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## THE PRINCIPLE OF SOLIDARITY IN INTERNATIONAL ENVIRONMENTAL LAW: THE MULTILEVEL GOVERNANCE ROLE IN THE POST-PANDEMIC ERA

*L'arrivo del COVID-19 su scala mondiale ha sconvolto l'intera comunità internazionale. Quest'ultima ha dovuto affrontare una crisi sanitaria senza precedenti, concentrando gli sforzi di cooperazione internazionale in campo sanitario e nello sviluppo di nuovi vaccini in grado di far fronte alla continua diffusione del virus. Precedentemente all'evento pandemico, la Comunità di stati sembrava aver intrapreso un multilateralismo che teneva sempre più in conto la protezione dell'ambiente. Il lavoro intende analizzare i recenti cambiamenti della cooperazione internazionale nel diritto internazionale dell'ambiente e la possibile importanza del principio di solidarietà quale elemento costitutivo di tale ordinamento nella definizione di nuove politiche di sviluppo a seguito della pandemia.*

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Abstract ENG

*The arrival of COVID-19 on a global scale has upset the entire international community. The latter had to face an unprecedented health crisis, focusing the international cooperation efforts in the health field and in the development of new vaccines capable of coping with the continuing spread of the virus. Before the pandemic event, the community of states seemed to embark on a multilateralism that was taking more and more account of environmental protection. The work intends to analyse the recent changes of the international cooperation in the field of international environmental law and the possible prominence of the principle of solidarity as a constitutive value of this normative system through the definition of new development policies after the pandemic.*

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**Summary:** 1. Introduction; 2. The protection of the environment in the pandemic era; 3. Making solidarity plausible in international law; 4. International Environmental Law and solidaristic approaches: an emerging linkage between societies and ecosystems; 5. Conclusions.

## 1. Introduction

The issue of environmental protection represents an element of central importance in the current international community. Before the arrival of the pandemic event, there had been numerous efforts that foreshadowed an effective change of pace by the states to finally take into account the application and enhancement of international environmental standards more effectively.

While the global spread of COVID-19 has led to a contraction of economic efforts, as well as of general international cooperation through the conduct of new international negotiations on the subject (such as the Conference of Parties or other Multilateral Environmental Agreements in international negotiation), at the same time it has surprisingly seen states increase their national contribution in terms of reducing global emissions for most of the states of the international community.

In this perspective, the cardinal principle of international environmental law concerning common but differentiated responsibilities, consecrated by the Kyoto Protocol of 1992, seems to have expressed a solidarity logic within the international community in which each state has understood that the pandemic event is in close correlation with the environment.

The depredation and excessive use of the natural environment is certainly the cause of the pandemic, therefore the strengthening of the environment and the commitment of the states to start an investment path towards the so-called “green recovery” seems to represent the only valid alternative in order to live in a healthier, fairer and consequently more supportive society. The correlation between environment and solidarity is not accidental, since the logic of solidarity presupposes collective action which, if initially it considers state action as decisive for assuming new international obligations in environmental matters, it also requires territorial enhancement.

The engagement of civil society therefore seems to determine a new development paradigm which, taking into account the protection of the environment, considers solidarity as an instrument of inter-state and inter-individual cooperation which sees its most concrete application in the principle of subsidiarity. Through the definition of new forms of governance that rest their foundations on solidarity, and therefore on the enhancement of territorial proximity that takes into account the subsidiary role of individuals, it is possible to find an effective response and execution of the international norms adopted by the states.

This should take place with the more general objective of rethinking the development paradigms that led to the spread of COVID-19, to imagine a post-pandemic society that makes the solidarity attribute the founding element on which to base international cooperation.

## 2. The protection of the environment in the pandemic era

International environmental law can be considered as a sui generis branch of international law. In fact, its fragile nature - due to the proliferation of the so-called “framework treaties” which hardly allow to describe with legal accuracy the fulfilment of international rules in the State practice - together with the limitation to some very narrow protection areas, gives it the characteristic of a segment of the international law as specific in some areas as excessively extensive in others.

Furthermore, it is undisputed to affirm that the multilateral commitment in reaching new conventional norms in environmental matters encounters considerable obstacles on the part of the States<sup>[1]</sup>, the latter reluctant to be bound by new rules that question State sovereignty and which, above all, could undermine the national economic growth in the short-term period. The first consequences of the pandemic were the postponement or the moving to virtual modality of many activities and meetings that had been scheduled in the regulatory and institutional framework of various international organizations.

Firstly, the fourth round of negotiations within the United Nations on the definition of marine protected areas and the protection of biological diversity in the high seas (known as BBNJ agreement) has been entirely postponed to 2021, with some mainly informal negotiation meetings held in virtual modality. Within the United Nations Framework Convention on Climate Change (UNFCCC) of the 1992, this provided for the establishment of the 26th Conference of the Parties (COP26), which should have been taken place in Glasgow from 9 to 20 November 2020, having then been postponed to November 2021.

Furthermore, many activities are taking place through online platforms: for example, the Placencia Ambition Forum, organized by the alliance of Small Island States, was held from 20 to 22 April in order to raise the level of ambition to achieve the objectives of the Paris Agreement. The postponement of the most important meetings and activities on the subject of the environment has obviously caused great concern due to the fear of a possible further slowdown in the implementation processes of the commitments contained, *inter alia*, in the UN Framework Convention on Climate Change and the Kyoto Protocol, as well as the implementation of the Paris Agreement<sup>[2]</sup>.

From the point of view of State practice with regard to the obligations contained in the UNFCCC and its protocols, it is possible to consider the proactivity of several States of the international community which, pursuant to the legal obligations contained in the Kyoto Protocol, have announced the implementation of the Nationally Determined Contributions (NDCs)<sup>[3]</sup>, while subordinating them to collective action by all States on a global scale. Rwanda was the first African State to update its national mitigation contribution on 19 May 2020 by reinforcing its commitment to reduce greenhouse gas emissions by 2030 also accelerating adaptation plans, notwithstanding the diminishment of the technical and financial support required for developing countries in order to reach these environmental standards<sup>[4]</sup>. If the financial commitment of industrialized countries were to decrease, as a consequence of the pandemic, the main risk is that this could have important consequences on the possibility for less developed countries to achieve the commitments contained within the UNFCCC.

Nonetheless, other States (Norway, Singapore, Moldova, Russian Federation, Japan, New Zealand and Chile) have also communicated (or updated) their NDCs. However, it remains appropriate to consider that, despite the efforts of States to increasing the mitigation contributions, these are still far from the objectives contained within the Paris Agreements<sup>[5]</sup>. To sum up, it is evident that the crisis of the global and multilateral approach in the various areas, both in the response to the pandemic and in the activity to combat climate change, is part of the broader change in the international geopolitical scenario of the last few years, which has seen the progressive strengthening of State sovereignty at various levels, as well as the slowdown in economic globalization (even

before the pandemic there was talk of “slobalisation”<sup>[6]</sup>, in favour of trade and investments relations which are characterised by the fact that they tend to be regional and no longer global<sup>[7]</sup>.

Moreover, the connection between environmental protection and the economic contraction linked to the spread of COVID-19 is not accidental. A very recent study<sup>[8]</sup> by the University of Oxford, which includes as co-authors Nicholas Stern, Joseph Stiglitz and Dimitri Zenghelis, outlines the economic advantages of the so-called “green recovery”.

The work considers the crucial role of fostering investments in energy efficiency and renewable forms of energy, the latter being considered as the most effective economic policies to implement in the States affected by the pandemic and to tackle climate change at the same time. A strong call for a “green recovery” was also uttered by the UN Secretary General, António Guterres, during the 50th day of Earth Mother Day, last 22 April, focusing his attention on green transition, sustainable growth, renewable energy subsidies and global cooperation for the protection of the environment<sup>[9]</sup>. At the European level, these appeals are reflected in the alignment of the recent measures presented by the European Commission to strengthen the EU budget through the new Recovery Fund (so-called “Next Generation EU”), with the Green New Deal announced last year and directly linked to the goal of achieving EU climate neutrality by 2050.

On the other hand, the resolution of the United Nations General Assembly of April 2nd (RES 74/270), on the subject of global solidarity to combat COVID-19, while not containing a specific reference to the green recovery, hopes that the UN system, under the leadership of its Secretary General, strongly manages the crisis through a «global response based on unity, solidarity and renewed multilateral cooperation», as reported in the Preamble of the Document.

Furthermore, operative clause n.8 considers the "optimism" of the Assembly «that the unprecedented crisis caused by the COVID-19 pandemic can be mitigated and successfully reversed through leadership and sustained global cooperation and solidarity»<sup>[10]</sup>. In these circumstances, the General Assembly, while not taking into account directly the work of national economies towards innovative and more sustainable forms of production<sup>[11]</sup>, seems to consider the dimension of multilateralism as a fundamental element of international cooperation in the pandemic period, based on the concept of solidarity. This concept represents a recently emerging principle in international law, meaning an inter-State and inter-individual cooperative and responsible approach that is completely innovative in this area of law.

### 3. Making solidarity plausible in international law

The concept of solidarity seems to be apparently distant from international law. As well known, international law is grounded on the principle of reciprocity as a fundamental legal pillar on which international relations are governed. According to this principle, reciprocity represents a normative element constituting the necessary consequence of the individualistic relations between the equal members of the international community. The relations between sovereign and independent entities give rise to legal relations between States in strictly “contractual” terms, configuring an evident parallelism between the rights and duties of these international subjects. In this logic - clearly ascribable to the *do ut des* - the existence of an obligation would lapse if the counterparty does not observe the same or a corresponding obligation.

Therefore, the principle of reciprocity would seem to place the synallagmatic character of international relations at the foundation of international law<sup>[12]</sup>, precluding the possible establishment of any form of international relations that would not be based on this postulate. However, upon a more careful analysis of the international legal order, it is possible to detect the birth of a particularly innovative principle of the international order, namely the principle of solidarity. The very definition of this principle raises innumerable interpretative divergences, since the indeterminacy in the purpose and application of the principle of solidarity raise questions about the binding nature of this principle in international law.

If, on the one hand, solidarity implies a *lato sensu* definition that intends to consider a relationship between people belonging to a community of interests, entailing the moral obligation not to harm others and to assist them, on the other hand this principle is considered without exactly specifying the existence of a unique definition in international law. A first interesting connotation of the principle of solidarity in the international normative order can be found in two resolutions of the United Nations General Assembly - 56/151 of 19 December 2001 and 57/213 of 18 December 2002 - both entitled "Promotion of a democratic and equitable international order". The two documents state that solidarity is «a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice and ensures that those who suffer or <sup>[who]</sup> benefit the least receive help from those who benefit the most»<sup>[13]</sup>.

This definition, contained in a resolution of the General Assembly of the United Nations - thus without binding efficacy - called for the establishment of a New International Economic Order (NIEO) that should had been taken into account a collective economic development path aimed at bridging the economic gap between developing and industrialized countries. The NIEO, although it was an attempt never concretely realized within the international community<sup>[14]</sup>, considered the principle of solidarity as a new

constitutive element of the international order. Special attention should be given to the qualification of solidarity as a "fundamental value" of the international order, capable of directing international cooperation to face global challenges through a sharing of resources and benefits derived from collective actions that necessarily take into account the principles of equity and social justice.

Macdonald claims that

«solidarity is foremost a principle of cooperation which identifies as the goal of joint and separate state action an outcome that benefits all states or at least does not gravely interfere with the interests of other states»<sup>[15]</sup>, therefore assuming «solidarity as a principle of international law, <sup>[which]</sup> creates a context for meaningful cooperation that goes beyond the concept of a global welfare state; on the legal plane it reflects and reinforces the broader idea of a world community of interdependent states»<sup>[16]</sup>.

Furthermore, it could also be argued to consider an implicit reference to the principle of solidarity in the UN Charter itself, when Article 55 provides for the commitment of member states, both individually and in agreement with the United Nations «<sup>[to]</sup> promote higher standards of living, full employment, and conditions of economic and social progress and development; <sup>[...]</sup> solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and <sup>[...]</sup> universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion»<sup>[17]</sup>.

Thus understood, solidarity would seem to imply a form of cooperation between states that goes well beyond mutual obligations between them, in this case considering the element of mutual assistance as a fundamental prerogative of the international order. The relations between States would therefore not end in the evaluation of the execution or otherwise of the obligation towards the counterpart but would determine an attitude based on the principle of good faith aimed at strengthening friendly relations between states and to validate that attitude of peace and collective well-being that international law intends to guarantee. In this sense, the principle of solidarity in international law «is having an impact on the structure of the law», reflecting «the transformation of the international system from a network of bilateral commitments into a value-based global legal order»<sup>[18]</sup>.

In conclusion, it is possible to affirm that although the principle of solidarity does not represent a legal principle from which concrete rights and obligations derive, this has a particularly wide scope of application, especially with regard to the interpretation of numerous regimes of international law (from the environment, economy, international humanitarian law to the protection of human rights) capable of determining new rules of

progressive development that contain in nuce the normative content of the principle of solidarity.

The plausibility of solidarity in the international order would therefore not exclusively derive from the reinforcement of a constitutive paradigm inherent to international cooperation already relying to the same basis of international law<sup>[19]</sup>, which consider the mutual assistance and the friendly relations as a physiological element of this body of rules since its beginnings in the XVII century; it could therefore be considered as a moral value that permeates the totality of the international order and which, although devoid of clearly determining binding norms, directs the work of the international community towards social justice, peace and cooperation between states.

Moreover, the principle of solidarity is significantly amplifying its areas of applications in new areas of international law - e.g., the right to development, the protection of minorities and the right to a healthy environment for future generations<sup>[20]</sup> which necessarily implies a solidaristic approach in the field of international relations.

#### **4. International Environmental Law and solidaristic approaches: an emerging linkage between societies and ecosystems**

The connection between international law and the environment is not to be taken for granted: indeed, this branch of law was born and developed with particular attention in protecting state sovereignty that could be damaged by harmful behaviour deriving from cross-border pollution of another state<sup>[21]</sup>. Therefore, international environmental law was born as an “egoistic” body of rules in which each state attempted to preserve its territory from environmental damage caused by another subject of the international community<sup>[22]</sup>.

The shift towards an “altruistic” approach - and consequently based on a cooperative will of all the parties in achieving new common objectives to preserve the environment, can be traced starting from the Brundtland Report “Our common future” (1987) which states that:

«National and international law is being rapidly outdistanced by the accelerating pace and expanding scale of impacts on the ecological basis of development. Governments now need to fill major gaps in existing national and international law related to the environment, to find ways to recognize and protect the rights of present and future generations to an environment adequate for their health and well-being, to prepare under UN auspices a universal Declaration on environmental protection and sustainable development and a subsequent Convention, and to strengthen procedures for avoiding or resolving disputes on environment and resource management issues»<sup>[23]</sup>.



In this sense, the Commission seems to take into account for the first time the new global environmental challenges and the necessary convergence in new international cooperation measures that bridge the regulatory gap between national environmental legislation and international environmental law. In the request for a renewed cohesion to multilateralism, the Commission considered the fundamental role of a State mechanism of interrelation no longer based on the preservation of State sovereignty and its national interests (e.g., natural resources) in environmental matters, but of a cooperative process that takes into account the wellbeing of future generations for an environment no less healthy than the present one.

The duty of cooperation also seems to be brought about by a moral - even before than legal - obligation towards individuals of present generations to preserve and protect the natural environment. The concept of intergenerational equity therefore appears to be the cornerstone of an ongoing principle in the international order, namely the principle of sustainable development<sup>[24]</sup>.

This concept is then reinforced in the Rio Declaration on Environment and Development of 1992, which affirms that the states «shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem»<sup>[25]</sup>. Principle 7 continues by affirming the principle of common but differentiated responsibilities in this field, «where 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»<sup>[26]</sup>.

If the concept of sustainable development takes into account the convergence between economy and environment in a clearly distant perspective from the classic economical approach - the latter aimed at increasing economic growth without considering the preservation of the environment - this finds its justification with regard to the birth of a new dimension of international cooperation that appraises the effort of each state in reaching this goal.

In fact, the principle of common but differentiated responsibilities seems to find its foundation in the proactivity of the state action in reaching a process of development with common repercussions on the whole international community<sup>[27]</sup> and consequently on the set of natural ecosystems that populate the Planet Earth. This dimension of international cooperation is therefore clearly attributable to a solidaristic logic, where the action of the single state determines collective benefits not only with regard to the protection of the environment and the enhancement of a new, more sustainable economic system, but also

through a solidaristic dimension that enhances the interest towards the future generations.

Moreover, Shelton says that intergenerational equity is based on the recognition of three key points: that human life emerged from, and is dependent upon, the Earth's natural resource base, including its ecological processes, and is thus inseparable from environmental condition; that human beings have a unique capacity to alter the environment upon which life depends; that no generation has a superior claim to Earth's resources because humans did not create them but inherited them<sup>[28]</sup>.

In the author's vision, an approach to intergenerational equity is outlined through a dimension of *lato sensu* solidarity, considering how equity implies reference not only with regard to economic growth and in the collective well-being of future generations, but also making attention to the role of culture and knowledge, natural resources, the protection of human dignity and the right to health of each individual. It follows that, if solidarity is considered as a normative principle of international environmental law, this gives reasons to the entire legal debate on the coexistence of the individual, the economy and the environment.

Focusing the attention on international cooperation against climate change, it is worth considering that, according to art. 6 of the 2015 Paris Agreement, when considering the role of "cooperative approaches", it is affirmed that each Party «may choose, on a voluntary basis, to cooperate in the implementation of their NDCs»<sup>[29]</sup>. Article 6 is meant to cover all existing cases of cooperation, and others that may emerge in the future. It is important to mention that cooperation is noted, acknowledged and recognized, rather than approved, by a body under the Paris Agreement. This reinforces the decentralized and bottom-up nature and ethos of the Paris Agreement governance<sup>[30]</sup>.

Therefore, the procedure in question is based on the willingness of each Party to implement and execute at the national level the international commitment. The strengthening of mitigation measures in this context would therefore presuppose a solidaristic attribute of each state in going to implement its NDCs, since the enforcement of new tools aimed at limiting the emission of harmful polluting substances into the atmosphere considers as evident consequence the reduction of environmental damage both on the transboundary context both on a global scale.

Furthermore, as emerges from the UNFCCC Guidance document on the issue of cooperative approaches<sup>[31]</sup>, the governance mechanism provides for the elaboration of national environmental policies that are submitted to the General Secretariat in order to implement the national effort and deepen the international commitments undertaken in terms of contrast to climate change. Solidarity would seem to operate in this circumstance

as a moral constitutive value of international environmental law. The “cooperative approaches” would therefore be paradigmatic in enhancing the presence of a moral element in the state action to protect the environment, that is to say in a solidaristic dimension which is permeating the international legal system in environmental matters<sup>[32]</sup>.

Together with the horizontal dimension, attaining to inter-state relations, it is nonetheless interesting to consider the vertical element of solidarity, taking into account the bottom-up nature of the Paris Agreement implementation procedures. As it is well known, the development of bottom-up policies consider that any reform must come from below, from the experience of local communities, or even from a profound change in human psychology.

They are little interested in political mechanisms, much more in concrete experiences that demonstrate the possibility of living or organizing in an innovative, different, alternative way. If commensurate with the very implementation of the Paris Agreements, it is therefore possible to affirm that the correct application of environmental objectives is a state prerogative, which however, finds its most concrete applicative dimension in the local, urban and rural territorial contexts of which the state is composed. Article 6 of the Paris Agreements constitutes a particularly relevant legal element in this context, since the role of public participation and civic engagement is considered in the national development of environmental policies<sup>[33]</sup>.

The participation of individuals in this policy-making process to combat climate change is also recognizable in the Sustainable Development Goals themselves, included in the Agenda 2030 within the United Nations Resolution 70/1 of the General Assembly. Goal 13 considers the collective measures to be adopted to combat climate change: in this context, the target 13.1 affirms the objective to «strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries», leveraging on the development of policies to protect individuals - evidently characterized by a bottom-up nature - aimed at increasing the capacity of adaptation plans which, together with mitigation, constitute the two fundamental pillars in the activities to fight climate change. Target 13.2 then considers national action through the elaboration of «integrate climate change measures into national policies, strategies and planning» together with target 13.3 which takes into account the strengthening of «education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning»<sup>[34]</sup>.

It clearly emerges that the horizontal composition of state action in its international dimension, does not exhaust the elaboration of systems of mutual assistance and values of solidarity in the field of international environmental protection. In this context,

nationwide implementation is the fundamental pillar on which the correct resilience of the environmental protection system is based, or as in the specific case, the activities to combat climate change. The implementation takes place on the basis of the circumstances and the geographical, natural and environmental characteristics of each state<sup>[35]</sup>.

It follows that the execution of internationally assumed obligations finds its most direct effectiveness precisely in the diversification of national environmental policies that consider territorial specificities, the differentiation of ad hoc resilience strategies for both urban centres and rural areas and the active participation of the population placed there in order to grasp the major concerns and risks in relation to natural environment. This helps to create new multilevel governance systems, that is to say development policies that start from the role of cooperation and mutual assistance of States in its horizontal dimension, but which then deepens into the national stratification that enforces new bottom-up participatory dynamics in terms of environmental governance thanks to the involvement of local actors and the civil population. In fact, the latter represent the social components best able to intercept the environmental characteristics of the territory, as well as the specific circumstances that constitute it.

On these foundations, multilevel governance has its roots precisely on the principle of subsidiarity, that is to say that «principle which guides the allocation and exercise of public authority in systems of multi-level governance», thus expressing «a preference for the allocation and exercise of governmental functions at the lowest level of governance»<sup>[36]</sup>.

To conclude, it is possible to consider the undeniable emerging linkage between society and ecosystems in the field of international environmental law, thanks to the enforcement of new mechanisms of protection of the environment (as seen, the 2015 Paris Agreement) which evaluate the necessary participation of civil society in the application and correct execution of the international obligations deriving from environmental treaties. The active participation of individual and the engagement of civil society in a multilevel governance system justifies the application of the solidaristic values inside the international legal systems, thus proving the constant presence and incidence of solidarity in this realm of international law.

## 5. Conclusions

Solidarity could be considered as a constitutive element of international law. Even though it is devoid of any constraint in the international legal system, it is remarkable to recognize its presence in the field of international relations both in its horizontal configuration and in its top-down dimension. As proof of this, the recent pandemic events

have configured the concept of solidarity as a necessary corollary to be taken into account in the definition of international policies aimed at strengthening the economic systems of the international community, while taking into account the necessary environmental activities that States must take into account. Albeit similar to the principle of sustainable development, this approach configures a divergent logic from a substantial point of view: in fact, solidarity owns a dimension of cooperation, mutual assistance and friendly relations with other subjects present in the international system.

The value of solidarity therefore represents an important cornerstone on which the international community should be founded, especially in the field of international environmental law. In this sector of law, solidarity is expressed as a concept attaining not only in terms of mutual assistance between States, but also with regard to the relationship between the State and its territorial diversifications in the fulfillment of internationally assumed obligations.

Indeed, this system has considered, especially starting from 2015, through the Sustainable Development Goals and the adoption of the Paris agreements in the UNFCCC context, the decisive role of international cooperation that finds the most effective response through the establishment of a multilevel governance system designed to strengthen the decision-making process at the local level, aimed at making environmental policies more effective. On the other hand, it is undeniable to consider how the pandemic event itself was determined by a depredation of particularly fragile natural environments placed in close contact with urban centres of ever more frequent expansion, consequently determining the so-called spill over which represented the triggering cause of human infection caused by this coronavirus within humans<sup>[37]</sup>.

The pandemic course highlights the need to develop new governance systems in environmental matters, capable of grasping the exactness of regional and local environmental frailties and of establishing adherent policies with international environmental standards.

As a system of participation by all the subjects present in the territory, it therefore requires the elaboration of a principle of subsidiarity which enlivens the bottom-up solidaristic framework that exists between the State and its population. It is indeed important to understand that subsidiarity represents the constitutive element of the solidarity value. This inseparable link between solidarity and subsidiarity is a principle proper to Catholic legal thought which recognizes the founding value of solidarity at the basis of social relations and also considers it as a principle which, in international law, coexists in symbiosis with the idea of sovereignty of international law. As Carrozza and Crema state, «while state sovereignty was originally conceived as a political concept able to justify the

egotistic claims of Hobbesian leviathans, it nevertheless also expresses a fundamental aspect of human social life: freedom. This aspect of sovereignty is not opposed to solidarity, but in fact is a condition for solidarity to be possible»<sup>[38]</sup>. According to the authors, the link between solidarity and sovereignty is represented precisely by subsidiarity<sup>[39]</sup>.

To conclude, it is possible to consider solidarity as a value which is increasingly affecting international law, especially with regard to international environmental rules. This finds its correct configuration in the creation of a multilevel governance system that empowers the participation of all the subjects in the success of environmental policies and therefore in the correct fulfilment of international standards in this matter.

Nonetheless, multilevel governance in international environmental law seems to find its most correct and practical execution precisely in the principle of subsidiarity, the latter closely linked to international solidarity and configuring the birth of an emerging principle in the international legal framework.

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## Note e riferimenti bibliografici

[1] R. E. KIM, K. BOSSELMANN, *International Environmental Law in the Anthropocene: Towards a Purposive System of Multilateral Environmental Agreements*, in *Transnational Environmental Law*, 2013, vol. 2, 285-309.

[2] In fact, it should be remembered that the previous COP25 in Madrid ended with a substantial postponement of many discussions on the most important aspects, i.e., in the field of “cooperative approaches” of art. 6 of the Paris Agreement.

[3] Nationally determined contributions (NDCs) are at the heart of the Paris Agreement and the achievement of these long-term goals. NDCs embody efforts by each country to reduce national emissions and adapt to the impacts of climate change. The Paris Agreement requires each Party to prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve (art. 4, par. 2). Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

[4] International Institute for Sustainable Development, *NDC Update: Rwanda is First LDC in 2020, Andorra Commits to Carbon Neutrality by 2050*, 26 May 2020, available online.

[5] See the climate target update tracker at [climateactiontracker.org](http://climateactiontracker.org).

[6] See N. SAVAL, *Globalisation: the rise and fall of an idea that swept the world*, in *The Guardian*, 2017, available online.

[7] C. FREUND, E. ORNELAS, *Regional Trade Agreements*, in *Annual Review of Economics*, 2010, vol.2, 139-144.

[8] See C. HEPBURN, B. O'CALLAGHAN, N. STERN, J. STIGLITZ, D. ZENGHELIS, *Will COVID-19 fiscal recovery packages accelerate or retard progress on climate change?*, in *The Oxford Review of Economic Policy*, Working Paper No. 20-02, 2020, vol. 36, n.1, 1-48.

[9] «On this International Mother Earth Day, all eyes are on the COVID-19 pandemic – the biggest test the world has faced since the Second World War. We must work together to save lives, ease suffering and lessen the shattering economic and social consequences. The impact of the coronavirus is both immediate and dreadful. But there is another, deep emergency - the planet's unfolding environmental crisis. Climate disruption is approaching a point of no return. We must act decisively to protect our planet from both the coronavirus and the existential threat of climate disruption. The current crisis is an unprecedented wake-up call. We need to turn the recovery into a real opportunity to do things right for the future. I am therefore proposing six climate-related actions to shape the recovery and the work ahead. First: as we spend huge amounts of money to recover from the coronavirus, we must deliver new jobs and businesses through a clean, green transition. Second: where taxpayers' money is used to rescue businesses, it needs to be tied to achieving green jobs and sustainable growth. Third: fiscal firepower must drive a shift from the grey to green economy and make societies and people more resilient. Fourth: public funds should be used to invest in the future, not the past, and flow to sustainable sectors and projects that help the environment and the climate. Fossil fuel subsidies must end, and polluters must start paying for their pollution. Fifth: climate risks and opportunities must be incorporated into the financial system as well as all aspects of public policy making and infrastructure. Sixth: we need to work together as an international community. These six principles constitute an important guide to recovering better together. Greenhouse gases, just like viruses, do not respect national boundaries. On this Earth Day, please join me in demanding a healthy and resilient future for people and planet alike», message of the UN Secretary General on the occasion of International Mother Earth Day, 22 April 2020.

[10] A/RES/74/270, op. clause n.8

[11] The General Assembly, despite having omitted a constitutive element for the economic recovery of the States following the pandemic, seems to be able to justify itself above all if we take into account the adoption of the document in April 2020, that is to say just a month after the diffusion of the COVID-19 on a global scale. The Resolution appears to hold these common elements together through a generalist perspective of international cooperation in the aftermath of the pandemic spread.

- [12] U. LEANZA, I. CARACCILOLO, *Il Diritto Internazionale: Diritto per gli Stati e Diritto per gli individui*, Parti Generali, Giappichelli Ed., Turin, 2012, 68-70.
- [13] United Nations General Assembly, *Promotion of a democratic and equitable international order*, A/RES/56/151 of 19 December 2001, op. clause n. 3, lett. f).
- [14] E. ENGLE, *The Failure of the Nation State and the New International Economic Order: Multiple Converging Crises Present Opportunity to Elaborate a New Jus Gentium*, in *St. Thomas Law Review*, 2003, Vol. 16, 187 s.
- [15] R. J. MACDONALD, *Solidarity in the Practice and Discourse of Public International Law*, in *Pace International Law*, 1996, vol. 8, no. 2, 1996, 259.
- [16] *Ibidem*, 260.
- [17] UN Charter, Chapter IX, Art. 55, lett. a)-c).
- [18] R. WOLFRUM, *Solidarity*, in *The Oxford Handbook of International Human Rights Law*, D. SHELTON (edited by), 2013, 1 ff.
- [19] See V. RANGEL, *The Solidarity Principle, Francisco de Vitoria and the Protection of Indigenous People*, in H.P. HESTERMEYER, D. KONIG, N. MATZ-LUCK, V. ROBEN, A. SEIBERT-FOHR, P.-T. STOLL AND S. VONEKY (eds.), *Coexistence, Cooperation and Solidarity: Liber amicorum Rüdiger Wolfrum*, Martinus Nijhoff, 2011, 131 f.; C. CAVALLAR, *Vitoria, Grotius, Pufendorf, Wolff and Vattel. Accomplices of European Colonialism and Exploitation of True Cosmopolitans?*, in *Journal of History of International Law*, 2008, vol.10, 181.
- [20] K. GOROBETS, *Solidarity as a Practical Reason: Grounding Authority of International Law*, (submitted), 2020, 7.
- [21] See *Trail Smelter Arbitration (United States v. Canada)*, Citation *Arbitral Trib.*, 3 U.N. Rep. International Law Arb. Awards 1905 (1941).
- [22] K. LIFTIN, *Sovereignty in World Ecopolitics*, in *Mershon International Studies Review*, 1997, vol. 41, Issue Supplement 2, 167-175.
- [23] See *Report of the World Commission on Environment and Development: Our Common Future*, pt.87
- [24] U. LEANZA, I. CARACCILOLO, *Il diritto internazionale diritto per gli Stati e diritto per gli individui*, Parti speciali, Giappichelli ed., Turin, 2020, p. 407. On the point, see also P. SANDS, *International Law in the Field of Sustainable Development*, in *British Yearbook of International Law*, 2014, vol. 65, no. 1, 303-381.
- [25] *Rio Declaration on Environment and Development 1992*, United Nations (UN), Principle 7.
- [26] *Ivi*.
- [27] A. WILLIAMS, *Solidarity, Justice and Climate Change Law*, in *Melbourne Journal of International Law*, 2009, vol. 10, no. 2., 503.
- [28] D. SHELTON, *Intergenerational Equity*, in R. WOLFRUM, C. KOJIMA (eds.), *Solidarity: A Structural Principle of International Law*, eiträge zum ausländischen öffentlichen Recht und Völkerrecht (Veröffentlichungen des Max-Planck-Instituts für ausländisches öffentliches Recht und Völkerrecht), vol. 213, Springer, Heidelberg, 2010, 143.
- [29] United Nations, *Paris Agreement*, 2015, art.6. Available online at <https://unfccc.int>.
- [30] A. MARCU, V.K. DUGGAL, *Negotiations on Article 6 of the Paris Agreement – Road to Madrid*, in *ADB Sustainable Development Working Paper Series*, 2019, no. 63, 1 ff.
- [31] See UNFCCC, *Matters relating to Article 6 of the Paris Agreement: Guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement*, in *Draft Text on SBSTA 49 agenda item 11(a)*, Draft negotiating texts prepared for COP 24, Annex II, Governance, Katowice, 2018.



[32] In this context, the constitutive value of solidarity would find confirmation and binding application in the principle of good faith. According to this principle, «bona fides is a broad and value-oriented concept. Due to its abstractness, it may inevitably contain the risk of an all too ambitious judicial activism. However, the predictability of a case's outcome might not be that much at risk if the decision-making body keeps in mind that bona fides is about legitimate expectations of the parties. Moreover, the mutual duties and obligations of international actors (States, international organizations, other subjects of public international law, to some extent even private actors such as non-governmental organizations) cannot be determined in a purely formalistic way. Treaties in particular are 'living instruments'. A dynamic and evolutive interpretation is indispensable for their effective implementation. Especially if and where little international law exists or rapidly changing economic conditions require flexibility, good faith assumes a gap-filling function. Good faith is a general and objective principle of international law. Given its consensual structures, the international community depends on persistently renewed consent in good faith. And so does its constitutional architecture», M. KOTZUR, Good Faith (Bona fide), in Max Planck Encyclopedia of Public International Law, 2009, 10-11.

[33] See Public Participation under Action for Climate Empowerment, available online at <https://unfccc.int>. See also Falker who says: «Developments at the subnational and regional level are key to understanding the gradual transformation that has occurred in international climate politics. While concern over climate change was on the rise throughout the 2000s, it was towards the end of the decade that critical momentum was built for a global agreement. Even in countries that had been laggards in the international negotiations, such as the United States, a groundswell of bottom-up initiatives had begun to change the political agenda. Around the world, local community groups have sprung up to advance voluntary carbon emission reductions; multinational corporations have increasingly invested in low-carbon business opportunities and adopted corporate social responsibility approaches with an explicit focus on climate change; institutional investors have begun to demand greater transparency on climate risks in business operations; and subnational authorities such as cities and municipal governing bodies have taken it upon themselves to create climate mitigation pledges and policies», R. FALKNER, The Paris Agreement and the new logic of international climate politics, in International Affairs, 2016 vol. 92, Issue 5, 1111.

[34] See United Nations, Sustainable Development Goals, Goal 13.

[35] On this theme, it is fundamental to consider the scientific contributions represented, inter alia, by C. GIL, Geoscience Engagement in Global Development Frameworks, in Annals of Geophysics, 2017, vol.60, n. 7,1-10.

[36] I. FEICHTNER, Subsidiarity, in Max Planck Encyclopedia of Public International Law, 2007, 1 f.

[37] «Environmental factors play a key role in the zoonotic transmission of emerging pathogenic viruses as mankind is constantly disturbing wildlife's ecosystems usually by cutting down forests to build human settlements or by catching wild animals for food, which deprives the viruses of their natural hosts and gives them opportunity to infect humans. In December 2019, a new coronavirus emerged from bats and was named SARS-CoV-2 by the International Committee for Taxonomy of Viruses, and the disease it causes named COVID-19 by the World Health Organization. Disease outbreaks such as SARS in 2002–2003, MERS in 2012 and the current COVID-19 pandemic are the result of higher mutation rates of coronaviruses and their unique capacity for genetic recombination, resulting in adaptations that make them more suitable to cross the species barriers and infect other species», P. Gomes da Silva, J. Rodrigo Mesquita, M. Nascimento, V. Ferreira, 2021 Viral, host and environmental factors that favor anthrozoönotic spillover of coronaviruses: An opinionated review, focusing on SARS-CoV, MERS-CoV and SARS-CoV-2, in Science of The Total Environment, 2021, vol.750, issue 1, p.1.

[38] P. CAROZZA, L. CREMA, On Solidarity in International Law, in Caritas in Veritate Foundation, 2014, p.19.

[39] In this regard, it is interesting to refer to the Encyclical Caritas in Veritate by Benedict XVI which, in paragraphs 57-67 states: «Hence the principle of subsidiarity is particularly well-suited to managing globalization and directing it towards authentic human development. In order not to produce a dangerous universal power of a tyrannical nature, the governance of globalization must be marked by subsidiarity, articulated into several layers and involving different levels that can work together [...]. The principle of subsidiarity must remain closely linked to the principle of solidarity and vice versa, since the former without the latter gives way to social privatism, while the latter without the former gives way to paternalist social assistance that is demeaning to those in need».

\* Il simbolo {[https/URL](https://URL)} sostituisce i link visualizzabili sulla pagina:

<https://rivista.camminodiritto.it/articolo.asp?id=6729>

THE PRINCIPLE OF SOLIDARITY IN INTERNATIONAL ENVIRONMENTAL LAW: THE MULTILEVEL  
GOVERNANCE ROLE IN THE POST-PANDEMIC ERA