26, Blog de l'IDDRI, <https://www.iddri.org/en/publications-and-events/blog-post/taking-stock-glasgows-cop26>

⁸ See in this yearbook volume R. Lyster, The Glasgow Climate Pact: is it all just 'blah, blah, blah?' See also for example : M. Lennan, M., & E. Morgera (2022). The Glasgow Climate Conference (COP26), *The International Journal of Marine and Coastal Law*, 37(1), 137-151. doi: <https://doi.org/10.1163/15718085-bja10083> ; Interviews

therefore shed light on another aspect of the current international negotiations aimed at curbing a major environmental disaster: the dizzying collapse of biodiversity.

2. Post-2020 Global Biodiversity Framework

A preparatory process for the development of the post-2020 global biodiversity framework was launched in 2018, through the Convention on Biological Diversity (CBD) decision 14/34.⁹ This global framework is to follow up on the Strategic Plan for Biological Diversity 2011-2020 and the Aichi Targets. In 2020, an initial draft was adopted by the Parties following the second meeting of the working group.¹⁰ The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the CBD was invited to conduct a scientific and technical review of the updated goals and targets, as well as the associated indicators and baselines. In July 2021, a first text of the Global Framework was published opening a long phase of negotiations.¹¹ The text was an update of the initial draft based on additional scientific and technical advice. In order to achieve the Framework's vision of a world where people live in harmony with nature, the text identifies four broad goals to be achieved by 2050, broken down into 10 milestones to be achieved by 2030 and 21 action-oriented targets for urgent action within the decade. A third virtual meeting of the Working Group was held from August 23 to September 3 to negotiate this first version of the Global Framework. Several strong oppositions emerged. First, states are divided on the actual form that the targets should take. While some advocate for qualitative targets, others call for the adoption of specific, measurable, achievable, realistic and time-bound targets: smart targets. The quantitative approach, for example, with regard to the extinction rate does not enjoy consensus among the States. Similarly, certain quantified objectives, such as the 30% protection of land and marine areas, are not supported by civil society and several international organizations because most of the time protected areas, especially marine ones, are not accompanied by an effective management plan. The 30% objective in the marine space could thus, in practice, be nothing more than a headlong rush on the part of the States. Furthermore, on the terrestrial space, the 30% target was set without prior assessment of social impacts, including the risk of displacement and eviction of indigenous peoples and other land-dependent communities. Finally, as with the Biodiversity Beyond National Jurisdiction negotiations at the United Nations designed to support high seas protection¹², the negotiations stalled on the issue of access to information on the digital sequencing of genetic resources and the sharing of the resulting benefits. There is a divergence of views among Parties regarding the sharing of benefits arising from the use of digital sequencing information on genetic resources. Some countries currently regulate digital sequencing information, others are awaiting international consensus on this issue, and still others have indicated that they do not intend to regulate it. The multiplicity of national access and benefit-sharing frameworks for digital sequencing information on genetic resources

of Sandrine Maljean-Dubois in *The Conversation* (<https://theconversation.com/apres-glasgow-pourquoi-nous-aurons-encore-besoin-des-cop-172334>) and with le Club des juristes (<https://blog.leclubdesjuristes.com/quel-bilan-peut-on-tirer-de-la-cop-26/>)

⁹ COP CBD, Decision 14/34, 'Comprehensive and participatory process for the preparation of the post-2020 global biodiversity framework', (30 November 2018), CBD/COP/DEC/14/34.

¹⁰ Preparations for the post-2020 biodiversity framework, 'Update of the zero draft of the post-2020 global biodiversity framework', note by the co-chairs, (17 August 2020) CBD/POST2020/PREP/2/1, <<https://www.cbd.int/doc/c/3064/749a/0f65ac7f9def86707f4eafa/post2020-prep-02-01-en.pdf>>

¹¹ <https://www.cbd.int/doc/c/d40d/9884/b8a54563a8e0bf02c1b4380c/wg2020-03-03-fr.pdf>

¹² In June 2022, further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction was adopted. Available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/368/56/PDF/N2236856.pdf?OpenElement>

therefore creates a problem for users and an internationally agreed position needs to be developed. Aware that this aspect could jeopardize the entire negotiations, the States met in Geneva in March 2022 to prepare a consensus text for the CBD COP15, which was to be held in China before the end of 2022, that would determine the path to follow in order to resolve the thorny issue of digital sequencing information. However, the negotiations in Geneva did not result in an ambitious text and a fourth meeting of the working group has been scheduled for June 2022 in Nairobi.

Beyond the strong opposition between States on the objectives and targets of the Global Framework, other technical and legal aspects currently being negotiated could be an obstacle to its effectiveness. Indeed, even if ambitious targets are adopted, there is no guarantee that they will be implemented by States. The effectiveness of the global framework thus depends both on the content of its objectives and on its degree of its implementation. Since the spring of 2021, negotiations have been taking place in parallel within the Subsidiary Body on Implementation of the Convention on Biological Diversity for the establishment of "Mechanisms for Reporting, Assessment and Review of Implementation". Less commented on, these negotiations are nevertheless just as important as those on the objectives insofar as they provide a means for evaluating success on the objectives. In the literature, some authors, believing that the current framework for monitoring the Convention on Biological Diversity was insufficient, have proposed ways of improving it, such as strengthening the reporting system, setting up a global assessment, or establishing a compliance mechanism.¹³ After the Nairobi meeting, the States plan to finally meet again in December 2022 in Montreal in Nairobi for the COP15 during which the Global Framework should be adopted. If this conference produces such a text, it will be necessary to analyze both the degree of ambition of the objectives and their potential to reverse the curve of biodiversity loss, as well as the related monitoring and control mechanisms to ensure their implementation.

3. Marine Litter and Microplastics

On February 28, 2022, states met in Nairobi to resume discussions at the fifth session of the United Nations Environment Assembly, which had been initiated online in February 2021. One of the issues on the agenda was the adoption of a resolution on plastic pollution. Three resolutions were proposed. The first one was proposed by Japan and concerned only plastic pollution in the marine environment. The second one carried by India was only about single-use plastic and did not necessarily include the adoption of a binding agreement. The third, sponsored by Peru and Rwanda, which was adopted, establishes an intergovernmental negotiating committee to adopt a legally binding agreement on plastic pollution, considering its entire life cycle, including micro plastics¹⁴. The timetable of work foreseen in the resolution is very ambitious since it foresees that the treaty could be adopted in 2024.

¹³ J. Landry, J. Rochette, , M. Wemaëre. (2022). Five proposals for a strengthened monitoring and review of the post-2020 Biodiversity framework. IDDRI, Policy Brief N°02/22.

¹⁴ Resolution 5/14. End plastic pollution: towards an international legally binding instrument, adopted by the United Nations Environment Assembly on 2 March 2022

