

# From the Dilemmas of the Copenhagen Accord to the Breakthrough of the Paris Agreement; The Evolution and Future Blueprint of International Climate Change Law

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**Abstract:** The current global climate governance framework is primarily structured around *the United Nations Framework Convention on Climate Change* (hereinafter referred to as the “Convention”), *the Kyoto Protocol*, and *the Paris Agreement*, all of which have played crucial roles in addressing climate change. However, the international community currently leans towards refining existing frameworks rather than negotiating new global climate agreements. With the completion of the first Global Stocktake and the upcoming COP29 in 2024, the international climate change legal system is entering a new phase of deepened adjustments and comprehensive implementation. This paper analyzes *the Copenhagen Accord* and *the Paris Agreement* to explore the dilemmas and breakthroughs encountered in the process of international climate cooperation. It also discusses the future blueprint for the international climate change legal system post-2024.

**Keywords:** International Climate Change Law; International Legal System; *Copenhagen Accord*; *Paris Agreement*

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## Introduction

As global climate change becomes an increasingly urgent issue, the international community continues to explore and experiment with solutions. International climate change law, as a critical framework for global climate governance, has evolved through periods of both challenges and breakthroughs. *The Copenhagen Accord* (2009) and *the Paris Agreement* (2015) are two landmark agreements that represent different approaches in the development of international climate law.

While *the Copenhagen Accord* holds historical significance in global climate governance, it relies predominantly on soft law mechanisms, which lack enforceability, resulting in challenges and controversies in implementation. These shortcomings illustrate the dilemmas faced by international climate law. In contrast, *the Paris Agreement*, building upon *the Copenhagen Accord*, successfully transformed the global climate governance system by integrating both hard and soft law mechanisms, representing a breakthrough in international climate law. Despite these advancements, challenges remain in balancing the relationship between hard and soft law, as well as strengthening the enforceability and flexibility of climate law.

This paper compares *the Copenhagen Accord* and *the Paris Agreement* to analyze the evolving trend of hard and soft law integration within international climate law. Furthermore, it provides recommendations for the future development of international climate law, suggesting that a balance between hard and soft law should be maintained. This balance should enhance the enforceability of hard law while preserving the flexibility and inclusiveness of soft law, thereby deepening global climate cooperation.

## 1. The “Dilemma” of the Copenhagen Accord

### 1.1 Background of the Copenhagen Conference

The Copenhagen Conference was held in 2009 against the backdrop of the impending expiration of the first commitment period under *the Kyoto Protocol* in late 2012, with an urgent need to establish a framework for post-Kyoto climate change action. *The Bali Roadmap* adopted in 2007 set the agenda, pushing for developed countries to fulfill their emission reduction obligations during the first commitment period, and it was decided that the Copenhagen meeting would complete the negotiations in 2009. The conference attracted significant attention as it was seen as a key juncture for international climate cooperation. As a result, representatives from 192 Parties and more than 100 heads of state and government, including U.S. President Barack Obama and Chinese Premier Wen Jiabao, attended. The United Nations referred to it as “the largest climate negotiation in history.”

### 1.2 The Copenhagen Accord: Exposing Change Law Dilemmas

*The Copenhagen Accord*, adopted during the conference, to some extent maintained the international cooperation framework of the

*United Nations Framework Convention on Climate Change (UNFCCC)* and *the Kyoto Protocol*, continuing the dual-track negotiation process authorized by *the Bali Roadmap*.<sup>[1]</sup> The Accord established that developed countries should take on legally binding emission reduction responsibilities, while developing countries would undertake voluntary mitigation actions. This distinction between “responsibility for reduction” for developed countries and “moral reduction” for developing countries was intended to uphold the development and survival rights of the latter.<sup>[2]</sup> Furthermore, the Accord reaffirmed the principle of common but differentiated responsibilities, which appeared to yield some cooperative results.

However, *the Copenhagen Accord*, as a non-legally binding document, has been critically questioned regarding its enforceability. The Accord failed to establish a mandatory legal mechanism, lacking specific frameworks for the enforcement of core issues such as emission reduction targets, financial support, and transparency. As a result, the commitments made by countries have proven difficult to fulfill. Scholars widely argue that the Accord did not substantially advance global climate governance. Guan Qingyou noted that the Copenhagen conference “had no winners”, reflecting the failure of the conference to achieve its expected goals.<sup>[3]</sup> Professor Zhang Lei remarked that the conference shifted from “hopeful Copenhagen” to “hopeless Copenhagen.” International scholars further pointed out that an agreement without legal binding force struggles to prevent non-compliance by countries and fails to ensure that the aggregate commitments would be sufficient to prevent global warming from exceeding 2°C.<sup>[4]</sup>

Overall, while the Copenhagen conference resulted in a formal agreement, it ultimately proved to be a case of “high hopes, low outcomes.” The lack of legal enforceability meant that the commitments made under the Accord could easily be retracted, failing to address the deeper issues in global climate governance. The conference process highlighted the economic conflicts underlying the climate change debate, which led to difficulties in reaching consensus on key issues such as negotiation mechanisms, emission reduction targets, funding, and transparency. These dilemmas underscore the need to improve international climate change law and establish a robust legal framework to provide a solid foundation for global climate cooperation and a sustainable development pathway.

## 2. The “Breakthrough” of the Paris Agreement

### 2.1 Background of the Paris Conference

In accordance with the 2011 Durban decision, the international community was tasked with achieving a “legally binding agreement applicable to all Parties” by 2015, with the agreement to take effect in 2020.<sup>[5]</sup> Along with the intensification of climate change impacts and the deepening of scientific consensus, the Paris Climate Conference thus garnered unprecedented global attention.<sup>[6]</sup>

The Paris Climate Conference officially opened on November 30, 2015, and after 13 days of negotiations, the landmark Paris Agreement was reached. The goals of the Durban Platform negotiations were successfully completed, and the Agreement was widely regarded as a historic step in global climate governance, receiving unanimous praise from the international community.<sup>[7]</sup>

### 2.2 The Paris Agreement: Highlighting Climate Law Breakthroughs

#### 2.2.1 Institutional Innovation of the Nationally Determined Contributions (NDCs) Model

In contrast to the top-down, mandatory emission reduction model of *the Kyoto Protocol*, *the Paris Agreement* innovatively introduced the Nationally Determined Contributions (NDCs) model, which allows Parties to set their own greenhouse gas emission reduction targets based on national circumstances and to update these targets periodically.

This model reflects the dynamic nature of the agreement. According to Article 4 of the Agreement, Parties are required to update their NDCs every five years and to make progressively more ambitious commitments. The first Global Stocktake was completed in 2023, and the results indicated that the NDC targets are gradually driving the increase in global emission reduction efforts.

Article 13 of the Agreement established the Enhanced Transparency Framework (ETF), which requires each Party to submit regular progress reports and undergo independent expert reviews. This mechanism enhances the verifiability of each country’s climate commitments, providing credibility to global cooperation.

The flexibility of the NDCs model and its broad participation have ensured significant improvements in both the number of Parties to the Agreement and its effectiveness in climate governance. This marks a transformation in global climate cooperation, shifting from a model of fixed responsibility allocation to one of dynamic collaboration.

#### 2.2.2 Improvement of Global Climate Governance Mechanisms

*The Paris Agreement* has enhanced the systemic and operational aspects of global climate governance through the establishment of innovative institutional frameworks. First, the establishment of the Global Stocktake mechanism. According to Article 14 of the Agreement, global progress is evaluated every five years, providing scientific data and guidance for policy adjustments by individual countries. The results of the first Global Stocktake in 2023 identified gaps in financial support, technology transfer, and emission reduction actions, pointing the way

forward for global climate cooperation.

Second, the commitments regarding financial and technological support have been clearly defined. Developed countries are required to continue providing financial and technological assistance, particularly the commitment to \$100 billion per year by 2020. Although this target has not been fully met, at COP29, developed countries raised the target to \$150 billion per year by 2030, injecting new momentum into future cooperation.

Finally, Article 6 of the Agreement established the legal framework for an international carbon market, allowing Parties to cooperate through market-based mechanisms to achieve emission reduction targets. This provision has been further developed, and COP29 approved its implementation, officially launching the global carbon market. This mechanism addresses the shortcomings of the Copenhagen Accord, which lacked rules for carbon markets, providing an important tool for achieving cost-effective emissions reductions. Specifically, a supervisory body (SBM) will be established to monitor and verify the emission reduction activities and transactions conducted through the international carbon market, ensuring that these activities and transactions comply with the requirements of the Paris Agreement. The establishment of this mechanism is a significant milestone in global climate governance.<sup>[8]</sup>

### **3. Exploring the Path of International Climate Change Law: The Balance Between Hard and Soft Law**

The soft law nature of the *Copenhagen Accord* created dilemmas in international climate cooperation, while the integration of hard and soft law in the *Paris Agreement* has facilitated a new breakthrough in climate cooperation. Currently, there is little willingness among Parties to negotiate a new global climate agreement; instead, there is a preference for refining and enhancing existing frameworks, particularly the *Paris Agreement*. Therefore, future international climate change law should continue to seek a balance between hard law and soft law by strengthening the enforcement of hard law while maintaining the flexibility and inclusiveness of soft law. This balance will help advance global climate cooperation and drive its deepening.

#### **3.1 Enhancing the Enforcement of Hard Law**

##### **3.1.1 Strengthening the Legal Binding Force of Emission Reduction Targets**

The Nationally Determined Contributions (NDCs) model relies on the voluntary commitments of each Party and lacks a mandatory enforcement mechanism. To harden the legal force of emission reduction targets, it is necessary to clearly define the emission reduction obligations and responsibilities. This can be achieved by incorporating specific legal provisions that require Parties to comply with their emission reduction commitments and stipulate concrete deadlines for achieving their targets. If commitments are not met on time, economic sanctions could be introduced, or Parties may be required to take corrective actions. For example, countries that fail to fulfill their commitments may face financial penalties or be required to contribute additional funds to the climate finance pool.

##### **3.1.2 Improving the Mandatory Mechanism for International Climate Finance**

Financial resources and technology transfer are core components of the *Paris Agreement*, yet the implementation of climate finance still faces numerous challenges. To ensure the fulfillment of financial commitments, international climate change law can establish mandatory funding commitments. Developed countries have committed to providing \$100 billion annually in climate finance and, at COP29, agreed to set a new collective quantified goal before 2025 to replace the \$100 billion target. In the future, these financial commitments can be incorporated into mandatory provisions through hard law, requiring a clear timeline for the allocation of funds and specific enforcement measures. Countries that fail to provide funds on time could face economic penalties, such as restrictions on international trade or the reduction of their eligibility for climate finance support.

Furthermore, a more transparent monitoring mechanism and a strong accountability system should be established. The allocation and use of international climate finance must be subject to a more transparent and enforceable supervisory framework. International climate finance institutions could require developed countries to report the flow of funds annually, ensuring their effective use. Countries that fail to comply would face appropriate legal consequences.

##### **3.1.3 Global Carbon Pricing and Market Regulation**

The global carbon market mechanism is a key element of the Paris Agreement, but the rules governing carbon markets are currently not unified, and carbon trading on a global scale still faces many challenges. To strengthen the hard law aspect, future international climate change law should enhance the legal framework for the global carbon market.

First, a unified global carbon pricing rule should be established to ensure that all countries set carbon prices according to a common standard, and to guarantee fairness and transparency in carbon emission trading. Unified rules will make the global carbon market more efficient and effectively promote the achievement of emission reduction targets.

Second, to ensure the proper functioning of the global carbon market, international climate change law should establish a dedicated regulatory body responsible for overseeing and coordinating carbon market transactions. This body would be tasked with developing and enforcing uniform carbon trading standards, ensuring market transparency and compliance.

Finally, a cross-border carbon tax could be introduced as part of enhancing the enforcement of hard law, compelling high-emission countries and businesses to bear the cost of their carbon emissions. A carbon tax would not only help balance the differences in carbon pricing among countries but also provide an additional source of funding for climate finance.

### **3.2 Maintaining the Flexibility and Inclusiveness of Soft Law**

#### **3.2.1 Maintaining the Flexibility of the Nationally Determined Contributions (NDCs) Mechanism**

The flexibility of the Nationally Determined Contributions (NDCs) mechanism allows each Party to independently decide its emission reduction targets based on its economic development, technological capacity, and emission reduction potential. Future international climate change law should continue to strengthen this soft law mechanism, ensuring its flexibility and inclusiveness to promote global climate cooperation.

First, it is essential to maintain differentiation between the emission reduction obligations of developed and developing countries, while ensuring the overall global emission reduction targets are met. For Small Island Developing States (SIDS) that are particularly vulnerable to the impacts of climate change, the soft law mechanism can also provide additional adaptation measures and support.

Second, there should be room for dynamic adjustments to the updating of NDCs. Encouraging each Party to adjust and enhance its emission reduction commitments based on the latest climate science, technological progress, and emission reduction potential will allow countries to continuously raise their climate ambitions without being constrained by overly rigid mandatory targets.

#### **3.2.2 The Soft Law Nature of Climate Finance**

The implementation of climate finance requires both the enforceability of hard law, ensuring that financial commitments are fulfilled and the use of funds is transparent, and the flexibility of soft law, ensuring that the flow of climate finance, particularly between developed and developing countries, is not overly constrained. This flexibility allows funds to flow where they are most needed in global climate cooperation.

First, under a soft law mechanism, each Party can set its financial commitments based on its capacity and climate needs. For example, developed countries have committed to providing \$100 billion per year in climate finance under the Paris Agreement framework, but the actual amount can be adjusted according to global economic conditions and the economic capacity of each country. The inclusiveness of soft law allows Parties to retain flexibility in their climate finance commitments, while also encouraging more non-state actors to participate in supporting climate finance.

Second, with the support of soft law mechanisms, the use and distribution of climate finance can be adjusted based on the specific climate adaptation needs and emission reduction capacities of different regions. For instance, developing countries can decide how to allocate climate finance based on their specific climate challenges (such as rising sea levels or extreme weather events). The distribution of funds can also be safeguarded through multilateral cooperation frameworks, addressing the limitations of rigid hard law provisions in climate finance.

## **4. Conclusion**

This paper, through a comparative analysis of the “dilemmas” of the Copenhagen Accord and the “breakthroughs” of the Paris Agreement, reveals that to promote international climate cooperation, future international climate change law should continue to seek a balance between hard law and soft law, providing an inclusive, dynamic, and flexible platform for global climate action. Future research should continue to focus on the implementation effectiveness of the Paris Agreement and explore how balancing hard and soft law can further strengthen international cooperation in order to achieve global climate goals.

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