International cooperation for the protection of the environment and sustainable development: real or supposed innovations?

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1. Introduction

About 50 years ago, in 1967, the international community reaction to the first extremely severe case of accidental marine oil pollution, caused by the sinking of the Liberian tanker “Torrey Canyon”\(^1\), forced the international community to concern itself with a situation of increasingly evident global environmental damage. The first important UN initiative was the Conference on Human Environment held in Stockholm in 1972; since then the adoption of resolutions and declarations of principles, the definition of systems of treaties both global and regional have led to the rapid formation of a new sector of international law\(^2\).

The evolution of international environmental law was not gradual and regular. Now, the important changes that have taken place on the global geopolitical scene, consequent on the emergence of new realities and priorities, make an analysis of the current situation of law and international cooperation for the protection of the environment and sustainable development really interesting. In this regard, we should note the increase in the number of acts adopted by the United Nations in this field in the last few years, particularly in 2015\(^3\), the year in which the World had agreed to achieve the Millennium Development Goals (MDGs) drawn up in 2000. The better known of these acts being the Addis Ababa Action Agenda, the Sustainable Development Goals (SDGs) and the Paris Agreement on Climate Change\(^4\).

In this paper we propose to evaluate the scope of these acts, beginning with a consideration – even if a basic one – of the legal framework of reference, as it has taken shape since the end of the 80s, starting from the conclusion of the work of the Brundtland Commission. We will then go on to identify the main priorities and the still existing lacunae, in the light, also, of the parallel evolution of bilateral and multilateral international cooperation in the field.

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2  Cf. Fois, Ambiente [tutela dell’] nel diritto internazionale, in Dig. disc. pubbl., I, 1987, 209 ss.
3  “2015 was a momentous year for multilateralism and international policy shaping”, see Report of the UN Secretary - General on: Critical Milestones towards Coherent, Efficient and Inclusive Follow-up and Review at the Global Level, UN General Assembly A/70/684, 15th January 2016. 2015 was also the European Year of Cooperation, cf. europa.eu.
4  See also the Sendai Framework for Disaster Risk Reduction, adopted at the Third UN World Conference on Disaster Risk Reduction, Japan, 18th March 2015.
We will try, furthermore, to look at the Encyclical Letter of Pope Francis, *Laudato Si’* - *sulla Cura della Casa Comune* (Praise Be to You, O Lord - On Care For Our Common Home), and some other acts adopted after the UN General Assembly, the G20\(^5\) and the BRICS Summits\(^6\).

### 2. Outline of the legal framework of reference

Towards the end of 1987, the Brundtland Commission adopted a wide-ranging Report which proposed a detailed series of legal principles for the protection of the environment, among which, in particular, was the principle of “sustainable development”, understood to mean development which did not affect negatively to any significant degree the environmental heritage\(^7\).

In June 1992, the UNCED – UN Conference on Environment and Development – hailed the idea that protection of the environment and economic growth are inevitably linked. Among the outcomes of the Conference, the Declaration on the Environment and Development, Agenda 21, and the UN Framework Convention on Climate Change are of particular importance for this analysis\(^8\).

The Declaration affirmed definitively the key principle of sustainable development\(^9\) and some fundamental related principles, in particular that of the common but differentiated responsibility of States\(^10\). Agenda 21, which contains hundreds of recommendations addressed to States, has become the action programme of reference for the international community. The Convention on Climate Change,

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5 As is well known, the G20 includes a mix of the world’s largest and emerging economies; its members are Argentina, Saudi Arabia, Australia, Brazil, Canada, China, France, Germany, Japan, India, Indonesia, Italy, Mexico, United Kingdom, Republic of Korea, Russia, United States, South Africa, Turkey and the European Union, see www.g20.org. Cf Sciso, Appunti di diritto internazionale dell’economia, Turin, 3rd ed., 2017, 23-24.

6 BRICS stands for five major emerging economies - Brazil, China, India, Russia and South Africa - , including 43% of the world’s population, with 30% of world GDP, see brics2016.gov.in. Cfr. De Robertis, Genesi e sviluppo del fenomeno BRICS nel sistema internazionale, in *Riv. St. Pol. Int.*, 2016, 13-23.


8 The Acts adopted in Rio are an expression of an extension of the field issues, which is reflected in the change of the same denomination of the discipline, with the passage - according to some scholars - from ‘international environmental law’ to ‘international law on sustainable development’, see Marchisio, Gli Atti di Rio nel diritto internazionale, in RDI, 1992, 581 ss.

According to Pineschi, L’evoluzione storica, in Fodella, Pineschi, La protezione dell’ambiente nel diritto internazionale, Turin, 2009, pp. 9-35, the work of the Rio Conference set in motion what was undeniably “a real environmental strategy, centred on the notion of sustainable development, to be carried out according to the principle of equity, in respect both of space (the relationship between States at different stages of economic development) and of time (the relationship between present and future generations)” [my translation] (p. 19).

9 The International Court of Justice seems, however, to see sustainable development as simply a ‘concept’, and not a legal principle, see its judgment on the case concerning the Gabčíkovo - Nagymaros project (25.09.1997, Hungary v. Slovakia, The Danube Dam Case), where it states that this need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development, I.C.J. Reports, 1997. On this point, see Marchisio, Il principio dello sviluppo sostenibile, in Rio cinque anni dopo, ed by Marchisio, Raspadori, Maneggia, Milan, 1998, p. 70.

which entered into force on 21st March 1994, still today represents the general reference framework in the most important sector of international cooperation for sustainable development.

An evaluation of the state of the environment and of the world socio-economic situation following the commitments undertaken in Rio was made in June 1997 by the XIX Special Session of the UN General Assembly on Sustainable Development (UNGASS). It set out a Programme for the Further Implementation of Agenda 21, which opens with a Declaration of Intent. The work of UNGASS consolidated the extension of the principle of sustainable development to the social dimension, defining the present tripartite configuration.

In December of the same year the Kyoto Protocol to the Convention on Climate Change was adopted, which, entering into force in 2005, defined the commitments of States to control climate-changing gas emissions, while remaining – mainly because of the flexibility mechanisms contemplated – on the edges of soft law.

We are well aware, as the Encyclical Letter Laudato Si' - sulla Cura della Casa Comune affirms, of the fact that, “although the Summit [Rio ‘92] was truly innovative for its time, the agreements adopted in its wake have been implemented to a very limited extent, because no adequate monitoring mechanisms, periodic verifications, or sanctions for non-compliance were established. The principles laid down still call for efficacious and skillful methods which will allow them to be put into practice.”

And it is impossible to ignore the fact that the principle of common but differentiated responsibility have not in practice led to the expected results. As far as the Convention-Protocol system in the matter of climate change is concerned, there is no doubt that it has activated important revision processes in industrial policies, and also new energy policies, but it does not lead to any reduction of global emissions.

In fact, in our opinion, the nature and the legal value of the principle of sustainable development has given rise to increasing perplexity; the principle seems rather to

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12 For a different evaluation of the flexibility mechanisms laid down in the Kyoto Protocol, see Montini, La protezione dell’atmosfera, della fascia di ozono e la prevenzione dei cambiamenti climatici, in Fodella, Pineschi, La protezione dell’ambiente nel diritto internazionale, Turin, 2009, who, in fact, attributes to the Protocol the character of advanced legal tool (p. 260).
14 According to Fodella, I principi generali, in La protezione dell’ambiente nel diritto internazionale, cit., 117 ss., the concept of sustainable development has undergone a significant expansion, particularly since the 2002 Johannesburg World Summit. It has become “a wider and more complex concept, flowing over into the political dimension” [my translation]. However, in the author’s opinion, sustainable development, in expanding out of its original sector of international environmental law, has become part of more general contexts of international law, thus assuming a proportionally greater importance (p. 121). On the need for a critical reflection on the content and scope of the principle of sustainable development, see instead Munari, Schiano Di
express a widely shared ethical-political-philosophical and holistic approach to (all) issues related to the wish to ensure an improved quality of life for mankind in the future.

3. From UNGASS to the Rio + 20 Summit

The Rio Conference and UNGASS were followed by a number of international conferences, by the growth of a complex treaty system, and by the adoption at all levels (international, regional, national and local) of various types of acts, both legal and political, concerning the protection of the environment and sustainable development. It seems sufficient here to recall the Millennium Declaration (2000), the World Summit on Sustainable Development - WSSD (Johannesburg 2002), and the 2012 UN Conference on Sustainable Development-UNCSD, known as Rio+20.

Among the Millennium Development Goals defined in the Declaration, of fundamental importance was that of “halving the number of people who live in conditions of extreme poverty, of undernourishment, or who lack access to safe drinking water”16. The signatory countries also undertook to promote concrete policies regarding development cooperation, to respect the principles of an international commerce which takes into account the needs of the Southern Countries of the World, to reduce or cancel the national debts of the poorest countries and to effect the transfer of adequate technologies. Now, it is certainly true that important results have been achieved in the reduction of extreme poverty17, but the international community is still far from achieving the other objectives listed.

The Johannesburg Summit, which took place a year after the attack on the Twin Towers, did not succeed in going beyond the adoption of a Declaration of a somewhat rhetorical tone, and an Implementation Plan which extends and articulates in a different way the commitments already defined in Agenda 2118. Both the Declaration and the Implementation Plan, however, point out the priority aims to be pursued: the eradication of poverty; a change in production and consumption methods; the protection and management of natural resources as the basis of economic and social development. In particular, the Implementation Plan defines the principle of good

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16 UN General Assembly, Resolution 55/2, A/Res/55/2, 18th September 2000.
18 Cf. Tamburelli, La Conferenza di Johannesburg sullo sviluppo sostenibile, in Ambiente. Consulenza e pratica per l’impresa, 2003, 33 ss., e Tendenze evolutive del diritto internazionale dello sviluppo sostenibile: la Conferenza di Johannesburg, in Gazzetta Ambiente, 5-6, 2002, 3-22, who also underlines the fact that WSSD launched 200 Voluntary Partnership Initiatives. In more general terms, regarding the post-Rio situation, it has been correctly observed that: “the overall impression is one of a step back with respect to the great aims which, it seemed, were to characterize international activity in the post-Rio period” …” it may be that this step back has been influenced by certain events which have strongly conditioned the international agenda, such as the emergence of global terrorism” (my translation), Munari, Schiano Di Pepe, Tutela transnazionale dell’ambiente, cit., p. 29.
governance, and reaffirms the principle of common but differentiated responsibility. This principle is, however, weakened by the affirmation of the central role of national development policies and strategies and also by the persistent opposition of the United States.

In substance, Agenda 21 remained the real reference point of international cooperation in the field until the Rio+20 Conference, which looked at two principal themes: (a) how to build a green economy that could achieve sustainable development and raise people from poverty, including questions concerning the support which must be given to developing countries to reach this goal, (b) how to improve a coordination of international action in the field through the strengthening of the relative institutional framework. But the Conference only just arrived at the adoption of a non-binding document on: “The Future We Want”, in which it simply repeats the commitment to promote sustainable development, and recalls previous action plans. Following this essential analysis of the acts which have marked the basic steps in the historical evolution of law and international cooperation in the field of the environment and sustainable development in the last thirty years, it seems ultimately that 2015 opened, as far as principles and aims are concerned, with a reference framework still substantially anchored in the outcomes of the Rio Conference of ’92.

4. The financing of sustainable development

We come now to the acts mentioned in our preliminary remarks. First of all, the Third UN Conference on Financing for Development was held in Addis Ababa (13-17 July 2015), after those in Monterrey and Doha. The Action Agenda of Addis Ababa describes itself as an ambitious programme that makes significant demands on budgets and public capacities and entails increased and more effective international support. In the section dedicated specifically to international cooperation for development, the Agenda recognizes that international finance has an important role to play in completing the efforts of Countries to mobilize public resources at the international level, in particular in the poorest or most vulnerable Countries with limited resources.

On the crucial point of the Official Development Assistance - ODA, the States reiterated, however, only what they had already reaffirmed in the Monterrey Consensus and in the Doha Declaration, that is the aims established in 1992 by UNCED and in 1980 by the UN General Assembly. In fact they expressed their concern over the fact that many countries had not met their commitments and affirmed that the fulfillment of such commitments remained fundamental; the providers of ODA confirmed the aim of reaching 0.7% of ODA/GNI, or in aid destined for the Least Developed Countries between 0.15% and 0.20% of the ODA.

20 In Johannesburg, the United States reiterated that they do not accept any interpretation of the principle of common but differentiated responsibility that implies international obligations of developed countries or, on the other hand, a decrease in the responsibilities of developing countries, Report of the WSSD South Africa, 26 August-4 September 2002, A/Conf.199/20.
21 Text at sustainabledevelopment.un.org.
23 Chapter II, Action Areas C, International Development Cooperation, p. 50.
As is well known, the Monterrey Consensus had reaffirmed the aim, already contained in Resolution 35/36 of 5.12.1980 of the UN General Assembly and in Chapter 33 of Agenda 21, which was to be reached by the end of 2015, of assigning 0.7% of the GNI of Developed Countries to the ODA\textsuperscript{26}. In the same way the Doha Declaration (2008), in confirming all the commitments undertaken at Monterrey, had also confirmed the commitment to assign 0.7% of ODA to Developing Countries by the end of 2015 (and at least 0.5% by the end of 2010), as well as the aim of assigning between 0.15% and 0.20% of ODA to the Least Developed Countries\textsuperscript{27}.

At a distance of almost 40 years from when the Developed Countries assumed the first commitments regarding the ODA, we have to suppose that those same Countries which adopted the Addis Ababa Action Plan were well aware of how false and theatrical these declarations sounded. The fact that only a few Countries have reached the aim of assigning 0.7% of ODA/GNI to Developing Countries and 0.15%-0.20% of ODA/GNI to the Least Developed Countries, does not give rise to any acknowledgement of the failure of the international commitments on this point, or to any reflection on the means to ensure effectiveness of those same commitments, but, on the contrary, States affirm that they are encouraged to carry on the historical commitment by those few Countries!

It is also strange that they now exhort all States which have not fulfilled those aims (themselves) to intensify their efforts to increase their ODA and to make further concrete efforts towards meeting the ODA goals.

Finally, the Agenda acknowledges the importance of full compliance with the commitments made through international agreements, including those on climate change, and declares that the Developed Countries have undertaken to mobilize jointly (from a wide variety of sources) 100 billion US dollars before the end of 2020 to meet the needs of Developing Countries\textsuperscript{28}.

5. The goals of sustainable development

The 2030 Agenda for Sustainable Development, adopted in October 2015, establishes a global framework for the eradication of poverty and the attainment of sustainable development, on the basis of the Millennium Development Goals, proclaimed in 2000\textsuperscript{29}. The Agenda defines a universal Action Programme, articulated in 17 Sustainable Development Goals-SDGs, and 169 associated goals, which require for their achievement the mobilization of all interested Countries. As far as the means


\textsuperscript{27} “…To reach their agreed timetables, Donor Countries should take all necessary and appropriate measures to raise the rate of aid disbursements to meet their existing commitments. We urge those developed countries that have not yet done so to make additional concrete efforts towards the target of 0.7 % of GNP for ODA to developing countries, including the specific target of 0.15 to 0.20 % of GNP for ODA to least developed countries”, Doha Declaration on Financing for Development, at www.un.org.

\textsuperscript{28} Chapter II, Action Areas C, p. 60.

\textsuperscript{29} “This Agenda is a plan of action for people, planet and prosperity. It also seeks strengthen universal peace in larger freedom” (Preamble); “We are setting out together on the path towards sustainable development, devoting ourselves collectively to the pursuit of global development” (Declaration, The New Agenda, 18), Transforming Our World: The 2030 Agenda for Sustainable Development, UN A/Res/70/1, 21st October 2015, at www.un.org.
necessary for their implementation are concerned, the Agenda refers to the Action Programme adopted some months earlier at Addis Ababa. The participating States recognize, already in the opening remarks, that the eradication of poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge, and an indispensable requisite for sustainable development. Closely linked to this central goal of the Agenda are the first two aims, which deal respectively with putting an end to every kind of poverty in the world and putting an end to hunger, achieving food security, improving nutrition and promoting sustainable agriculture. A strengthened international cooperation is seen as the essential tool for achieving both these goals in Developing, and particularly in the Least Developed Countries.

The international community recognizes, then, that "the global nature of climate change calls for the widest possible international cooperation, aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change" and undertakes to ‘take urgent action to combat climate change and its impacts’ (Goal 13). No mention is made, however, of the problem of mass migration, among the main causes of which are, indeed, climate change and armed conflict. In addition, we should note that the Agenda makes no reference to one of the principal causes of severe and persistent hunger in the world, that is, again, war and armed conflict. In fact, the most worrying levels of food insecurity are registered in Countries affected by political instability; armed conflict renders food systems unreliable, destroys means of sustenance, forces people to flee their homes, and in
some cases leaves them in situations of extreme uncertainty as to the possibility of access to the prime necessities.

The list of Goals concludes, not by chance, with that of strengthening the means of implementation and revitalizing the global partnership for sustainable development. The Agenda does not in itself, however, constitute any advance in the move towards more efficacious law and policies for the protection of the environment and sustainable development, nor does it contain any indication on new instruments which would ensure the effectiveness of actions aimed at the achieving of the goals listed.

6. The Paris Agreement

The adoption of the Action Agenda of Addis Ababa and the Sustainable Development Goals was followed by the signing of the Paris Agreement, which took place during the 21st annual session of the CoP (Conference of the Parties) to the Climate Change Convention (29 November-13 December 2015).

The Parties recognize in the Preamble – though not for the first time – that sustainable life styles and sustainable models of consumption and production ... play an important role in facing climate change and recognize the fundamental priority of safeguarding food security and putting an end to hunger. They declare, therefore, their wish to strengthen the global reaction against the threat of climate change in the context of sustainable development and efforts to eradicate poverty (Article 2.1).

The fundamental goals of the Agreement are: a) to keep the increase in average global temperature below 2°C, trying to limit this increase to no more than 1.5°C above pre-industrial levels, and recognizing that this would lead to a significant reduction in the risks and impacts resulting from climate change; b) to increase the capacity to adapt to adverse impacts; c) to use financial flows coherent with a move towards low emissions of greenhouse gases and a development resistant to climate change.

The Agreement, on the other hand, does not impose any real legal obligations on the Parties, and Article 2.2 itself establishes that it will be implemented according...
to equity and in such a way as to reflect the principle of common but differentiated responsibility and respective capacity, in the light of diverse national circumstances. This is an appeal to principles which, even if it may raise interest and curiosity, above all for the unusual appeal to equity in the norm that defines the general obligations of the Parties, leaves ample space to the discretion of the States in determining individual conduct relating to the commitments assumed.

The Developed Countries have also undertaken (as foreseen in the Action Agenda) to invest 100 billion dollars every year in favour of Developing Countries. Only the implementation procedure will show how far this sum - held by many to be insufficient - will be effectively mobilized, but precedents (see the ODA Commitments) certainly do not invite optimism40.

As has been observed, in our view correctly, the Paris Agreement created the illusion of a model of governance of climate change, which everyone knows does not correspond to the truth41. In addition, we should note that, while the Decision of the CoP on the adoption of the Agreement called on the Executive Committee of the Warsaw International Mechanism42 to set up a Task Force and to involve, if necessary, organisms already in existence and groups of experts to draw up recommendations aimed at defining integrated approaches to avoid, reduce to a minimum and face movements resulting from the negative impacts of climate change (at 50)43, the controversial question of climatic migrants is not considered in the Agreement44.

In any case, on 5th October 2016, the threshold for the entry into force set forth in Article 2145 was achieved46 and the Agreement entered into force on 4th November 201647. Regarding the monitoring and checking of the commitments made, Article 15 only institutes a mechanism for facilitating implementation and promoting conformity with the provisions of the Agreements; in particular, a committee of experts which will pay “particular attention to the respective national capabilities and circumstances of Parties” and will present an annual report to the CoP.

7. The current legal framework

After this brief analysis of the most important among the acts adopted in the sphere of the UN in the last few years, it seems useful to observe how widespread is the con-
viction – at all levels – that current tendencies are unsustainable: mankind seems to be facing “a closing window of opportunity to effect meaningful change in Humanity’s trajectory”.

If this conviction is well founded, the importance of the fundamental ethics underlying possible choices is evident, and this takes us back to the Encyclical *Laudato Si*’. It is also worth noting the 2016 UN General Assembly Resolution on: Harmony with Nature, which also has an essentially ethical value. This Resolution recognizes that planet Earth and its ecosystems are our home and that ‘Mother Earth’ is a common expression in a number of countries and regions, and underlines that some countries recognize the rights of nature in the context of the promotion of sustainable development. Then, it invites States to increase their knowledge in order to move towards a holistic conceptualization of sustainable development in all its three dimensions, and “to identify different economic approaches that reflect the drivers and values of living in harmony with nature”.

These acts express the awareness of the fact that progress in scientific knowledge and the definition of a “philosophy” of (and holistic approach to) sustainable development do not in themselves overcome the limits to effectiveness and efficacy of policies and international law in the field. But it would be ingenuous to invest great hopes in, or attribute extraordinary innovative value to, a Papal Encyclical or a Resolution of the United Nations.

The Encyclical *Laudato Si*’, in fact, is only one of a series of acts, and harks back to those which preceded it, beginning from Pope Paul VI’s Apostolic Letter of 14th May 1971, which made reference to the ecological problem, describing it as a crisis, a “dramatic consequence” of the uncontrolled activity of mankind. As far as the Resolution of the General Assembly is concerned, this appears to be poorer in content than a series of other declarations and resolutions adopted by the Assembly itself, the Encyclical *Laudato Si*’, in fact, is only one of a series of acts, and harks back to those which preceded it, beginning from Pope Paul VI’s Apostolic Letter of 14th May 1971, which made reference to the ecological problem, describing it as a crisis, a “dramatic consequence” of the uncontrolled activity of mankind.

48 See Theme of the IUCN (World Conservation Union) Congress 2016 Planet at the Crossroads, at iucnworldconservationcongress.org.


50 Esborraz, El modelo ecológico alternativo latinoamericano entre protección del derecho humano al medio ambiente y reconocimiento de los derechos de la naturaleza, in Revista Derecho del Estado, 2016, 93-129, “el denominado ‘nuevo constitucionalismo andino’, retomando principalmente la cosmovisión de los pueblos originarios de América Latina (así como también la noción del ius naturale heredada de la tradición romano-ibérica), haya propuesto reconocer directamente a la ‘Naturaleza/Pacha Mama/Madre Tierra’ el carácter de sujeto de derecho (pasándose, de esta manera, del ‘ambientalismo’ al ‘ecologismo’)” [at 125].

51 “To create a stronger culture of conservation, we need to look beyond mere technical means. The values and wisdom of indigenous peoples, elders, and the world’s rich faith and spiritual communities offer a deeper understanding of our connections with nature, and help inform the necessary transformational changes in the financial, technological, industrial, governance and regulatory systems of our societies”, Cultivating a Culture of Conservation, Linking Spirituality, Religion, Culture and Conservation, The Opportunities Identified by the Congress, in Navigating Island Earth - The Hawai’i Commitments, adopted at the IUCN World Conservation Congress on: ‘Planet at the Crossroads’ [1-10 September 2016], at www.wet tropics.gov.au.

52 See also the Encyclical Centesimus Annus of 1st May 1991 (https://www.ewtn.com/library/encyc/p2hundr.html), in which Saint John Paul II stated that every aspiration to care for and improve the world calls for a profound change in life styles, production and consumption methods, and in the established structures of power which today govern society [58]; and the Address to the Diplomatic Corps accredited to the Holy See of 8th January 2007 (http://w2.vatican.va/content/benedict-xvi/en/speeches/2007/january/documents/hf_ben-xvi_spe_20070108_diplomatic-corps.html), in which Pope Benedict XVI renewed the invitation to eliminate the structural causes of global economic dysfunction, and to correct models of growth that seem incapable of guaranteeing respect for the environment.
beginning with the 1982 World Charter for Nature\textsuperscript{53}, referred to in its preamble\textsuperscript{54}.

On the other hand, the 2016 international conferences and acts introduce no new elements. The States that took part in the G20 Summit held in Hangzhou merely declared their determination to promote “an innovative, invigorated, interconnected and inclusive world economy to usher in a new era of global growth and sustainable development\textsuperscript{55}”, bearing in mind the Action Agenda of Addis Ababa, the 2030 Agenda for Sustainable Development, and the Paris Agreement\textsuperscript{55}.

At this point, while it is unrealistic to expect to be able to intervene on policies and law independently of ethical vision and values, a specific reflection on environmental law would seem to be called for. In this respect – on a general level – one of the principal lacunae in the present international legal framework lies, in our opinion, in the separation between law applicable in peace time and problems concerning environmental protection and the fight against hunger in time of war, and/or in unstable areas, or in the presence of unresolved conflicts\textsuperscript{56}.

 Militarization, war and armed conflict are part of the current scene in international relations and wreak serious damage to the environment, often to a point beyond repair\textsuperscript{57}. It was opportune, therefore, that the UN Commission on International Law in 2013 included Protection of the Environment in Relation to Armed Conflict among the headings of its work programme\textsuperscript{58}.

Related problems, regarding which a serious delay in the finding of answers must be noted, are a) that of migration resulting from armed conflict or environmental catastrophes and climatic changes (in their turn the cause of significant impacts on the environment, and also of further conflicts) and b), that of food aid in conflict areas. Regarding environmental migration, we have already seen how the Paris Agreement represents a lost opportunity. As for food aid in conflict areas, we can limit ourselves to noting that the Food Assistance Convention, adopted in London on 25th April 2012 and entered into force on 1st January 2013, constitutes only a reference tool for the activities of Donor Countries\textsuperscript{59}, and has not proved to be of any use in the situations in question\textsuperscript{60}.

\textsuperscript{53} A/Res/37/7 of 28th October 1982.

\textsuperscript{54} See in particular Resolution no. 63/278 of 22.04.2009, which designated 22nd April as International Mother Earth Day.

\textsuperscript{55} They have also undertaken that: “no one is left behind in our efforts to eradicate poverty, achieve sustainable development and build an inclusive and sustainable future for all”. G20 Action Plan on the 2030 Agenda for Sustainable Development, G20 Leaders’ Communiqué Hangzhou Summit, 4-5 September 2016, at www.g20.org.

\textsuperscript{56} According to the UN International Law Commission, “armed conflict” means a situation in which there is resort to armed force between States or protracted resort to armed force between governmental authorities and organized armed groups, see Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries, 2011, at legal.un.org.

\textsuperscript{57} “Unlike many of the other consequences of armed conflict, environmental harm may be long-term and irreparable and has the potential to prevent an effective rebuilding of the society, destroy pristine areas and disrupt important ecosystems”, ILC sixty-sixth session, Geneva, 5 May-6 June and 7 July-8 August 2014, Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts, submitted by Marie G. Jacobsson, Special Rapporteur; A/CN.4/674 - 30 May 2014, at legal.un.org.

\textsuperscript{58} For the draft of the introductory provisions and principles provisionally adopted by the Drafting Committee, see the Statement of the Chairman of the Drafting Committee, Mathias Forteau, 30th July 2015, ILC, sixty-seventh session, Geneva, 4 May-5 June, 6 July-7 August 2015, at legal.un.org.

\textsuperscript{59} According to Article 12, the Convention is open to the signature of 36 States. At present [28.04.2017], Australia, Austria, Canada, Denmark, Finland, Japan, Luxembourg, the Russian Federation, Slovenia, Spain, Sweden, Switzerland, the United States and the European Union are Parties to this Agreement. Italy, which is among the States mentioned in the Article, has neither signed nor ratified the Convention (see treaties.un.org).

\textsuperscript{60} See Tamburelli, Food Aid to Conflict Affected Populations. WFP Emergency Operations - The Case of Eastern
8. Notes on the evolution of bilateral and multi-lateral cooperation

Having considered the orientation, priorities and lacunae in multi-lateral cooperation, we will pass on to some notes on the evolution – in the twenty years that followed UNGASS – of the organization, methodological approach, operational modes, and goals of bilateral and multi-lateral cooperation in the field of environment and sustainable development.

We should first of all observe that the relations between Donor Country and Beneficiary Country have been revised, in the sense that the concept of dependence of the latter on the former has been superseded, and a more equal relationship affirmed in its place. The Beneficiary Country – whose full autonomy to design its own development strategy is recognized, at least in theory – is defined as a “Partner”. The Donor Country should intervene in the support of the strategies drawn up by the Partners Country, and in the fulfillment – on a basis of shared goals and responsibilities – of the consequent projects. In other words, the principle of “democratic ownership” is recognized, which transforms the cooperation from a simple outside aid, enacted on an economic plan, into an interactive cooperation between the two countries (or groups of countries or other institutions)61.

The organization itself of the Cooperation among various countries changes in order to respond more fully to the necessity of finding economic means, and to needs arising from the new dynamics of intervention. In some cases an ad hoc Agency for Development Cooperation is created for this purpose, alongside the competent ministerial structure62. Another innovative aspect is to be found in the intensification of the activity of bodies and institutions other than the central State. These initiatives, while they bear testimony to growing interest and increased sensitivity, call for common strategies at different levels. This in turn gives rise to the definition of new coordination mechanisms between the various active bodies: State, Regions, local bodies of various kinds63.

There remain, however, evident limits regarding the transparency of the interests effectively at stake, the coordination of interventions on the part of various national Cooperations (and also of Foundations, NGOs and other private bodies) in the Beneficiary Country, the conditions of the transfer of economic resources, the nature of transferred technologies, the monitoring of conformity of the interventions fulfilled to the programmes agreed on, and to the real needs of the beneficiaries.

Having said that, we can note how the new strategies aim at giving space to interdisciplinary projects – wide-ranging and of lasting effect – that foresee the involve-

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61 Cf. Linee Guida per la Cooperazione Italiana sulla Democratic Ownership, according to which the principle of democratic ownership requires a transformation of the traditional vision of cooperation, which, from merely external aid, becomes the result of the cooperation between the Donor Country and the Partner Country, both through the support of the strategies identified by the beneficiary itself, and by the involvement, in the development process, of civil society of the two countries, as actors essential for growth (my translation) Resolution no. 167 of 8th November 2010, Ministry of Foreign Affairs - Executive Committee for Development Cooperation, at www.cooperazioneallosviluppo.esteri.it.

62 See, among others, the new Italian Law containing Disciplina generale sulla Cooperazione internazionale allo Sviluppo, adopted on 11th August 2014 (no. 125), in GU no. 199 of 28th August 2014.

63 The Italian Government acted with the aim of leading the projects supported by the regions and local authorities within the strategies and priorities defined at national and international level and at the same time to enhance them. Today the c.d. decentralized cooperation, managed by the Regions and Local Authorities (REL), is carried out in agreement with the DGCS of the MAE, at www.cooperazioneallosviluppo.esteri.it.
ment of the civil society in the interested countries, as actors essential for growth. It may be useful to point out the particular attention which the EU pays to Universities through the Erasmus Programme. The Italian Cooperation, too, recognizes the unique role of the Universities in defending values of solidarity and international cooperation, educating the new generations to social responsibility and in the understanding of international politics, and promoting relations between institutions of higher education and research at the service of peace and development.

Evidence can be found of this evolution in the Action Plan of Agenda 2030 for Sustainable Development adopted by the G20, where it is stated that the contribution of the G20 to the implementation of the Agenda will have among its fundamental guiding principles, that of supporting international partnerships for development which will involve governments, the private sector, civil society, the academic world and international organizations.

Even more interesting is the fact that – with the emergence of BRICS and other countries on the scene of political relations and international economics – the dividing line between Donor Countries and Beneficiary Countries is moving. In particular, the BRICS Countries have now become important actors in Cooperation at the global and /or regional level and are beginning to wish to play a role also in a more coordinated way. China, for example, has given support to more than 120 Developing Countries in activities aimed at fulfilling the Millennium Goals and has engaged to support them now in the implementation of Agenda 2030; South Africa is using its African Renaissance and International Cooperation Fund - ARF to support Developing Countries and has committed to continuing to contribute to finding a solution to the needs of the African Continent.

64 See EU Regulation no. 1288 of the European Parliament and of the Council of 11th December 2013, setting up ‘Erasmus +’: the EU Education, Training, Youth and Sports Programme, which should have a strong international dimension, especially as regards higher education, also with the aim of ‘fostering understanding among peoples and contributing to the sustainable development of higher education in partner countries, as well as their socio-economic development in general’, Preamble (8). See also Decision no 1298/2008/EC of the European Parliament and of the Council of 16th December 2008 establishing the previous Erasmus Mundus 2009-13 Action Programme, in particular the Preamble (9).

65 The collaboration between the Conference of Rectors of Italian Universities (CRUI) and the MAE - DGCS takes origin from this conceptual framework, and is aimed to identify a renewed academic model of cooperation on development and peace, which emphasizes the role of the Universities in the training of human resources, at www.crui.it.


67 The Fund was established by the legislation adopted to strengthen South Africa’s cooperation with other countries, particularly African countries, through the promotion of democracy; good governance; prevention and resolution of conflicts; socio-economic development and integration; humanitarian assistance; the development of human resources, v. G20 Action Plan on the 2030 Agenda for Sustainable Development, cit.

68 See at www.fmprc.gov.cn.
Finally, of particular interest is the Statement adopted by the first official meeting of the Ministers of the Environment of the BRICS Countries, meeting in Moscow on 22nd April 2015, in which the participating Ministers declared that they shared “the common conviction that the effective implementation and promotion of an economically, socially and environmentally sustainable future is essential to achieve our overarching priority of poverty eradication”69.

9. Conclusion

Going on to draw some essential conclusions, the analysis we have made seems to show that the vision and the methodological approach to bilateral and multilateral cooperation have evolved, but the results have remained far behind expectations and aspirations. Official Development Aid has stayed well below the commitments formally assumed by the States.

Environmental issues – while the degree of knowledge and awareness of the problems has increased at all levels – are by no means among the priorities on the international agenda. Economic crises, global financial uncertainty and instability, armed conflicts of various nature, gravity and extension, terrorism, and migration are all themes which in fact take precedence over environmental worries, which, however, raise their heads with renewed force whenever new disasters caused by human activity or large scale natural phenomena occur.

The Millennium Declaration did not introduce any notable innovation. The Johannesburg Summit of 2002 was held at a moment when the theme of the environment had slipped down the list of priorities at the international level. The Rio +20 Conference barely avoided concluding with nothing done. The Addis Ababa Agenda, the Goals for Sustainable Development and the Paris Agreements on Climate did not lead, as we have seen, to any substantial advance.

The international law for the environment and sustainable development has remained substantially at a standstill, on the plane of principles and laws of a general nature, at the framework shaped in the last decade of the last century, that is, at the ’92 Rio Conference and the ’97 UNGASS. Ultimately, in spite of the (apparently) profuse commitments at international level, the effectiveness of the law and policies continues to appear to be modest.

In this context it is legitimate to wonder whether we are in a phase of evolution as regards environmental law and policy, or rather in a phase of stasis or even regression. In our opinion, if the situation is static on the plane of conceptual elaboration, methodological approach and law, on that of political intention and coherence between declarations and conduct (words and actions), we have been for some time in a period of retrogression, as is shown by the lack of any real expectations and by the widespread skepticism which surrounds international negotiations and negotiators. A regression that can be dated from the beginning of the Millennium, to the substantial failure of the 2002 WSSD, and to the years of crisis in international law which followed the attack on the Twin Towers.

We have already underlined the need for deep reflection on fundamental ethics and religious values70 and the possible role of law in pursuing the aim of restoring the

69 See at www.brics.utoronto.ca.
70 In this regard, we can find an analysis of environmental sensitivity of Hinduism, Islam and Christianity (which are the three major religions in India) in Rajyalakshmi, Religious Environmentalism for Sustainable Development, in Sinha, Sivakumar, Ahmad (eds.), Environment - Law and Enforcement: The Contemporary Challenges, New Delhi, 2017, 39-60. Interestingly, the Author affirms: “Apart from scientific suggestions and
traditional, or promoting a new, relationship/equilibrium between man and nature, as well as for an intensification of efforts on questions concerning armed conflict, environmental migration, food aid.

It is worth noting the growing attention to the links between conflict prevention and management, and the protection of the environment and sustainable development, as is shown, for example, in the speech of Mr. Guterres at the UN General Assembly high-level dialogue on “Building Sustainable Peace for All: Synergies between the 2030 Agenda for Sustainable Development and Sustaining Peace”; he affirmed that the universal nature of the 2030 Agenda – adopted as a plan to tackle poverty, inequality and other global challenges – and its pledge to leave no one behind ties it to sustaining peace71.

According to the IUCN, the most important international NGO operating in the sector, in the face of enormous forces of transformation such as climate change, and of the dramatic socio-economic inequality that is to be found throughout the world, there exist credible and accessible alternatives – political, economic, cultural and technological – that could promote general well-being in such a way as to favour or even improve the natural resources of our planet72.

In this direction, which we hold to be the only one possible, the conclusions formulated by the Meeting of the Senior BRICS Officials responsible for International Development Assistance, held in Moscow on 7th December 2015, in which the participants described “the humanitarian assistance and emergency response” as “the most promising spheres of cooperation” appear very interesting73.

Despite the fact that we have no great faith in an international community which is incapable – with rare exceptions – of setting in motion any efficient action against the great environmental problems they are called upon to face, we share the pragmatic approach of the IUCN and the identification of priorities effected by the BRICS, which seem to have the merit of allowing the development – at least as long as unhindered by circumstances – of wide ranging initiatives.

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71 “Our priority is prevention of conflict, of the worst effects of natural disasters, and of other manmade threats to the cohesion and wellbeing of societies”, Guterres Highlights Importance of Recognizing the Links between Peace and Sustainable Development, 24th January 2017, at www.un.org. See also the Communication from the EU Commission to the EP, the Council, the ECOSOC and the Committee of the Regions, Proposal for a New European Consensus on Development Our World, Our Dignity, Our Future, which affirms that: “The prime focus of development cooperation remains poverty eradication and there will be no diversion of effort from that goal. To this end, the EU and its Member States will promote the comprehensive approach to conflict and crises, focusing on fragility, human security and recognizing the nexus between sustainable development, peace and security” (52), COM (2016) 740 final, 22.11.2016.


73 The participants stressed the importance of the concept of mutual solidarity and respect for the sovereignty of States, and of the development priorities of partner countries, The BRICS Handover Report: 2015-2016, From Russia as Current Chair of BRICS and Host of the 7th BRICS Summit in 2015 to India as the Incoming Chair of BRICS and Host of the 8th BRICS Summit in 2016, 57, Moscow, at www.mid.ru.