

INTERNATIONAL ENVIRONMENTAL LAW

Teaching materials

Academic Course: 2021-2022



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Unit 5. Protection of the Atmosphere

CONTENT

1. General aspects: Long-Range Transboundary Air Pollution Convention, 1979
2. Vienna Convention for the Protection of the Ozone Layer
3. Legal instruments regulating Climate Change: UNFCCC; Kyoto Protocol; Paris Agreement; COP26 - Glasgow Climate Pact

1. Convention on Long-Range Transboundary Air Pollution (LRTAP), Geneva, 1979

- * The first international legally binding instrument to deal with problems of air pollution on a broad regional basis = a bridge between different political systems and a factor of stability in years of political change.

2. Vienna Convention for the Protection of the Ozone Layer of 1985, including the Montreal Protocol of 1987

- * A framework Convention that lays out principles agreed upon by many Parties;
- * The first convention of any kind to be signed by every country involved, taking effect in 1988 and reaching universal ratification in 2009
- * Cooperation among nations by exchanging information on the effects of human activities on the ozone layer = 1 meeting every 3 years.

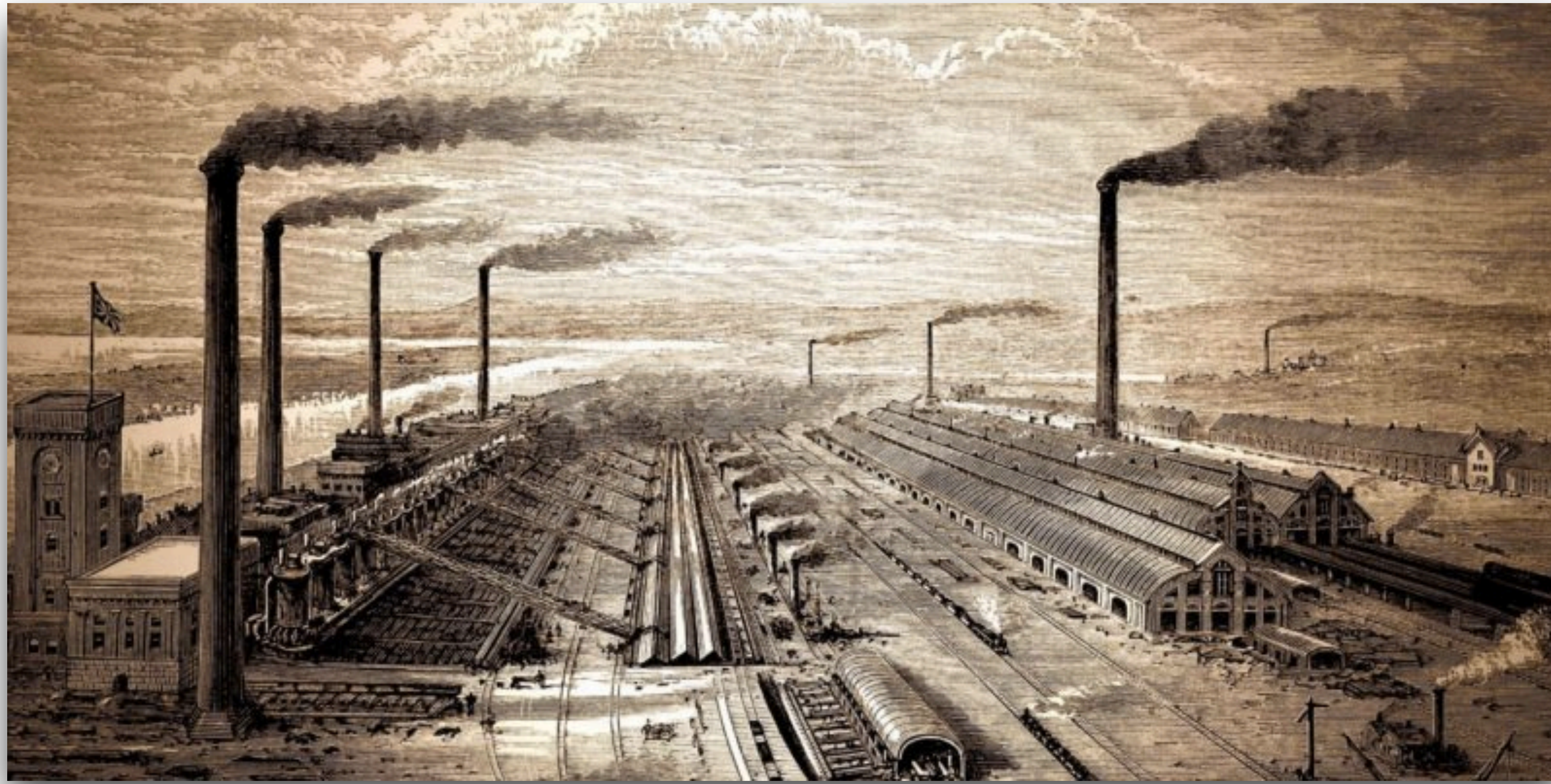
3. Climate Change

- The United Nations Framework Convention on Climate Change (UNFCCC), in Article 1, defines climate change as "**change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods**".
- The UNFCCC thus differentiates between climate change attributable to human activities that alter atmospheric composition and climate variability attributable to natural causes.

Why is the atmosphere warming?



- Anthropogenic impacts have had serious consequences on the environment in the wake of the industrial revolution.



What are the main adverse effects of climate change?

- Sea level rise + acceleration of polar ice caps;
- Intensification of droughts and floods;
- Impacts on water supply as a result of melting glaciers;
- Increase in emissions since 1990
- Emergence of diseases
- Effects on human health
- Compromise of the rights of future generations
- Extinction of biodiversity
- Hunger, Armed conflicts....WAR...

3.1. Legal instruments regulating Climate Change in the IEL

A) UNFCCC

Entry into force: 1994

Considerations:

- Ineffective framework text to take on the seriousness of the issue on its own.
- Objective: to achieve stabilisation of GHG concentrations within a timeframe sufficient to enable adaptation to climate change.
- To achieve the objective, the Parties must be inspired by the principles set out in Article 3: intergenerational equity, common but differentiated responsibilities and respective capabilities, principle of precaution, right to sustainable development, etc. (**).
- Failure to include: the principle of "internationalisation of environmental costs" or the "polluter pays" principle.
- Lack of specific obligations - minimum, broad and generic provisions.

- With regard to the commitments established by the UNFCCC, we must look at the distinction of commitments:
 - 1. Applicable to all Parties
 - 2. Applicable to the Parties listed in Annex I to the Convention.
 - 2. Applicable to Parties listed in Annex II to the Convention

- **Commitments to be undertaken by all Parties:** minimum, generic obligations and do not imply specific commitments beyond:
 1. The completion of national inventories of GHG emissions; - The implementation of programmes containing measures to mitigate climate change;
 2. The implementation of programmes containing measures to mitigate climate change;
 3. The promotion of technologies, practices and processes that improve emissions;
 4. Conservation and enhancement of sinks(**);
 5. Adaptation to climate change;
 6. Promoting and supporting scientific research, education and public awareness of climate change.

- The commitments of the **developed State Parties** listed in Annex I of the Convention add **emission reduction obligations** that imply, in particular, that these Parties **must return to their 1990 greenhouse gas emission** levels by the end of the decade (i.e. by the year 2000).
- The commitments of the **developed State Parties** listed in Annex II are essentially to provide "**new and additional**" **financial resources** to meet the agreed full costs incurred by developing State Parties in meeting their reporting obligations under the Convention, to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adapting to the adverse effects of climate change, and to promote, **facilitate and finance the transfer of, or access to, environmentally sound technologies and know-how to other Parties**, especially developing country Parties, to enable them to implement the provisions of the Convention.

B) The Kyoto Protocol

Date of adoption: 1997

Entry into force: 2005

Reflections:

- Definition of a time horizon pending results (1st and 2nd commitment period = 2008 to 2012; 2013 to 2020).
- Low environmental effectiveness.

Interpretation of the principle of **common but differentiated responsibilities** = impact limitation. The principle of common but differentiated responsibilities, on which the Kyoto Protocol is based, has its most remote origin in the principle of "**compensatory inequality**". **This principle implies that industrialised states bear the greatest burden of emission reductions, mainly because they have been the main promoters of the anthropogenic greenhouse effect as a consequence of their development.**

- The Protocol identifies in Annex A the six greenhouse gases targeted for emission reductions: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆).

- The set of general obligations pursued by the Kyoto Protocol in Article 10 is identical in content to that set out in Article 4 of the UNFCCC.
- This "minimum" binding burden obviously includes developing countries, although its ambiguity contributes to the fact that, in practice, it is quite complex to determine compliance.

C) The Paris Agreement

Entry into force: 2016

Reflections:

- Soft law provisions: prioritisation of food security, famine eradication, technology transfer from developed to developing countries.

Characteristic features:

1. Globality
2. Progressive development (NDCs)
3. Transparency and global stocktaking
4. Mechanism to facilitate implementation and promote compliance with the Agreement.
5. Relevance to human rights law.

- Objectives of the Agreement:
 1. Temperature limitation
 2. Climate adaptation and resilience
 3. Decarbonisation of the economy towards sustainable development
- 3 key action areas: Mitigation, Adaptation and Loss and damage.
- Compliance mechanism: verifiable NDC's

C) COP26 - Glasgow Climate Pact

- 8 key elements:
 - (i) Science and urgency;
 - (ii) adaptation;
 - (iii) adaptation finance;
 - (iv) mitigation;
 - (v) Finance, technology transfer and capacity-building for mitigation and adaptation;
 - (vi) Loss and damage;
 - (vii) Implementation;
 - (viii) Collaboration

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