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THE DEVELOPMENT OF FINANCIAL ASSISTANCE IN INTER-STATE RELATIONS REGARDING ENVIRONMENTAL PROTECTION: A REVIEW OF THE PARIS AGREEMENT 2015

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Abstract
The Increasing of environmental issues affect countries' views on international environmental policy. This requires countries to take shared responsibility on environmental issues, which later developed as the principle of Common but Differentiated Responsibility and Respective Capabilities (CBDR-RC). The implementation of this principle can be seen in the aspect of financial assistance obligations from developed countries to developing countries in the 2015 Paris Agreement. This study aims to determine the development of financial assistance obligations between developed and developing countries in international environmental law, especially on climate change issues and on financial assistance obligations and mechanisms in the 2015 Paris Agreement. The results show a shift in views from sovereignty-based responsibility to a shared international responsibility that requires countries to work together to address climate change. The process of shifting views is supported by principles that continue to change in response to overcoming the shortcomings of previous principles. Despite changes in interactions, responsibilities, and principles, the mechanism of financial assistance relations between countries is still based on the UNFCCC mechanism.
Keywords: financial assistance, developed and developing countries, Paris Agreement.

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A. INTRODUCTION

Climate Change is a significant challenge that the world is currently facing. Various environmental problems triggered this phenomenon, especially regarding global warming. Relating to this, 2015 to 2021 was the hottest seven-year period on the world record. If this global temperature continues to increase, it is projected that in 2050, the earth will reach a temperature rise of 2.4-4.6°C and cause a significant threat to all living things on this earth because it has significant implications for disrupting the hydrological and biological cycle, including the economy, ecosystems, and substances in natural resources on earth.[3] In this case, environmental protection efforts are needed to address world climate change.

To combat climate change as a global environmental problem, majority of countries worldwide agreed to sign the *Paris Agreement 2015 to the United Nations Framework Convention on Climate Change at the 21st Conference of the Parties (COP)* (Paris Agreement) held in Paris, France. Paris Agreement is an international agreement that first binds member states to combat threats and adapt to the impacts of climate change. This makes the Paris Agreement a vital milestone in dealing with climate change.[4] Nowadays, Paris Agreement has been ratified by 194 countries in the world.[5]

The main objective of this agreement is to strengthen global response to deal with the threat of world climate change, including by:[6]

"a. Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, …;
b. Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
c. Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."

The Paris Agreement established the basis of shared international responsibility with different national circumstances, called the *Common but Differentiated Responsibility and Respective Capabilities* (CBDR-RC) and *Sustainable Development principles.*

The Principle of CBDR-RC is applied in international environmental treaties to demonstrate that all countries should participate in efforts to address environmental issues. In this case, state commitments can be considered based on the characteristics of each different country.[7] This principle is motivated by differentiating factors such as differences in wealth, power, and influence between countries and the diverse nature of environmental problems so that they all determine whether the issue will give rise to an effective international regime

[3] Hossain, Md. Nazmul, "Absolute Globalization: The Way to Confront the Global Challenges", *Advances in Social Sciences Research Journal,* Vol. 9, No. 9, 2022 pp. 128.

[4] United Nations Climate Change, "The Paris Agreement", https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement?gclid=Cj0KCQjwnbmaBhD-ARIsAGTPcfXkHv3wX8m9FtdGhHlLMZhZZAM8HLi-lOGecIBvB9HXwTCTLuRKNh4aAoIrEALw_wcB, accessed on 20 October 2022 .

[5] United Nations Climate Change, "Paris Agreement – Status ", https://unfccc.int/process/the-paris-agreement/status-of-ratification accessed on 24 November 2022.

[6] *Paris Agreement to the United Nations Framework Convention on Climate Change*, 15 December 2015 (entered into force 4 November 2016), Online: UNFCCC <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> [*Paris Agreement*], Article 2.

[7] Bugge, Hans C. and Voight, C., *Sustainable Development in International and National Law*, Groningen: Europa Law Pub., 2008, pp. 251.

on the international agenda.[8] Since the 1980s, CBDR-RC has become a distinctive feature in international environmental conventions, with one form of implementation being the provision of financial assistance and technology transfer assistance between countries.[9]

Regarding the threat of climate change, developing countries are vulnerable to the impacts of climate change because they focus on other interests, such as economic and social development. On the other hand, developed countries can lead significant movements to curb the pace of world climate change because, historically, developed countries have contributed more significantly to global warming. Therefore, developed countries have more capable financial and technological resources. Regarding the two interests of developed and developing countries, different contributions are needed according to each country's characteristics to continue to participate in dealing with the threat of climate change.

The Paris Agreement regulates the application of CBDR-RC and Sustainable Development principles in Article 9, article 10, and Article 11 of the agreement. Regarding to this, developed countries shall provide financial resources for developing countries.[10] Developed countries shall also support a transfer technology development to assist in mitigation and adaptation efforts in developing countries.[11] Other than that, developed countries need to increase support in capacity building for developing countries.[12] From some of the responsibilities, it can be seen that there are differences in treatment between developed and developing countries in achieving the agreement's goals.

Regarding environmental protection efforts, several international declarations, such as the Stockholm Declaration on the Human Environment 1972 and the Rio Declaration on Environment and Development 1992, show that relations between developed and developing countries are only limited to protection and assistance for sustainable development.[13] In this case, developed countries are not obliged to provide financial, technological, or capacity building assistance to developing countries to protect the environment. Nevertheless, on the other hand, effective improvement and sustainable development action are increasingly needed due to widespread and uncontrollable environmental problems, especially in the issue of climate change. In response, the Paris Agreement takes a different step in the concept of relations-interactions between countries to overcome the climate crisis. This issue is essential to discuss regarding the development of developed countries' relations-interactions with developing countries in environmental protection from several declaration, especially in the Paris Agreement to combat global climate change.

Based on the above framework, this article examines the interaction and obligations of developed countries to developing countries in the Paris Agreement. Of the three obligations developed countries

[8] Bilqis, Amira and Arie Afriansyah. "Paris Agreement: Respon terhadap Pendekatan Prinsip *Common but Differentiated Responsibility and Respective Capabilities dalam Protokol Kyoto." Jurnal Penelitian Hukum De Jure,* vol. 20., no. 3, 2020, pp.394. http://dx.doi.org/10.30641/dejure.2020.V20.391-408.

[9] Kiss, Alexandre. and Shelton, Dinah., *Guide to International Environmental Law,* Leiden: Martinus Nijhoff Publisher, 2007, pp. 77.

[10] Paris Agreement, Article 9 (1).

[11] Paris Agreement, Article 10 (6).

[12] Paris Agreement, Article 11 (3).

[13] Principle 9 of Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972, A/CONF.48/14 and Corr.1 (entered into force 17 May 2004) [Stockholm Declaration]; Principle 7 Rio Declaration on Environment and Development Rio de Janeiro, 14 June 1992, A/CONF.151/26/Vol. I (21 March 1994) [Rio Declaration].

bear to developing countries, this paper will only analyze the financial assistance obligation of developed countries. This study will discuss two main things: 1) the discussion regarding the development of the relations-interactions of financial obligations of developed countries to developing countries; and 2) developed countries' obligation of financial assistance to developing countries in the Paris Agreement. The second discussion will describe two main things: the obligation form of financial assistance and the financial mechanism in fulfilling financial assistance obligation.

B. DISCUSSION

1. Development of Relations and Interaction of Financial Assistance of Developed Countries to Developing Countries

The discussion in this sub-section will be directed to describe the effect of environmental change on international law, especially in the context of relations between countries regarding relations and the interaction of financial obligations in overcoming environmental problems.

Along with the times, environmental problems are increasing. The international community continues to produce problem-solving in the form of programs, international instruments, negotiations, responsibility systems, etc., to deal with environmental problems. This situation prompted the escape of the existence of sovereignty which is the primary basis for the presence and states power in international relations.

Historically, the internationalization of the environment arose from various problems that demanded the exclusion of *egocentric states' sovereign power*.[14] Environmental issues have attracted international attention since the 19th century. Initially, international agreements tried to address the issue of shared resources, followed by agreements on fisheries and the protection of plant species. Continuing international agreements to address the issue of water pollution that spreads and impacts other countries, environmental problems caused by technology, and economic activity, to the *Torrey Canyon* oil boat event, have encouraged the international community's awareness to focus on environmental issues.[15] These issues are highlighted as internationalization that attracts countries to develop new laws that can support more effective and efficient actions in solving environmental problems at the international level,[16] including climate crisis. Therefore, the global community is becoming *state interdependent* in overcoming environmental issues.[17,18]

In overcoming problems arising and environmental concerns in the future, countries and various *non-governmental organizations,* both nationally and

[14] Environmental issues need to be resolved collectively by the international community, not based on *egocentrics* that put forward the interests of the state alone. Look Cullet, Philippe, *Op. Cit.,* pp. 550.

[15] Kiss, Alexandre. and Shelton, Dinah, *Op. Cit.,* pp. 32-34.

[16] Sovereignty is considered to hinder the emergence of solidarity relations. In fact, environmental problems are global problems that need to be solved at the international level, not domestic. Cullet, Philippe, "Differential Treatment in International Law: Towards a New Paradigm of Inter-state Relations", *The European Journal of International Law,* Vol. 10, No. 3, 1999, pp. 550.

[17] International law is generally depicted with entity sovereignty. Allot says: "international law has been the minimal law necessary to enable state-societies to act as closed system internally and to act as territory-owners in relation to each other". *Ibid.,*

[18] The Stockholm Conference redefines the need for international action and international responsibility in addressing environmental issues. Look Sands, Philippe, et.al, *Principle of International Environmental Law,* (Cambridge: Cambridge University Press, 2012) at 31.

internationally, were involved in the Stockholm *Conference* in 1972.[19] The *Stockholm Conference* emphasizes development with careful management in nature management to protect present and future generations. The conference produced three instruments, namely institutional and financial regulatory resolutions, declarations, and Action Plans.[20] The Stockholm Declaration created principles of environmental protection that initiated the principle of *sustainable development*[21] in principles 4, 13, 15-20.[22] However, these various instruments are not binding because the concept of sovereignty in international law still influences the paradigm of the international community.[23] Nonetheless, the conference seeks to transform the view of sovereignty (individual national policy) into an international responsibility in addressing environmental issues.

The need to overcome environmental problems together is none other because environmental impacts have impacted various aspects. The increase in the use of fossil fuels, urban builders, etc., has increased the problem of greenhouse gases to impact social aspects, such as mass migration.[24] Environmental issues are increasingly integrated into trade, investment, intellectual property, and human rights. Environmental problems cannot be seen in one aspect only because the environment has complex interconnections.[25]

Philippe Sands sees this issue as cross-border, presenting a challenge to respond appropriately in an international dimension[26] that may obscure the notion of state sovereignty. The ICJ also states, "general obligation of States to *ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment*"[27] The implication is that this changes the concept of domestic power and sovereignty to merge with the international dimension. States are becoming more active in the globalized world and national governments are directed to cooperate in networks outside the country.[28]

Recognizing the need for joint efforts in addressing the environment began to be adopted at the Stockholm Conference. The international responsibility is to emphasize each country's domestic policy to support environmental protection "*focus on the need for States to legislate internally to protect and preserve the environment, as well as on the need for international co-operation for the same purpose*."[29]

Recognizing international responsibility is a positive development in addressing environmental problems. This awareness also has implications for the principles of solidarity and partnership to achieve fair and

[19] Kiss, Alexandre. and Shelton, Dinah, *Op. Cit.,* pp. 34.
[20] Sands, Philippe, et.al, *Op. Cit.,* pp. 30.
[21] Barral, Virginie, "Sustainable Development in International Law: Nature and Operation of an Evolution Legal Norm", *The European Journal of International Law,* Vol. 23, No. 2, 2012, pp. 379.
[22] Stockholm Declaration.
[23] Preparatory Committee states: "*the Declaration should not formulate legally binding provisions, in particular as regards relations between States and individuals, or as between the latter, which were considered in principle to be governed by national legislation*.". Lihat Sohn, Louis B., "The Stockholm Declaration on the Human Environment", *The Harvard International Law Journal,* Vol. 14, No. 3, 1973, pp. 426-427.
[24] Urs Luterbacher and Dtlef F. Sprinz, *International Relations and Global Climate Change*, Cambridge: The MIT Press, 2001, pp. 5.
[25] Sands, Philippe*, et.al. Op.Cit*, pp. 4.
[26] *Ibid.*, pp. 4.
[27] *Ibid.*, pp. 4.
[28] Joana C. Pereira, "Environmental issues and international relations, a new global (dis)order – the role of International Relations in promoting a concerted international system", *Revista Brasileira de Política Internacional*, Vol. 58, No. 1, 2015, pp. 193.
[29] Sohn, Louis B., *Op. Cit.,* pp. 427.

effective results.[30] The principle in the environmental context is used to overcome problems that attract *common attention* that requires joint action.[31]

On the other hand, this conference still imposes each domestic's policies with suggestions for paying attention to environmental issues. This declaration has not established relations and interactions between countries as a shared international responsibility to the environment. This can also be seen in the *Declaration of the United Nations Conference on the Human Environment on the* 4th point, which states:

> "*In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development*."

Apart from the view of sovereignty in international law, the other reason that relations between states in international shared responsibility have not been established is because of the opinions of developing countries that see environmental problems arising from industrialized countries[32] , so industrialized countries must solve environmental issues.

Meanwhile, the forerunner of the relationship between developed countries and developing countries in overcoming new environmental issues is seen in the technological aspect of the 20th Principle "… *environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries*". Indirectly, this gave consequences for developed countries to help developing countries regarding technology transfer. However, this relationship is not established in the *Stockholm Declaration,* and no interaction has occurred between developed and developing countries in addressing environmental issues.

After the *Stockholm Conference*, the internationalization of environmental issues has strengthened and resulted in many programs, agreements, or conventions addressing environmental problems, such as the *United Nations Convention on the Law of the Sea, the 1978 UNEP draft Principle, the 1981 Montevideo Programme, 1982 World Charter for Nature*, and several other environmental conventions.

In 1992, the *UN Conference* on Environment and Development held the Rio *Declaration on Environment and Development 1992* (*Rio Declaration*) to elaborate strategies and measures to address the effects of environmental degradation in national and international contexts in promoting sustainable development and the environment in all countries.[33] *The Rio Declaration* represents a compromise

[30] Cullet, Philippe, pp. 3. The principle of solidarity shows the interdependence of the state but remains responsible in ensuring that the economy, offense or other policies do not have a negative impact on other countries and still maintain the prohibition of intervention in other countries. See, *Ibid.,* p. 11.

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[32] Kiss, Alexandre. and Shelton, Dinah, *Op. Cit.,* pp. 35.

[33] Sands, Philippe, et.al, *Op. Cit.,* pp. 41.

between developed and developing countries and a balance between environmental protection goals and economic development.[34] This declaration emphasizes the concept of *sustainable development*, which consists of three dimensions: environmental *protection, economic development,* and *social development.*[35] The importance of *economic development* can be seen in Article 2 of the UNFCCC "S*uch a level* ***should*** *be achieved within a time-frame sufficient…* ***to enable economic development to proceed in a sustainable manner".***

Integrating the three dimensions above in achieving sustainable development is built through the *Principle of Common but Differentiated Responsibilities* (CBDR),[36] which imposes more responsibility on developed countries than on developing countries through technological and financial transfers to developing countries.[37] This is a development of the *Stockholm Declaration* and previous instruments emphasizing universal participation in addressing environmental damage.[38]

From the *Stockholm Declaration*, all efforts to overcome environmental problems are based on *differential treatment*. This disparate treatment overrides the principle of *sovereign equality* to address unequal development differences.[39] This principle overrides state sovereignty to accommodate specific problems, such as environmental problems that require attention from various international communities. This concept is based on The *Principle of Solidarity and Partnership* to achieve effective results.[40]

In this regard, it can be known that the influence of the environment on the international system cannot only be overcome with an understanding of universal responsibility. International law recognizes that the international community has different capacities in different countries. Some countries may still be in a stage of development with not very adequate technology, including knowledge, methodology, and resources. [41] With different treatments, the goal of overcoming environmental problems will be more realistic.

On the other hand, the CBDR Principle and *differential treatment* still need to form the relationship and interaction of developed and developing countries in a shared international responsibility on the financial aspect. *The Rio Declaration* does not explicitly state the necessity for developed countries to financially assist developing countries in addressing environmental damage, as well as the nature of the declaration, which still needs to be legally binding. However, with the foundation of sustainable development, the financial aspect of overcoming the environment is directed as a standard in achieving *sustainable development*. The 12th principle of the Rio Declaration states:

> "***States should cooperate to promote a supportive and open international economic system that would lead to economic growth*** *and sustainable development in all countries, to better*

[34] Sands, Philippe, et.al, *Op. Cit.,* pp. 42.
[35] Barral, Virginie, *Op. Cit.,* pp. 379.
[36] This principle is a common principle for each country in addressing environmental issues which must be balanced with consideration of different circumstances, especially regarding contributions in preventing, reducing, and controlling threats. Bugge, Hans C. and Voight, C., *Op. Cit.,* pp. 169-170.
[37] Barral, Virginie, *Op. Cit.,* pp. 381.
[38] Sands, Philippe, et.al, *Op. Cit.,* pp. 43.
[39] Cullet, Philippe, *Op. Cit.,* pp. 551.

[40] *Ibid.*, p. 3. The principle of solidarity shows the interdependence of the state but remains responsible in ensuring that the economy, offense or other policies do not have a negative impact on other countries and still maintain the prohibition of intervention in other countries. See, *Ibid.*, p. 11.
[41] Joana C. Pereira, hlm. 203.

address the problems of environmental degradation."

In relations between countries, economic growth and sustainable development based on the CBDR principle will result in different financial burdens between developed and developing countries. The 7th principle of the Rio Declaration states:

"…. . *The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command*."

11th principle:

"… . *Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries*."

In this declaration, environmental issues have narrowed down to the climate crisis as seen from one of the instruments produced from the *Rio Declaration*, namely the *UN Framework Convention on Climate Change* (UNFCCC).).[42] This Convention is based on the awareness that increasing the concentration of greenhouse gases in the atmosphere results in global warming that will affect natural and human ecosystems. Therefore, the Convention aims to stabilize the concentration of greenhouse gases in the atmosphere at a level that can prevent harmful anthropogenic disturbances in the climate system.[43]

The Convention recognizes the condition of developed and developing countries towards the environment. Developed countries widely cause the greenhouse effect, so as an industrialized and superior country, it is expected to take immediate action in tackling climate change socially and economically. On the other hand, developing countries struggle in the economy and need access to resources for social and economic development in controlling greenhouse gas emissions. This background affects how the Convention is run for developed and developing countries.

I see some of the things that are the conception of financial obligations to climate change. First, the CBDR principle and its capabilities in protecting the climate system. Developed countries must take the lead in combating climate change and its adverse effects.[44] This principle adds *respective* capabilities, meaning that the principle of common but differentiated responsibilities differs from *capabilities.* The CBDR principle emphasizes the obligation of all countries to work together in achieving environmental integrity while recognizing the responsibilities of higher-developed countries. With the addition of *respective capabilities*, the obligation to address the environment refers to considering state capacity differently. *Respective capabilities* also result in different financial, technical, demographic, human capacity, and cost standards in the relationship between developed and developing countries.[45] The CBDR-RC principle gives different weights as a cornerstone of convention execution, so it seems binding in burden-sharing with different treatments.[46]

Second, UNFCCC continues the promotion of *sustainable development* in

[42] Sands, Philippe, et.al, *Op. Cit.,* pp. 41.
[43] United Nations Framework Convention on Climate Change, 19 June 1993 (entered into force 24 March 1994), Online: UNFCCC [UNFCCC], Article 2.
[44] UNFCCC, Article 3 (1) and (3).
[45] Larrea, Gonzalo, "Climate Change and Development. The Global Administrative Law of the UNFCCC Financial Mechanism'', (Florence:European University Institue, 2022), pp. 32.
[46] Larrea, Gonzalo, *Op. Cit.,* pp 29.

tackling climate change.[47] Both principles at the outset resulted in developed countries having to take the lead in combating climate change,[48] and developing countries should be given full consideration because they are vulnerable to the adverse impacts of climate change, particularly those that bear disproportionate burdens.[49] Parties should also promote international economic support and systems for sustainable economic development, particularly for developing countries to tackle climate change.[50]

The relationship between developed and developing countries in the fight against climate change can be seen from financial obligations, although it has yet to form strong interactions between countries. Financial obligations are part of *climate finance*. *Climate finance* is local, national, or transnational financing that can be done by institutions that manage public and private funding. This is significantly intended to reduce emissions, especially in sectors that emit large amounts of greenhouse gases.[51] The question is, why is climate finance important in overcoming environmental problems?

In overcoming environmental problems, a significant role is needed to reduce emissions. The ability of developed countries to sharply reduce emissions is not enough, so needs assistance to developing countries through additional investment in assisting developing country adaptation and mitigation.[52] This requirement normatively obliges developed countries to assist developing countries financially.

Based on norms, *Climate finance* is divided into two things: *hard obligations* that give rise to legal obligations for the state and *soft obligations* that give rise to recommendations or encouragement for the state to carry out specific actions in a certain way. [53] The financial responsibility of developed countries to developing countries includes *hard obligations.*[54] Article 4 (3) obliges developed countries to provide financial resources for developing countries.[55] Developed countries are also required to assist developing countries vulnerable to the disadvantages of climate change in meeting the cost of adaptation to these adverse impacts. This is one of the forms of financial assistance that "shall also assist the developing country: which requires developed countries to help developing countries in context of the impacts of climate change.[56]

Hard *obligation* shows that the CBDR-RC principle and the goal of *sustainable development* need to be approached with more vigorous efforts, and cannot give up the capabilities of each country alone because the issue of climate crisis cannot be addressed by imposing greater responsibility on developed countries alone. It needs to be involved in helping developing countries improve economic, social, and technological to move forward in the fight against the climate crisis.

The effectiveness of developing countries in implementing the Convention even stated depends on the financial efficacy of developed countries against developing countries.[57] The parties should fully consider

[47] UNFCCC, Article 3 (4).
[48] UNFCCC, Article 3 (1).
[49] UNFCCC, Article 3 (3).
[50] UNFCCC, Article 3 (5).
[51] Ramiah, Vikash, and Greg N. Gregoriou, *Handbook of Environmental and Sustainable Finance*. London: Elsevier, 2016, pp. 16.
[52] Richard B. Stewart, p. 4.
[53] Larrea, Gonzalo, *Op. Cit.,* pp 34.
[54] Hard obligation can be seen from the phrase "shall". Larrea, Goncalo, Op. cit., pp. 35.
[55] Including promotion, facilitation, and financing as appropriate to the developing country in the Article 4 (5) of UNFCCC
[56] UNFCCC, Article 4 (4).
[57] UNFCCC, Article 4 (7).

the situation and specific needs of developing countries.[58] Financial relations and interactions between countries are carried out through bilateral, regional, and multilateral agreements.[59] This relationship between countries shows that the burden on developed countries in leading climate change is enormous, and the Convention has increased financial responsibility in helping developing countries realize *sustainable development*.

Continuing to address environmental issues, the international community has again developed efforts to handle high levels of greenhouse gases through the Kyoto Protocol. The Kyoto Protocol is an international derivative treaty of the UNFCCC adopted at the third conference of the parties in December 1997.[60] The Convention aims to limit the emissions of developed countries because developed countries are responsible for high greenhouse gas levels. However, the Convention does not rule out the possibility of developing countries contributing to their emission restrictions.

The Kyoto Protocol also has more in-depth environmental targets on issues such as emission reductions, *sinks*, emissions trading, implementation, and treatment of developing countries. On the other hand, the protocol has caused controversy over commitments to financial assistance, capacity building, and technology transfer.[61] This controversy arises a lot from developed countries because of conventions that are binding on industrialized countries. The opposition occurred because it was economically and politically inefficient "*deeply flawed agreement that manages to be both economically inefficient and politically impractical*".[62] The relationships built into this protocol are not matched by balanced interactions between developed and developing countries.

This protocol relies heavily on developed countries to help developing countries financially. Article 11 of the Kyoto Protocol contains at least three core points, namely (1) developed countries shall provide new and additional financial resources to meet the costs agreed upon by developing countries; (2) shall provide financial resources including for the transfer of technology with consideration and predictability of the flow of funds. Guide entities entrusted to run financial mechanisms; (3) developed countries shall provide, and developing countries shall utilize financial resources to implement Article 10 through bilateral, regional, and multilateral relations.[63] The problem is that the protocol needs to provide certainty about the funds, methods, and how much it will benefit from reducing greenhouse gases, making climate policy decisions more complicated.[64]

The international community has again formulated a more effective agreement through the *Paris Agreement.* The Paris Agreement is an international derivative agreement of the UNFCCC adopted at the 21st conference of the parties (2015). This agreement aims to strengthen the global response to the threat of climate change in

[58] UNFCCC, Article 4 (9).

[59] UNFCCC, Article 11 (5).

[60] Sands, Philippe, et.al, *Op. Cit.,* pp. 283.

[61] America is one of the countries that sees this protocol as having controversy, because it excludes developing countries and is not in the best interest of the United States. Sands, Philippe, et.al, *Op. Cit.,* pp. 284-285.

[62] Böhringer, Christoph, "The Kyoto Protocol: A Review and Perspectives", *ZEW Discussion Papers,* No. 03-61, 2003, pp. 1.

[63] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997 (entered into force 16 February 2005), Online: UNFCCC [Kyoto Protocol], Article 11.

[64] The relative irregularity between mitigation measures and climate change will determine whether to invest at that time or be delayed, so that the uncertainty of possible impacts will affect financial decision-making. Böhringer, Christoph, Op. cit., pp. 3-4.

the context of sustainable development. This time, there are climate management developments based not only on the principles of CBDR-RC and sustainable development but also on *the Nationally Determined Contribution* (NDC)[65] in response to climate change.

This NDC principle is a response to the Kyoto Protocol which is considered too burdensome for developed countries in dealing with environmental problems. Through NDCs, commitments to help address emissions reductions are a political expression. Contributions based on NDC provide an explanation of ideas, values, and state policies in overcoming environmental problems. Therefore, not only developed countries are actively involved, but developing countries can also be held accountable for overcoming environmental problems.[66]

Developed countries in the Paris Agreement must lead by implementing emission gas reduction targets. Meanwhile, developing countries can continue to increase mitigation efforts, and it is recommended to reduce or limit gas emissions considering different countries. Article 9 of the Paris Agreement states, "*Developed country Parties shall provide financial resources to assist developing country Parties concerning both mitigation and adaptation in continuation of their existing obligations under the Convention*". In contrast to the financial assistance requirements in the UNFCCC, the 2015 Paris Agreement financial assistance is not limited to assisting the impact of losses in meeting adaptation costs but rather "to assist" mitigation and adaptation in facing climate change. As part of the global effort, developed countries must continue to take the lead in mobilizing climate finance from a variety of sources, instruments, and channels, taking into account the critical role of public funds through a variety of actions, including supporting state-driven strategies and taking into account the needs and priorities of developing country parties.[67] As for these obligations, they look more efficient such as the direction of funding objectives, the responsibility to communicate quantitative and qualitative indicative information within a period, the provision of relevant information from developed and developing countries, etc.[68]

This concept of climate finance must be able to show the progress of previous efforts. Given that, interactions between countries look better. Where example, developing countries need to provide information on financial support needed and receive[69] the financial assistance provided. This is also reflected in the financial awarding procedure, which will be discussed in the following discussion. Further development of financial responsibility can be seen in the following table.

From the explanation of the development above, it can be seen that the development of the formation of legal instruments is a response to overcoming the shortcomings of previous instruments while overcoming environmental changes that continue to occur.

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[65] The Principle of *National Determined Contribution* is a state contribution determined based on national conditions and considerations. Paris Agreement, Article 2 (2).

[66] Megan M Novoa and Diana M. Liverman, "Nationally Determined Contributions: Material climate commitments and discursive positioning in the NDCs", *WIREs Climate Change,* 2019, hlm. 2.

[67] Paris Agreement, Article 9 (3).

[68] Paris Agreement, Article 9.

[69] Paris Agreement, Article 13 (10).

2. Developed Countries' Obligation of Financial Assistance for Developing Countries in Paris Agreement

a. The Obligation Form of Financial Assistance

Regarding financial assistance provided by developed countries to developing countries in dealing with global climate change, Paris Agreement specifically regulated this matter in Article 9, which included the commitment to provide financial assistance, how much financial assistance shall be provided, transparency, and the responsible institutions for this obligation.

Article 9 paragraph 1 of the Paris Agreement states that developed countries shall provide financial assistance to developing countries as a form of climate change mitigation and adaptation efforts. In the Paris Agreement, developed and developing countries are not interpreted broadly but are limited only to the party of the agreement.[70] The obligation to provide financial assistance is also present to continue the previous responsibility regulated in the United Nations Framework Convention of Climate Change (UNFCCC) that is:

> *"The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article….*"[71]

However, there is a slight difference regarding the parties contributing to financial assistance. In the UNFCCC, the parties required to provide the obligation are the developed countries that are members of Annex II of the Convention. While in the Paris Agreement, all developed countries that are parties to the agreement are required to provide such financial assistance. As the world's economic condition continues to develop, the responsible parties' shift in providing this obligation is considered more flexible in adjusting to current world economic conditions.[72]

Furthermore, the Paris Agreement also accommodates "Other Parties" (other than developed countries) to contribute by voluntary providing financial assistance. Nonetheless, developed countries still have a significant role and responsibility to continue their lead to mobilize climate finance as part of the global effort to deal with climate change.

This climate finance mobilization may be derived from various sources, instruments, or

[70] Paris Agreement, Article 1.

[71] UNFCCC, Article 4 (3).

[72] Yamineva, Yulia. "Climate Finance in the Paris Outcome: Why Do Today What You Can Put Off till Tomorrow?" *Review of the European, Comparative and International Environmental Law*, vol. 25 issue no. 2, 2016, pp. 180. *RECIEL*, 10.1111/reel.12160. Accessed 30 October 2022.

channels by also considering the important role of public funds. Moreover, this funding mobilization should provide progress from previous attempts that have been made. The efforts to increase climate finance are necessary because developing countries will take longer contribution to achieve the goal of restraining the average world rate of temperature rise.[73]

As a consequence, developed countries are obliged to provide support to developing countries so that it will raise more ambitions to achieve the goal.[74] This aims to balance the mitigation and adaptation efforts of global climate change which also taking into account strategies, priorities, and the needs of developing country parties, especially in developing countries that have limited capabilities and are vulnerable to the adverse effects of climate change, such as the least developed countries and small island developing states.[75] Based on this, the increase of global climate finance is needed to encourage even higher climate change prevention actions.[76]

The progress of global climate finance can be seen from the development of Fast Start Finance towards Long-Term Finance. Fast Start Finance (FSF) is a commitment of developed countries to provide US$ 30 billion in new and additional finance jointly[77] within 2 years from 2010 to 2012 to balance mitigation and adaptation efforts of climate change. In addition, this commitment is also considered as the first step to building trust from developing countries to prepare international architecture for long-term climate finance.

As the FSF commitment continues, this commitment could have gone better than expected. Obstacles in this commitment arose, such as unclear standards to calculate the FSF, as there is no basis for new and additional finance classification funds.[78]

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[73] Paris Agreement, Article 4 (1).

[74] Paris Agreement, Article 5 (4).

[75] Paris Agreement, Article 9 (4).

[76] Zahar, Alexander. "The Paris Agreement and the Gradual Development of a Law on Climate Finance." Climate Law, vol6, no. 1-2, 2016, pp. 75-90. BRILL, https://doi.org/10.1163/18786561-00601005. Accessed 30 October 2022.

[77] No instrument rigidly defines the terms of new and additional finance. However, in general, the term "new" refers to separate financing from funds that have been pledged to the development assistance through Official Development Assistance (ODA). In contrast, "additional" refers to additional funds in developed countries' pledges to provide development assistance through ODA. In line with this, new and additional financing is considered separate funding from ODA because there are differences between ODA and "new and additional finance". The main target of ODA is socio-economic development, while the main target of new and additional finance in the climate finance framework is to increase efforts to mitigate and adapt to climate change. See Gebreyesus, Kalekritos Zerisenay. "The Impacts of Combining Climate Finance with ODA on the Volume of Development Finance." (South Korea: KDI School of Public Policy and Management, 2017), https://archives.kdischool.ac.kr/bitstream/11125/32014/1/The%20Impacts%20of%20combining%20climate%20finance%20with%20ODA%20on%20the%20volume%20of%20development%20finance.pdf, pp. 8.

[78] One example is America, which stated that its contribution to the FSF can be fulfilled through funding to the Montreal Protocol Fund, which has been done since 1990. That is considered that it does not meet the new and additional finance provisions as the agreements were made before the FSF commitment began. So, it was classified as ODA funding. In addition, the lack of reporting and transparency from developed countries makes it difficult to track FSF commitment to climate funding donated by developed countries within a predetermined time. See Amadi, John Iloabuchi. "Global Climate Change: Transfer of Tehcnology, Financial Assistance and Sustainable Economic Development of Developing Countries under the International Legal Framework." (Auckland: Faculty of Law University of Auckland, 2017). https://researchspace.auckland.ac.nz/bitstream/handle/2292/36239/whole.pdf?sequence=2&isAllowed=y. Pp. 287.

Furthermore, the FSF experienced other problems, such as the lack of coordination and leadership between countries, the lack of scaling up, and the need for more coherent reports.[79] However, FSF commitment opened up opportunities for a better climate finance structure as the Long-Term Finance commitment phase in 2013 began to start.

The Copenhagen Accord as COP 15 was the beginning of the Long-Term Finance (LTF) commitment. In the context of implementing mitigation and transparency efforts, it is stated that developed countries are jointly committed to achieving a mobilization goal worth USD 100 billion per year through 2020 to meet the needs of developing countries.

Funding through LTF commitment can come from various sources, such as public or private, bilateral or multilateral, and alternative funding sources. One of the goals of this commitment is to increase the mobilization of climate finance through post-2020 arrangements regarding long-term climate financing.[80] Furthermore, there have been developments regarding the climate finance target in this LTF commitment.

Previously, the Copenhagen Accord (COP 15) and the Cancun Agreements (COP 16) stated that the amount of USD 100 billion is the maximum limit of climate finance. Nevertheless, after COP 21 was held in Paris in 2015 and it was mandated in the Paris Agreement that there should be progression in climate finance, the amount of USD 100 billion later was set as the minimum basis for climate finance.[81]

As the financial assistance obligation is a part of climate finance, this obligation also shall be communicated, such as transparent information in the form of both indicative quantitative and qualitative data that shall be published biennially by developed countries.[82] For example, information about the increasing sources of climate finance clarity to be provided to developing countries.[83] Besides that, information communicated by developed countries shall also be consistent according to the procedure of the Paris Agreement's Conference of the Parties (COP). This provision also encourages Other Parties to publish information related to the provided financial assistance voluntarily. All the information later shall be taken into account in the implementation of the Global Stocktake.[84]

The obligation to communicate those data transparently also gives more certainty regarding the relation-interaction between developed and developing countries because this method also strengthens the Measurement, Reporting, and Verification (MRV) mechanism in climate finance. The mechanism of MRV was first known in the

[79] Amadi, John Iloabuchi. Op. cit, pp. 288.

[80] United Nations Framework Convention on Climate Change, "Background Information: Long-Term Climate Finance", https://unfccc.int/topics/climate-finance/workstreams/long-term-finance. Accessed 2 November 2022.

[81] Developed countries will continue their climate finance goals until 2025, and in the implementation of the COP it must redefine the climate finance goals to be achieved with a minimum limit of USD 100 billion per year. See Report of the Conference of the Parties to the UNFCCC on its twenty-first session, held in Paris from 15 November to 13 December 2015, Decision 1/CP 21, FCCC/CP/2015/10/Add.1, Paragraph 53.

[82] Paris Agreement, Article 9 (5) and (7).

[83] Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018, FCCC/PA/CMA/2018/3/Add.1.

[84] The Global Stocktake is a COP meeting that held every five years by taking inventory of the implementation of the Paris Agreement to collectively assess the progress of the contributions of member countries that have been made.

Bali Action Plan 2013, which states that the mitigation and adaptation efforts to climate change should be measurable, reportable, and verifiable. Measurements start with defining "climate finance," and what types, projects, and activities are included in climate finance. Reporting means how developed countries can publicly inform the financial data as the party required to provide financial assistance. Meanwhile, Verification's purpose is to evaluate whether the reported data is accurate to avoid calculation errors and how the fund can be applied to achieve the goals.[85]

Lastly, Article 9 of the Paris Agreement states that the financial mechanism in the UNFCCC, including its operating entities, shall serve as the financial mechanism of the Paris Agreement.[86] Institutions under the financial mechanism in the UNFCCC and its operating entities are obliged to provide efficient access for developing countries, less developed countries, and small island developing states through a simple procedure, thereby increasing the support for those countries.[87] To accommodate financial assistance, a mechanism is needed to channel the requests for assistance submitted by developing countries and to the allocation of financial assistance provided by developed countries, as this topic will be discussed in the next sub-chapter.

b. Financial Mechanism in Fulfilling Financial Assistance Obligation

"Financial Mechanism" is a mechanism to provide financial resources in climate change adaptation and mitigation efforts. Referring to Article 9 paragraph 8 of the Paris Agreement, the current mechanism is the exact mechanism stipulated in Article 11 of the UNFCCC. This mechanism shall work under and be responsible to the Conference of the Parties (COP), which shall decide on its policies, eligibility criteria, and program priorities related to the Financial Mechanism of UNFCCC. For its operation, Financial Mechanism is entrusted to one or more international institutions and shall have balanced and equitable representation of all parties with a transparent government system.[88] Institutions that operate the Financial Mechanism shall also meet all the requirements stated in Article 3 of UNFCCC.

Implementing climate finance, including financial assistance, can be carried out through bilateral, regional, or multilaterally. Furthermore, through fulfilling LTF commitments, funding can come from various sources, be it public or private, bilateral or multilateral, as well as alternative sources of funding.82 Organization for Economic Co-operation and Development (OECD) classified the four forms of climate finance originating in developed countries as follows:[89]

1) Bilateral Public Climate Finance, provided by developed country institutions, such as Bilateral Aid Agencies and Development Banks;
2) Multilateral Public Climate Finance, provided through the Multilateral

[85] Atteridge, Aaron. "Monitoring, Reporting and Verifying Climate Finance – A Framework for Transparency of Support Provided to Developing Countries." Stockholm Environment Institute, 2012, https://mediamanager.sei.org/documents/Publications/Climate/SEI-PB2012-MRV-climate-finance.pdf, pp. 2.

[86] Paris Agreement, Article 9 (8).

[87] Paris Agreement, Article 9 (9).

[88] UNFCCC, Article 11 (1) and (2).

[89] OECD (2022), Aggregate trends of Climate Finance Provided and Mobilised by Developed Countries in 2013-2020, https://www.oecd.org/climate-change/finance-usd-100-billion-goal, pp. 12.

Development Bank and Multilateral Climate Fund;
3) Officially Supported Climate-Related Export Credits, provided by Developed-Country Export Credit; and
4) Private Finance mobilized under bilateral and multilateral public climate frameworks.

The UNFCCC does not directly regulate the specific Climate Funding Institutions for financial mechanism. However, the UNFCCC mandated the COP to regulate and determine Climate Funding Institutions that can operate the financial mechanism. The COP later determined the Climate Funding Institution that operates under the UNFCCC Financial Mechanism, namely the Global Environmental Fund (GEF). This was followed by the establishment of the other Climate Funding Institutions under UNFCCC. As those institutions are Multilateral Climate Funds, they can be classified as a part of Multilateral Public Climate Finance.

In general, there are two schemes for channeling financial climate assistance from developed countries to developing countries: "direct access" and "indirect access" schemes. While there are many different types of Climate Funding Institutions worldwide, most institutions have the same procedure using the indirect access scheme. In this scheme, apart from the Climate Funding Institution, Partner Agencies also play an essential role in accessing funding sources through Climate Funding Institutions and implementing the funding assistance through the planned project or program. Climate Funding Institutions can cooperate with many Partner Agencies, for example GEF cooperates with 18 Partner Agencies, also known as GEF Agencies.[90]

This process begins with Partner Agencies who act as intermediaries between Climate Funding institutions and developing countries for submitting requests for financial assistance. These Partner Agencies can be Multilateral Development Banks (MDBs), bilateral development agencies, specialized agencies and programs of the United Nations, or international, regional, and national organizations. For example, GEF's Partner Agencies will help developing countries prepare the proposals and manage the project to be implemented. Therefore, Partner Agencies can help develop, implement, and carry out the planned climate change mitigation projects.[91]

The following is a general procedure for providing financial assistance through Climate Funding Institutions:

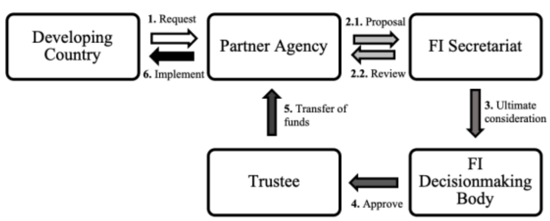
1) First, Partner Agencies, as the intermediaries, receive financial assistance requests from developing countries. The Partner Agencies will submit the proposal to the Managing Body of the Climate Funding Institution;
2) Then, the Secretariat of the Climate Funding Institution will select all proposals according to the eligibility criteria. The Secretariat may also request the Partner Agencies to amend the proposal according to the criteria.
3) If the Secretariat has determined that the application proposal is ready, then the proposal will be submitted to the Board of Climate Funding Institutions. The Board of Climate Funding Institutions will decide whether or not the application for assistance will be received.
4) If the application is accepted, then the World Bank as Trustee will distribute or transfer such financial assistance to the Partner Agencies on the instructions of the Climate Funding Institution's Board.

[90] GEF. "GEF Agencies". Global Environmental Fund, https://www.thegef.org/partners/gef-agencies. Accessed 10 November 2022

[91] Ibid.

The Trustee generally has the same role in each Climate Funding Institution. For example, within the GEF, the Trustee acts as the legal owner who is obliged to carry out trust to keep funds, assets, and all receipts related to financial assistance provided by developed countries through Climate Funding Institutions. In addition, the Trustee shall also manage these funds in accordance with the objectives of the Climate Funding Institution and shall maintain the fund by separating it from all other accounts and assets of or administered by the Trustee.[92]

5) Lastly, the financial assistance submitted to the Climate Funding Institution through the Trustee to Partner Agencies will be channeled to developing countries to implement the planned program or project.
6) The following is an overview of the financial assistance allocation scheme:[93]



One of the Climate Funding Institutions under UNFCCC is GEF. GEF has been an operating entity under the financial mechanism of UNFCCC since the Convention entered into force in 1994. The main objective of the GEF establishment is to provide "new and additional grants and concessional funding to meet the agreed incremental costs of measures to achieve agreed"[94] in global environmental problems.

In order to carry out its duties to operate the financial mechanism of the UNFCCC, GEF manages three funding institutions, the GEF Trust Fund, the Least Developed Country Fund (LDCF), and the Special Climate Change Fund (SCCF).

The allocation of funds in the GEF is known as the System for Transparent Allocation of resources (STAR), which is a performance-based framework to allocate funding resources from the GEF Trust Fund to recipient countries in the Replenishment period transparently and consistently in accordance with global environmental priorities and relevant country capacities, policies, and practices within the successful implementation of GEF projects and programs.[95]

Meanwhile, LDCF focuses more on supplying the needs of less developed countries to prepare and implement a special process for less developed countries to identify needs and formulate actions to be taken within the climate change framework in adaptation efforts. SSCF itself aims to meet the needs of developing countries under the UNFCCC in the scope of adaptation efforts, technology transfer, energy, transportation, industry, agriculture, forestry, waste and waste management, and economic diversification.[96]

Another Climate Funding Institution under the UNFCCC is AF. AF is the Climate Funding Institution set up under the Kyoto Protocol to the lack of efforts to adapt to global climate change compared to mitigation efforts. The main purpose of AF establishment is to support concrete

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[92] GEF. Instrument for the Establishment of the Restructured Global Environment Facility. Global Environmental Fund, 2011, https://www.thegef.org/sites/default/files/publications/GEF_Instrument_Oct2011_final_0_1.pdf\, Annex B, pp. 25.

[93] Larrea, Gonzalo. Op. cit., pp. 61-62.

[94] GEF. Op. cit., Paragraph 2.

[95] GEF. Policy (GA/PL/01) and Guidelines (GS/GN/02) on System for Transparent Allocation of resources (STAR). 2018, Gender Policy https://www.thegef.org/sites/default/files/documents/STAR_Policy_Guidelines.pdf pp. 2.

[96] Report of the Global Environment Facility to the Conference of the Parties, 20 September 2012, FCCC/CP/2012/6 pp. 29.

adaptation efforts through project and program financing. AF also aims to reduce the vulnerability of developing countries to the impacts of climate change and to improve adaptive capacity, not only at the international level but also at the local and national levels.[97] Unlike GEF's funding mechanism, AF provides financial assistance at full cost in climate change adaptation efforts.

There is another Climate Funding Institution under the UNFCCC framework, namely the GCF. GCF serves to accelerate the UNFCCC implementation and the Paris Agreement to provide successful innovations in climate finance other than the Climate Funding Institution predecessor.[98] GCF focuses on balancing mitigation and adaptation efforts and promoting synergy among environmental, social, economic, and development sectors. In contrast to GEF and AF, GCF provides financial assistance either in full or incremental cost agreed. The financial assistance is projected for activities that increase the efforts of adaptation, mitigation (including REDD+), capacity building, technology transfer and development, and the preparation of national reports by developing countries.

As previously explained, besides the indirect access scheme, financial assistance to developing countries can also be accessed through direct access schemes. This scheme allows developing countries to directly access financial assistance from developed countries through Climate Funding Institutions to implement local and national efforts in climate change mitigation and adaptation.[99] In contrast to indirect access, this scheme does not involve third parties such as Partner Agencies as intermediaries between developing countries as the applicants for assistance and Climate Funding Institutions, also through this scheme, the developing counties are able to implement the projects or programs directly.[100]

The presence of this direct access scheme is motivated by the emergence of problems regarding bureaucratic complexity that often constrained the requests for assistance from developing countries. For example, through the GEF and the World Bank, access to financial assistance is complex and requires a high enough cost.[101] It is noteworthy that it has mandated in the Paris Agreement that climate funding institutions shall aim to ensure efficient access to funding with simple procedures to increase the readiness of developing countries in dealing with climate change.[102] With the complexity of the bureaucracy in the indirect access scheme, this is considered inefficient for developing countries to get financial assistance. Based on this problem, developing countries require a new scheme related to financial assistance to mitigate and adapt to climate change under the UNFCCC.

Concerning this matter, several Climate Funding Institutions have implemented the direct access scheme; among them were AF and GCF. AF and GCF provide funding

[97] AF Board. Operational Policies and Guidelines for Parties to Access Resource from the Adaptation Fund. Adaptation Fund, 2017, https://www.adaptation-fund.org/wp-content/uploads/2017/08/OPG-amended-in-October-2017-1.pdf, Paragraph 2.

[98] GCF Board. GCF First Replenishment (GCF-1): Replenishment Summary Report. Green Climate Fund, 2019, GCF/B.24/11, https://www.greenclimate.fund/sites/default/files/document/gcf-b24-11.pdf, Paragraph 50.

[99] UNDP. Discussion Paper: Direct Access to Climate Finance: Experiences and Lessons Learned. United Nations Development Programme, 2011. UNDP, http://cdn-odi-production.s3-website-eu-west-1.amazonaws.com/media/documents/7479.pdf

[100] Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its third session, held in Bali from 3 to 15 December 2007, FCCC/KP/CMP/1007/9/Add.1, Decision 1/CMP.3, Paragraph 29

[101] Amadi, John Iloabuchi, Op. cit., pp. 299.

[102] Paris Agreement, Article 9 (9).

through two mechanisms, indirect and direct access. In this case, AF became the first institution to initiate the direct access scheme so developing countries can decide whether to use indirect or direct access schemes to get financial assistance. Though direct access is considered to streamline the procedure for allocating climate financial assistance, it is still being determined whether this scheme can work effectively. Some developing countries are seeing challenges that must be faced related to this scheme, such as transparency, accountability, and risk management at the assistance-receiving country due to the non-involvement of third-party "Partner" Agencies" in accessing the financial assistance.

Although the Paris Agreement generally regulated the obligations of developed countries in providing financial assistance to developing countries as an effort to mitigate and adapt to climate change, there is currently a shift in the matter of parties providing financial assistance to developing countries. Related to this, Paris Agreement stated that "Other Parties" (other than developed countries) can also contribute by providing financial assistance to the developed country.

This participation is not binding and obligatory but only to encourage other parties to contribute voluntarily.[103] This provision was motivated by the strengthening of the world economic sector in the last two decades, which also had impacts on global climate finance, including the role of developing countries which has also begun to increase in the world economic sector. This provision also has begun to open up opportunities between developing countries to work together to provide additional climate assistance and investment.[104]

This phenomenon also creates a mechanism for providing financial assistance to support climate change mitigation and adaptation among developing countries called South-South Climate Finance (SCCF). There are four methods of channeling financial assistance among developing countries in this mechanism. Those are through: 1) multilateral climate funds; 2) bilateral funding initiatives; 3) new Southern-led international organizations like BRICS Bank and the Asian Infrastructure Investment Bank; and 4) private sector investment.[105]

An example is China, as one of the developing countries, has promised to contribute US$ 3 billion at the end of 2015 to combat climate change in developing countries.[106] In addition, BRICS Bank, also known as New Development Bank (NDB), is also closely related to SSCF practices. As a forum for facilitating the Multilateral Climate Fund, the BRICS Bank, founded by the Global South (Brazil, Russia, India, China, and South Africa), aims to help deal with the climate change crisis and support sustainable development in the field of renewable energy, transportation, and sustainable infrastructure development among five funding countries along with other developing countries.

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[103] Paris Agreement, Article 9 (2).

[104] Ha, Sangjung and Thomas Hale, Peter Ogden. “Climate Finance in and between Developing Countries: An Emerging Opportunity to Build On.” *Global Policy*, vol. 7, issue no. 1, 2016, pp. 103.

[105] Chirambo, Dumisani. “Moving Past the Rhetoric: Policy Considerations that Can Make Sino-African Relations to Improve Africa’s Climate Change Resilience and the Attainment of the Sustainable Development Goals”. *Advances in Climate Change Research*, vol. 7, issue no. 4, 2016, pp. 254.

[106] Shaohui, Tang. "China Pledges 3 billion USD for Developing Countries to Fight Climate Change”, Xinhua, 25 September 2015, http://www.xinhuanet.com/english/2021-05/21/c_139961354.htm. Accessed 30 October 2022.

The examples above show that the provision of financial assistance began to develop over time as Article 9, paragraph 2 of the Paris Agreement also stated its existence. Not only acting as a social mechanism, but SSCF also functions as an instrument to achieve cleaner, more sustainable economic growth, develop the market potential of new technologies, reduce the domestic and trans-border risks they and others face from climate change, and also any other reasons.[107] SSCF framework could have a significant role to help among developing countries to build the resilience of communities and ecosystem together in order to face climate change.

However, there are still no specific rules regarding SSCF implementation. Even Paris Agreement has yet to accommodate this. Paris Agreement only stated that other parties could contribute voluntarily to provide financial assistance to developing countries. It remains unclear how the institutions of the new south-south architecture will integrate and interact with the existing order of global institutions.[108]

On the other hand, there is this view from several developing countries that fear the SSCF could shift the burden of responsibility onto developing countries in terms of providing financial assistance, which was previously the responsibility of developed countries to developing countries. If this happen, financial assistant is no longer in line with CBDR-RC principles.[109] In this case, the connection with the principles is that both developed and developing countries have different backgrounds so that both parties should have their respective share of responsibility in dealing with climate change.

As a part of the development of relations-interactions between developed and developing countries in providing financial assistance to deal with climate change, the existence of this new SSCF mechanism needs to be further regulated in an international environmental law instrument so that on the implementation, it will remain in line with the living principles of mitigation and adaptation effort to face climate change, that is CBDR-RC. In this case, it requires the cooperation of various stakeholders from various dimensions with their respective roles to form an international community in dealing with the problem of climate change together.

Related to that, several things that must be considered further in the SSCF mechanism include the following:

1. Standardization that SSCF must be identified as a solidarity and voluntary effort so that it does not reduce the responsibility of developed countries in providing financial assistance to developing countries;
2. Alignment with the conventional concept of providing financial assistance from developed countries to developing countries that is also known as North-South Climate Finance (NSCF);
3. The scope and forms of the SSCF implementation;
4. Providing financial assistance through the SSCF mechanism must be trackable in the UNFCCC reporting framework;
5. Understand that SSCF can be an alternative effort that can significantly affect climate change mitigation and adaptation efforts if its use can be

[107] Ha, Sangjung and Thomas Hale, Peter Ogden, *Op. cit.,* pp. 105.

[108] Hannam, Phillip M, Zhenliang Liao, Steven J. Davis, and Michael Oppenheimer. "Developing Country Finance in a Post 2020 Global Climate Agreement". *Nature Climate Change*, https://doi.org/10.1038/nclimate2731, pp. 985.

[109] Muller, Benito. "South-South Solidaritu in Climate Finance". *Oxford Climate Policy*, April 2014, https://oxfordclimatepolicy.org/publications/documents/GCFSSFfinal.pdf, Accessed 21 March 2023.

optimized simultaneously with the fulfillment of the NSCF.

C. CONCLUSION

1. The discussion in this sub-section is directed to describe the effect of environmental change on international law, especially in the context of relations between countries regarding relations and the interaction of financial obligations in overcoming environmental problems. The influence of environmental change continues to demand the adjustment of norms and international relations in overcoming climate change problems. Its main effect is shifting the paradigm of sovereign responsibility (each country bears) to an international responsibility in international law that creates a system of relations between states in addressing climate change. The financial obligations of developed countries to developing countries in environmental protection require a relatively long process. The establishment of relations between countries at the Stockholm Conference did not directly result in the relationship of financial obligations between developed countries and developing countries. In the Stockholm Conference and the Rio Declaration, responsibility is still universal or sovereign-based, so the concept of financial obligations of developed countries to developing countries has yet to emerge. New financial obligations to the UNFCCC are based on international responsibility for environmental protection. Still, they are only limited to the obligations of developed countries in providing financial assistance to developing countries. They have not yet established Interactions that must be found between the two countries. Relationships and Interactions were newly established in the 2015 Paris Agreement, which requires developing countries to provide information on the needed and received financial support. On the other hand, this influence continues to redefine the principles in international law in overcoming the shortcomings of the principles in previous instruments.

2. The form of financial assistance obligations for developed countries to developing countries is specifically regulated in Article 9 of the Paris Agreement. Developed countries are obliged to provide financial assistance for developing countries to carry out mitigation and adaptation climate efforts. Developing countries should provide a progression of global climate finance from the previous efforts to encourage even higher climate change mitigation and adaptation actions in developing countries by also taking into account strategies, priorities, and the needs of developing countries parties. This financial assistance obligation shall also be supported by providing transparent information in the form of qualitative and quantitative data that shall be published biennially by developed countries. That provision considered strengthening the certainty of relations-interactions between developed and developing countries.

   The mechanism to accommodate this financial assistance is the exact financial mechanism established under the UNFCCC through bilateral, regional, multilateral, publicly, privately, or through alternative funding sources. Through the COP, the Global Environmental Fund, Special Climate Change Fund, Least Developed Country Fund, Adaptation Fund, and Green Climate Funds were established as Climate Funding Institutions that operates the financial mechanism under the UNFCCC. The process to access financial assistance could be carried out through "indirect access" or "direct access" schemes.

Although Paris Agreement generally regulated the obligations of developed countries in providing financial assistance to developing countries to face climate change, there is currently a shift in the matter of parties providing the financial assistance. Currently, developing countries could start providing financial assistance to other developing countries. This phenomenon also called as South-South Climate Finance (SSCF). However, SSCF has yet being regulated in Paris Agreement or any other international environmental law instrument. This is giving the fear that through SSCF, developed countries could shift their burden to developing countries in providing financial assistance. If this happen, the phenomenon is no longer in line with CBDR-RC principles. To prevent that happen, there should be an instrument to regulated the further implementation of SSCF.

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