

FOREWORD

To mark the 10th anniversary of the *Melbourne Journal of International Law*, we were inspired to reflect upon the past and to consider our future; to recall the scholarly contributions of the *Journal* and the shifts within international law over the last decade; and to explore the aspirations and challenges that lie ahead. In addressing the latter objective, we are proud to present our symposium on ‘Climate Justice and International Environmental Law: Rethinking the North–South Divide’.

Of the myriad issues facing the international community, climate change poses a central challenge to the workings of international law and, more importantly, our global livelihoods. Undoubtedly, the uniquely global nature of climate change requires a multilateral response. As we write, momentum is building with the initial phase of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* drawing to a close, and preparations well underway for the Copenhagen Climate Change Conference in December 2009. This symposium thus seeks to intervene at a critical moment in international law, a moment in which the scope and content of any post-*Kyoto* agreement must be determined and agreed upon.

In focusing on ‘climate justice’, the symposium places questions of global equity and distributional justice at the core of international debates around climate change mitigation and adaptation. While the *UNFCCC* principle of ‘common but differentiated responsibilities’ presently recognises the differing historical state responsibilities for climate change as well as their varying capacities for mitigation and adaptation, this symposium seeks to complicate the ‘easy’ dichotomies of North/South, developed/developing and First World/Third World. In doing so, some central questions persist: Is it problematic to conceptualise global justice with reference to such binary categorisations (and what does this overlook) or is this terminology nonetheless useful in providing a language for thinking through unequal distributions of material wealth and global power relations? Can justice be found in present legal frameworks, through, for example, the ‘common but differentiated responsibilities’ principle or the forms of collaboration facilitated through the increasingly criticised *Kyoto* flexibility mechanisms? And ultimately who (or what) will bear the cost of global action (or inaction)? With these questions in mind, we invited leading scholars and practitioners to provide their insights on the meaning of climate justice and its implications for international law. In particular, we asked contributors to explore the intersections between law and emerging ideas of climate justice, and how international environmental law is shaped by and in turn reshapes (or fixates, or interrogates) our understandings of the North–South divide.

The disjuncture between law and justice, or law and politics, are themes that strongly resonate throughout the symposium pieces. Our symposium begins with Karin Mickelson’s suggestion that the greatest hope for attaining an equitable response to climate change lies in pursuing a new kind of climate change politics — a ‘politics of the improbable’ — that entails reconceptualising the power dynamics and embedded assumptions within South–North relations. Similarly, for Jeremy Baskin, climate justice is also ‘something both beyond and different

from' climate law. In focusing on how to negotiate the North–South divide, Baskin argues that we must reach a genuinely global and just solution in order to avoid the destructive and disparate effects of climate change — that is, that 'might needs right'. Thus, Baskin's think piece posits a possible framework that can assess the 'justness' of an international climate change agreement.

For Cinnamon Carlarne, climate justice necessitates examining the implications of mixing economic and security concerns in climate change policy. While recognising that climate change will inevitably be interlinked with these motivations, Carlarne argues that climate policies must be 'wielded for the greater good' and deeply informed by equity concerns. Mairon Bastos Lima also takes up these concerns regarding global equity, focusing on biofuel governance. As biofuel is increasingly seen as a viable alternative energy source, Bastos Lima argues that a more rigorous and democratic governance framework is required to give voice to the less powerful, in particular, the affected communities in the global South.

Three further pieces challenge us to consider law as a forum to facilitate justice. For Angela Williams, the concept of solidarity provides a vehicle for enlivening the principle of 'common but differentiated responsibilities'. Williams argues that the language of solidarity can foster genuine global collaboration that bridges the North–South divide and promote a truly global climate change strategy. Similarly, Maxine Burkett turns to a legal framework of climate reparations to redress the vast disparity of suffering and displacement caused by climate change, focusing on the plight of the 'climate vulnerable'. A reparations frame, for Burkett, is profoundly morally transformative, as the developed world must assume responsibility for its past destructive behaviour and the consequences that flow therefrom. Lee Godden's article, in contrast, emphasises how the present focus on 'flexible' market mechanisms in climate change law signals the modern shift from the state power over Death to the governance of life as Desire, thereby relegating the focus on central concerns for justice. Writing from a critical legal perspective, Godden evokes the haunting spectre of Death and Chaos in Eliot's *The Waste Land* as an entry point for considering the redemptive challenges posed to law by climate change.

To conclude the symposium, Jane McAdam's review essay of Michelle Foster's *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* demonstrates how climate change pervades other areas of international law. McAdam extends Foster's analysis of socioeconomic refugees by critically investigating the possibility of recognising persons displaced as a result of climate change within current international refugee law.

We express our sincere gratitude to those who gave us guidance and insight including Lee Godden, Shaun McVeigh and our Advisory Board. We also thank our generous sponsors, particularly our Principal Symposium Sponsor, AGL Energy; our Symposium Supporter, Freehills; and our Major Sponsors, Allens Arthur Robinson and Mallesons Stephen Jaques.

We look forward to the *Journal* remaining a critical forum for scholarly debate in the coming years.

LAURA BELLAMY, SARA DEHM AND JEREMY LEUNG
2009 Editors, *Melbourne Journal of International Law*
October 2009