

BEYOND A POLITICS OF THE POSSIBLE? SOUTH–NORTH RELATIONS AND CLIMATE JUSTICE

KARIN MICKELSON*

This symposium's issue on 'Climate Justice and International Environmental Law: Rethinking the North–South Divide' asks contributors 'to explore the intersection 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'. In relation to the former, I posit that there appears to be a profound disconnect between the law and the politics of climate change, one that reflects a broader disconnect between those who view the challenge posed by climate change through an ethical lens, and those who see it in pragmatic terms. In relation to the latter, I consider the various arguments as to why we need to rethink North–South relations, and explain why many of those arguments need to be critically evaluated in terms of their embedded assumptions. I conclude by arguing that climate change requires us to move beyond a 'politics of the possible' to a 'politics of the improbable'.

CONTENTS

I	Introduction	1
II	A New Era of Climate Change?	3
III	A New Era of South–North Relations?	8
IV	A New Kind of Climate Change Politics	12

Politics is the art of the possible.

Otto von Bismarck¹

Politics is not the art of the possible. It consists in choosing between the disastrous and the unpalatable.

J K Galbraith²

I INTRODUCTION

The Editors have posed a challenging set of questions to be addressed in this symposium issue on 'Climate Justice and International Environmental Law: Rethinking the North–South Divide'. As I have pondered these questions, I have joined thousands of others throughout the world who are doing much the same thing this year. The year 2009 has become critically important in the minds of those who follow the climate change negotiations, with the deadline for achieving a post-*Kyoto* consensus looming at the upcoming Copenhagen Climate Change Conference in December. On the United Nations Framework Convention on Climate Change ('UNFCCC') website, a 'Countdown to Copenhagen' appears in a prominent position, with the days, hours, minutes and seconds all

* Faculty of Law, University of British Columbia. The author would like to thank the Editorial Committee of the *Melbourne Journal of International Law* for their assistance, and the two anonymous reviewers of this piece for their thoughtful comments.

¹ 'Remark to Meyer von Waldeck, 11 August 1867' in Fred R Shapiro (ed), *The Yale Book of Quotations* (2006) 86.

² 'Letter from J K Galbraith to John F Kennedy, 2 March 1962' in J K Galbraith, *Ambassador's Journal: A Personal Account of the Kennedy Years* (1969).

ticking away. When I first saw it, I could not help thinking of the famous 'Doomsday Clock',³ which has long been used to illustrate how close we are to catastrophic destruction. The analogy was heightened when I learned that the organisation that maintains the 'Doomsday Clock', now monitors climate-changing technologies as one of the means by which humanity could obliterate itself.⁴

As awareness of the potentially calamitous impacts of climate change has grown and spread, the recognition of how profoundly those impacts will affect the most vulnerable and marginalised has also increased. While an understanding of the ethical dimensions of climate change is by no means a recent phenomenon,⁵ notions of 'climate justice' are gaining increasing visibility in the current discourse regarding climate change. In 2002, representatives from a wide range of social and environmental justice organisations met in Bali to proclaim the 'Bali Principles of Climate Justice', in which they resolved 'to begin to build an international movement of all peoples for Climate Justice'.⁶ Since then, civil society groups and movements from all over the world have taken up that challenge with enormous dedication and enthusiasm.⁷ From Durban⁸ to Bangkok,⁹ Brussels¹⁰ to Belem,¹¹ meetings on climate justice have been held on every continent. The resulting declarations and documents have always insisted

³ See, eg, Bulletin of the Atomic Scientists, *Doomsday Clock Overview* (2009) <<http://www.thebulletin.org/content/doomsday-clock/overview>>.

⁴ *Ibid.*

⁵ There is a long-standing body of scholarly literature on the ethics of climate change. For an early example, see Henry Shue, 'The Unavoidability of Justice' in Andrew Hurrell and Benedict Kingsbury (eds), *The International Politics of the Environment: Actors, Interests and Institutions* (1992) 373. In recent years, a substantial body of writing has begun to develop on more specific topics, such as different approaches to assigning and quantifying responsibility for climate change (for example, equal per capita entitlements or historical responsibility for current greenhouse gas concentrations). For a useful and relatively recent survey of the various ethical aspects of climate change, see Donald Brown et al, *White Paper on the Ethical Dimensions of Climate Change* (White Paper, Rock Ethics Institute, Penn State University, 2006). For an online bibliographic compilation on ethics and climate change, see Rock Ethics Institute, *Bibliography* (2006) <<http://rockethics.psu.edu/climate/education/bibliography.shtml>>.

⁶ International Climate Justice Network, 'Bali Principles of Climate Justice' (Paper presented at the United Nations World Summit on Sustainable Development, Johannesburg, South Africa, 29 August 2002) <<http://www.ejnet.org/ej/bali.pdf>>.

⁷ For a useful overview of the climate justice movement, see J Timmons Roberts, 'Globalizing Environmental Justice' in Ronald Sandler and Phaedra C Pezzullo (eds), *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement* (2007) 285, 293.

⁸ Durban Group for Climate Justice, *Durban Declaration on Carbon Trading* (Durban, South Africa, 10 October 2004) <<http://www.carbontradewatch.org/durban/statementeng.pdf>>.

⁹ A Climate Justice Conference was held in Bangkok, Thailand from 12–14 July 2008. For the corresponding conference report, see *Towards Climate Justice in Asia* (Climate Justice Conference Summary Report, 12–14 July 2008) <http://www.ecologicaldebt.org/documentos/noticias/thailand_climate_justice_conference_summary.doc>.

¹⁰ A conference on 'Global Contract Based on Climate Justice — The Need for a New Approach concerning International Relations' was held in the European Parliament in Brussels on 11 November 2008. It was organised by the Ecosocial Forum Europe in cooperation with the Potsdam Institute for Climate Impact Research. For the related conference summary and presentations, see Global Contract, *Conference Summary and Presentations* (2008) <http://www.global-contract.eu/Conference_Summary_and_presentations_index-23.html>.

¹¹ World Social Forum, *Climate Justice Assembly Declaration* (Belem, Brazil, 4 February 2009) <http://www.tni.org/detail_page.phtml?act_id=19174>.

upon the need to foreground equity in the climate change negotiations, and often called for a fundamental shift in our political and economic systems and thinking. Furthermore, governments have also invoked the language of climate justice. For example, speaking at a ‘Technical Briefing on Historical Responsibility as a Guide to Future Action to Address Climate Change’, on 4 June 2009,¹² Bolivian Ambassador Angelica Navarro emphasised her state’s particular vulnerability to climate change, before going on to deliver an impassioned plea that historical responsibility must be seen as the basis for an enormous and unpaid ‘carbon debt’ that is part of a broader ecological debt owed by developed countries to developing countries. Writing in 2006, Saleemul Huq and Camilla Toumlin of the International Institute for Environment and Development argued that there have been three eras of climate change, and that the third and most recent has concern for justice at its core:

A shift is happening in the way climate change is perceived, from just an environmental issue, or even an environment and development issue, to one of global justice, or more correctly, global injustice. One group of people (namely people everywhere, but mostly in rich countries) have caused the problem, and another group of people (namely poor people especially in poor countries) will suffer most of the adverse consequences, in the near term.¹³

It is in light of this growing awareness that climate change is, at its core, a problem of global injustice — coupled with a sense of urgency (if not, of impending doom) regarding the need for a meaningful response to the problem — that I propose to address the two questions posed by the Editors. They have asked us, first, ‘to explore the intersection between law and emerging ideas of climate justice’; in so doing, I consider whether we have, in fact, moved into a new era of climate change in which justice is perceived as fundamental. Second, they have asked us to explore ‘how international environmental law is shaped by and in turn reshapes (or fixates, or interrogates) our understandings of the North–South divide’. In response, I grapple with the question of whether it might be time to rethink the North–South divide, as we are (at least implicitly) invited to do in this symposium.

II A NEW ERA OF CLIMATE CHANGE?

International environmental law has always reflected an understanding that the concept of justice is fundamental to addressing climate change, albeit one that may not dovetail exactly with the understanding of justice articulated by Huq and Toumlin.¹⁴ A major focal point for concerns about justice has been the principle of ‘common but differentiated responsibilities’. The principle did not originate in the context of climate change, but it is here that it has achieved its

¹² Angelica Navarro, ‘Climate Debt: The Basis of a Fair and Effective Solution for Climate Change’ (Paper presented at the ‘Technical Briefing on Historical Responsibility as a Guide to Future Action to Address Climate Change’, Bonn, Germany, 4 June 2009). The Technical Briefing was convened as a special session of the Ad Hoc Working Group on Long-Term Cooperative Action.

¹³ Saleemul Huq and Camilla Toumlin, *Sustainable Development Opinion: Three Eras of Climate Change* (International Institute for Environment and Development, Sustainable Development Opinion, 2006) <<http://www.iied.org/pubs/pdfs/11060IIED.pdf>>.

¹⁴ *Ibid.*

best-known (and most controversial) formulation. It is reflected in the *United Nations Framework Convention on Climate Change*,¹⁵ in strikingly clear terms:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.¹⁶

The *Kyoto Protocol*¹⁷ notably (or notoriously, depending on one's point of view) imposes binding emissions reduction commitments only on developed (or 'Annex I') countries. Even the *Bali Action Plan*,¹⁸ the negotiating platform agreed to at the UN Climate Change Conference held in 2007 — while representing a fundamental breakthrough where developing countries agreed to discuss possible mitigation actions under a post-*Kyoto* regime — continues to reflect the same concerns. Calling for a 'shared vision for long-term cooperative action' in order to achieve the ultimate objective of the *UNFCCC*, the *Bali Action Plan* nonetheless insists that such action must be in accordance with the Convention itself, 'in particular the principle of common but differentiated responsibilities and respective capabilities'.¹⁹ The reference in the *Bali Action Plan* to 'nationally appropriate mitigation actions by developing country Parties' is doubly qualified by specifying that these must be 'in the context of sustainable development' as well as 'supported and enabled by technology, financing and capacity-building, in a measurable, reportable and verifiable manner'.²⁰

Climate change law has been less successful at articulating the broader concerns that are reflected in the concept of climate justice. Let us leave aside for the moment the fundamental question of the extent to which climate change is entwined with current economic and political systems. In general, the climate change regime has addressed the differences in vulnerability to climate change through a focus on support for adaptation, which has received increased attention in recent years. Scholars have identified various explanations as to why adaptation to climate change received little attention from either a legal or a scientific perspective in the early years of the climate change regime.²¹ Among the most prominent is that a discussion of adaptation was seen as defeatist and unproductive, since it assumed that mitigation efforts would be insufficient to address anthropogenic climate change, and the view that adaptation raised the question of who should 'foot the bill', which was objectionable to developed

¹⁵ Opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994) ('*UNFCCC*').

¹⁶ *Ibid* art 3(1).

¹⁷ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005) ('*Kyoto Protocol*').

¹⁸ Conference of the Parties ('COP'), UNFCCC, *Report of the Conference of the Parties on Its Thirteenth Session, Held in Bali from 3 to 15 December 2007, Addendum — Part Two: Action Taken by the Conference of the Parties at Its Thirteenth Session*, 13th sess, UN Doc FCCC/CP/2007/6/Add.1 (14 March 2008) 3 (*Decision 1/CP.13 — Bali Action Plan*) ('*Bali Action Plan*').

¹⁹ *Ibid*.

²⁰ *Ibid*.

²¹ E Lisa F Schipper, 'Conceptual History of Adaptation in the UNFCCC Process' (2006) 15 *Review of European Community and International Environmental Law* 82.

countries.²² In any event, it soon became clear that dealing with adaptation was a necessity. This political consensus was reflected in the establishment of the Adaptation Fund as part of the 2001 *Marrakesh Accords*.²³ More recently, the Ad Hoc Working Group on Long-Term Cooperative Action, set up pursuant to the *Bali Action Plan*, was called upon to consider ‘enhanced action on adaptation’ as an integral part of its mandate. There is no doubt that vulnerability to climate change tends to be understood in terms of differences *between* states, rather than *within* states, which fails to capture the full spectrum of climate justice concerns. Nevertheless, at least some of those concerns are reflected in the existing legal framework.

Climate change politics, on the other hand, has reflected a more deeply contested understanding of what justice requires. From the earliest days of international political deliberation and debate on the issue, there has been resistance to seeing the climate change regime as being, in part, about sustainable development and international equity, and criticism of its exclusion of binding commitments for developing country parties. For example, one commentator characterised the *UNFCCC* as ‘the absolute lowest common denominator outcome’, not because of its lack of binding obligations for the North, but because of ‘the South’s unwillingness to accept any responsibility for mitigating [the] adverse effects of the build-up of greenhouse gases caused by development in the North, unless the North [was] willing to increase substantially the development assistance given to the South’.²⁴ In that author’s view, this attitude, coupled with the North’s unwillingness to foot the bill, led to a weak and ‘inconsequential’ Convention. The discussion of developing country commitments continued during the process leading up to the first Conference of the Parties (‘COP-1’) in April 1995. That meeting adopted the *Berlin Mandate*,²⁵ launching a new round of negotiations that was to result in the *Kyoto Protocol*, based on the recognition that commitments for developed country parties were inadequate. Developing country commitments were specifically excluded. Nevertheless, the debate about the leadership and obligations of developed countries persisted, reflected most notably when then United States President George W Bush indicated that the US would not ratify the *Kyoto Protocol* due, in part, to the perceived ‘unfairness’ of excluding large developing country emitters from obligations. The breakthrough in Bali regarding a willingness to discuss some form of mitigation action for developing countries has, if anything, intensified the debate, rather than laid it to rest.

²² Ibid 84.

²³ The *Marrakesh Accords* are the decisions adopted by the seventh session of the COP: COP, UNFCCC, *Report of the Conference of the Parties on Its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001*, 7th sess, UN Doc FCCC/CP/2001/13 (21 January 2002) (‘*Marrakesh Accords*’).

²⁴ Lawrence E Susskind, ‘What Will It Take to Ensure Effective Global Environmental Management? A Reassessment of Regime-Building Accomplishments’ in Bertram I Spector, Gunnar Sjöstedt and I William Zartman (eds), *Negotiating International Regimes: Lessons Learned from the United Nations Conference on Environment and Development (UNCED)* (1994) 221, 224.

²⁵ Ad Hoc Group on the Berlin Mandate, UNFCCC, *Implementation of the Berlin Mandate: Proposals from Parties*, UN Doc FCCC/AGBM/1997/MISC.1/ADD.8 (1997) 8 (‘*Berlin Mandate*’).

A *New York Times* editorial, published on 16 June 2009, can be said to exemplify many aspects of the prevailing attitude.²⁶ Entitled ‘Climate Trap’, it begins by discussing attempts on the part of various members of the Obama Administration and other US Government officials to engage China in discussions about climate change. The editorial reports that the Speaker of the House of Representatives, Nancy Pelosi, who had visited China in May 2009 accompanied by other Congressional leaders, ‘found herself greatly encouraged by the dialogue but deeply afraid that the two countries would fall into an old trap: hiding behind each other so that neither would have to do anything difficult or expensive’.²⁷ The editorial goes on to characterise this comment as a ‘legitimate fear’, noting that the US has resisted accepting binding emissions reduction commitments unless developing countries like China take on similar commitments, while China has insisted that the developed countries (namely the US), ‘move first and do more’ because of their historical contributions to greenhouse gas concentrations.²⁸

Perhaps attempting to present a balanced view, the editorial seems to equate the US and China and their respective positions. It notes that the US tops the list of per capita emitters of greenhouse gases, while characterising China as the ‘biggest overall emitter’.²⁹ It mentions that steps have already been taken by each country in relation to climate change. However, the gaps in the editorial’s analysis are striking. The issue of historical contributions to greenhouse gas concentrations is mentioned only in the context of discussing how the Chinese justify their stance. There is no indication that this could be a legitimate concern. More significantly, the editorial makes no mention of the continued significant disparity in per capita emissions, the size of the Chinese population relative to its overall emissions, or what percentage of those emissions originates from its export-oriented industrial sector, much of which is driven by US consumer demand. There is no reference to the applicable legal framework at all, let alone the principle of common but differentiated responsibilities, or anything hinting at its importance in the climate change regime. More surprisingly, the editorial does not reflect an accurate understanding of the current state of negotiations and discussions in relation to emissions limitations in developing countries. It criticises the Chinese Government’s position for assuming that emissions will continue to rise, when in fact many observers take the view that, at least in the short term, China should be limiting emissions growth rather than pursuing absolute emissions reduction.

What is heartening about the editorial is that it proposes that the US forge ahead on climate change initiatives, even in the absence of corresponding Chinese commitments, asserting that setting a positive example is the best option to encourage China to move forward as well. It concludes by acknowledging that ‘[t]his may not be enough to get the Chinese to do what’s necessary, but it will take away an important excuse’.³⁰ However, characterising the Chinese position as an excuse trivialises it and the ideas of fairness that might be said to underlie

²⁶ Editorial, ‘Climate Trap’, *New York Times* (New York, US), 16 June 2009, A20.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

it. In fact, the notion of justice is missing from this analysis altogether. While many would appreciate and share the concern that action need be taken, it is disturbing that this is seen as somehow entirely disconnected from the legal context in which climate change negotiations are taking place.

The attitude reflected in this editorial is far from unique. Sadly, in fact, it should be considered an enlightened one given its insistence on US action, even in the face of Chinese inaction. In my view, this points to a disconnect between the law and politics of climate change that in turn reflects a broader disconnect between those who view the challenge posed by climate change through an ethical lens, and those who see it in pragmatic terms.

For the ‘ethicists’ (if I may be permitted to use this term for the countless activists and scholars who work on issues of climate justice), the ethical dimensions of climate change are fundamental to understanding all aspects of the problem: causes, effects and possible solutions. Whether they champion an approach to responsibility for climate change that is based on historical contributions or present day inequalities, what is central is the view that responsibility and ethics are inextricably connected to one another.

The ‘pragmatists’, on the other hand, seem to feel that ethical considerations have to be downplayed in order to achieve political consensus. Consider the following candid response of Christopher Flavin, President of the Worldwatch Institute, an important US-based non-governmental organisation, when asked early in 2009 about the possibility of carbon emissions being allocated on a per capita basis:

I think that, from an idealistic point of view, that is a wonderful strategy. I think a moral philosopher would have a very hard time disagreeing with it. I think it is, frankly, a nonstarter politically. The world is not going to agree to the kind of large-scale redistribution of income that that would require. I think that what we need is certainly some redistribution of income as part of this process — I would not argue against that — but I think, inevitably, it is going to take a hundred years, at minimum, to actually get to the sort of level playing field in terms of carbon emissions. Countries start at very, very different levels today. There are a lot of accidents of history. Countries have a lot of emissions — for example, China — because they happen to have a lot of coal. There are a lot of poor African countries that just don’t happen to have a lot of fossil fuels, so they have not developed it in part for that reason. I think that addressing it as a purely equity issue is not going to get to that win/win economic opportunity framework, which I think, frankly, is the only way we are going to politically move forward.³¹

I have reproduced the entire answer here because it is so revealing. It clearly assumes a dichotomy between ethics and realism. Almost as significant, however, are the other assumptions implicit in Flavin’s answer. When Flavin states that ‘[t]he world is not going to agree to ... large-scale redistribution of income’, he really seems to mean that the wealthy will not give up their position of privilege. When he talks about ‘accidents of history’, he focuses on the distribution of carbon-based resources, rather than the fact of patterns of unequal and inequitable development. I do not mean to single Flavin out for criticism;

³¹ Christopher Flavin, ‘Fordham Environmental Law Review Fifteenth Annual Symposium, Energy and Climate Change: North and South Perspectives: Keynote Address’ (2009) 19 *Fordham Environmental Law Review* 231, 247–8.

elsewhere in his presentation he does, in fact, argue in favour of an approach that combines a moral understanding with a focus on economic opportunities.³² Nevertheless, when a high profile ‘Northern’ environmentalist feels the need to assert that a ‘win/win economic opportunity framework ... is the only way we are going to politically move forward’, it becomes apparent just how profound the disconnect between ethics and pragmatism really is. And this disconnect makes it difficult to accept that we have entered into a new era of climate change.

III A NEW ERA OF SOUTH–NORTH RELATIONS?

If there is reason to doubt that we have entered into a new era of climate change, it is still possible that we have entered into a new era of South–North relations, or that it might be time to rethink the North–South divide. When one considers why this might be the case, a number of possible reasons come to mind, and although none is particularly new, each illuminates a dimension that needs to be taken into account in assessing the current state of international affairs in relation to climate change.

One is almost purely pragmatic. While there have always been problems with seeing the global South as some kind of monolith, it is certainly possible to argue that it no longer makes any sense to speak of ‘the South’ when countries like China, India and Brazil appear to be in a completely different category and therefore need to be treated in a different way.³³ This is certainly reflected in current demands that larger developing countries accept commitments under the post-*Kyoto* climate change regime, and in the EU view that ‘[d]iffering national circumstances and stages of development in developing countries require differentiated actions and ... levels of ambition’.³⁴ Beyond the confines of the climate change regime, it could be argued that the new political landscape is reflected in new state coalitions, such as ‘BRIC’ (Brazil, Russia, India, China). While the acronym was first coined by an economist to refer to the fastest developing non-OECD nations, it has come to take on greater significance, as the four states themselves have begun to engage in collective dialogue that crosses traditional North–South lines.³⁵

Second, the use of categories such as ‘North’ and ‘South’ arguably obscures the extent to which there is a ‘North’ in the ‘South’ and a ‘South’ in the ‘North’. In the climate change context, this makes it more difficult to focus on the

³² Ibid 245, 247–8.

³³ Of course, there are also differences between countries in ‘the North’ that need to be taken into account. The distinctive treatment accorded to countries with economies ‘in transition’ is only one example.

³⁴ Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a Comprehensive Climate Change Agreement in Copenhagen*, Doc No COM(2009) 39 final (Brussels, Belgium, 28 January 2009) [3.2] <http://ec.europa.eu/environment/climat/pdf/future_action/communication.pdf>.

³⁵ Note, for example, the heads of state of the BRIC countries held their first official summit in June 2009, during which they ‘discussed the current situation in global economy and other pressing issues of global development, and also prospects for further strengthening collaboration within the BRIC’: see BRIC, *Joint Statement of the BRIC Countries’ Leaders* (Statement, First BRIC Summit, Yekaterinburg, Russia, 16 June 2009) <<http://www.kremlin.ru/eng/text/docs/2009/06/217963.shtml>>.

fundamental ethical concerns of responsibility for and vulnerability to climate change. This is reflected in Huq and Toumlin's view that those responsible for the problem are 'rich people everywhere, but mostly in rich countries', yet those who will bear the brunt of its effects will be 'poor people especially in poor countries'.³⁶ In the aftermath of Hurricane Katrina in particular, it is impossible to assert that vulnerability to climate change can be neatly divided along geographical lines. Instead, understanding vulnerability requires attention to race, class and gender, which is consistent with well-established understandings of environmental justice. Among those most vulnerable to climate change are indigenous peoples in the far North, whose way of life is threatened. In fact, indigenous peoples worldwide are likely to experience the effects of climate change in a particularly devastating fashion. As the participants at the Indigenous Peoples Global Summit on Climate Change, held in April 2009, pointed out:

We are experiencing profound and disproportionate adverse impacts on our cultures, human and environmental health, human rights, well-being, traditional livelihoods, food systems and food sovereignty, local infrastructure, economic viability, and our very survival as Indigenous Peoples.³⁷

Even more damning is the argument that 'North-South' not only serves to blur differences within states, but is wilfully deployed to conceal those differences. Walden Bello, a well-known anti-globalisation activist, has insisted that '[i]t is the national elites that spout the ultra-Third Worldist line that the South has yet to fulfill its quota of polluting the world while the North has exceeded its quota'.³⁸ He sees evidence of a commonality of interest on the part of elites worldwide:

When the Bush administration refuses to ratify the Kyoto Protocol because it does not bind China and India, and the Chinese and Indian governments say they will not tolerate curbs on their greenhouse gas emissions because the United States has not ratified Kyoto, they are in fact playing out an unholy alliance to allow their economic elites to continue to evade their environmental responsibilities and free-ride on the rest of the world.³⁹

And finally, it may no longer make sense to talk about 'North' and 'South' because climate change poses a challenge on an unprecedented scale. Leaving aside the issue of vulnerability, climate change is a global problem that requires global solutions. From this perspective, we are all in this together and focusing on a divide between 'North' and 'South' is counterproductive because we need to focus on what unites us rather than what divides us. Even worse, it might actually stymie progress because it creates a false sense that some will be able to insulate themselves from the effects of climate change, when those effects may well be so widespread and far-reaching that no one will be left untouched. Predictions of widespread population movements, so-called 'climate change

³⁶ Huq and Toumlin, above n 13.

³⁷ Indigenous Peoples Global Summit on Climate Change, *The Anchorage Declaration* (Anchorage, US, 24 April 2009) <<http://www.indigenoussummit.com/servlet/content/declaration.html>>.

³⁸ Walden Bello, 'Elites vs Greens in the Global South' (Fall 2008) 47 *Synthesis/Regeneration* 26.

³⁹ *Ibid.*

refugees', underscore the pointlessness of viewing climate change as a problem that will affect 'them' rather than 'us'.

Each of these factors is compelling. Together, they seem to pose an insurmountable challenge to the idea of a North–South divide in relation to climate change. Yet, none is without flaws. While it is true that there is enormous diversity among so-called developing countries, the idea of the global South, like that of the Third World before it, has never been about homogeneity or uniformity. China and India have each experienced significant levels of growth over the last few decades, but even forty years ago, during the height of 'Third Worldism', would it have made sense to equate China with Cambodia, or India with Nepal?⁴⁰ In fact, the disparities between the countries of the South go back to the earliest days of Third World dialogue. In his opening speech at the 1955 Bandung Conference, for example, President Soekarno of Indonesia emphasised the 'spirit of diversity' existing among the participants. He further noted the presence of nations of differing size, religion, and economic and political approach, and pointing out that the gathering sought

to impress on the world that it is possible to live together, meet together, speak to each other without losing one's individual identity; and yet to contribute to the general understanding of matters of common concern and to develop a true consciousness of the interdependence of men and nations for their well-being and survival on earth.⁴¹

Similarly, the awareness of disparities *within* the countries of the South is not new. In the 1960s and 1970s, dependency theory and world systems theory emphasised the distinction between the 'core' (capital-intensive nations) and the 'periphery' (labour- and/or resource-intensive nations), but also understood that there was a 'core of the periphery' and a 'periphery of the core'.⁴² There is no doubt that some in the 'South' may have the resources to protect themselves from at least some of the effects of climate change, while many in the 'North' might be unable to do so. The fact remains, however, that a map of global vulnerability to climate change still reveals a significant North–South divide. It is essential to keep in mind that 'vulnerability' to climate change is not the same as 'susceptibility' to climate change. According to the Intergovernmental Panel on Climate Change ('IPCC'):

Vulnerability is the degree to which a system is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the character, magnitude, and rate of climate change and variation to which a system is exposed, its sensitivity, and its adaptive capacity.⁴³

⁴⁰ Cambodia and Nepal fall into the category of 'Least Developed Countries' in the UN system. See, eg, United Nations Statistics Division, *Composition of Macro Geographical (Continental) Regions, Geographical Sub-Regions, and Selected Economic and Other Groupings* <<http://unstats.un.org/unsd/methods/m49/m49regin.htm#ftnc>>.

⁴¹ President Soekarno, Indonesia, 'Opening Keynote Address at the Asian–African Conference' (Speech delivered at the Asian–African Conference, Bandung, Indonesia, 18–24 April 1955).

⁴² See generally Immanuel Wallerstein, *World-Systems Analysis: An Introduction* (2004).

⁴³ IPCC, 'Summary for Policymakers' in Working Group II, IPCC, *Climate Change 2007: Impacts, Adaptation and Vulnerability* (IPCC Fourth Assessment Report, 2007) 7, 21.

In addition to the far 'North', the regions that are among the most susceptible to climate change are low-lying coastal areas, small islands, and areas already experiencing water scarcity. Countries with these characteristics are, overwhelmingly, located in the global 'South', and frequently lack the infrastructure and resources to adequately respond to the challenges posed. While it is true that elites within those highly-vulnerable countries might be able to insulate themselves from some of the likely impacts, it is worth asking how far that ability would extend if those impacts turn out to be as devastating as many have predicted.

This last point links to the argument that 'North-South' is deployed to conceal differences within states. With the greatest respect to Bello, it is simply not accurate to state that only Southern elites espouse the view that 'the South has yet to fulfil its quota of polluting the world while the North has exceeded its quota'.⁴⁴ Southern-based civil society organisations such as the Third World Network and Centre for Science and Environment have championed variations of this view.⁴⁵ The global climate justice movement, from church-based organisations to environmental justice organisations, sees the acknowledgment of differentiated obligations as crucial to an equitable outcome of the current round of negotiations. And it is invoked by governmental representatives from all regions and backgrounds, in any number of different settings, at least some of whom have impeccable representative credentials.

Regardless of the relative merit of arguments that can be made in relation to whether it might be time to rethink the North-South divide, a fundamental question remains: should we do so? The preceding discussion has shown that we must recognise the limitations of our categories. There are significant differences in perspective and interest among the various Southern states, which the debates about climate change have revealed with crystal clarity. One need only consider the chasm between the small-island states, represented in the Alliance of Small Island States ('AOSIS'), whose calls for drastic action have repeatedly fallen on deaf ears, and the petroleum-exporting states, who have insisted that the interests of states 'with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change'⁴⁶ be taken into account. Furthermore, the idea of common but differentiated obligations does not necessarily entail complete uniformity of treatment among countries with widely differing circumstances, and thus a lack of differentiation among the countries of the 'South'. China, for example, has indicated that nationally-appropriate mitigation actions should take into account each developing country's 'respective capacities and specific national circumstances'.⁴⁷ Scholars and activists have attempted to fashion approaches to allocating emissions

⁴⁴ Cf Bello, above n 38.

⁴⁵ See, eg, Martin Khor, Third World Network, 'Development Issues Crucial for Post-2012 Climate Regime' (Briefing Paper No 1, UN Climate Change Conference, Bali, Indonesia, 3-14 December 2007) <<http://www.twinside.org.sg/climate.briefings.htm>>; Centre for Science and Environment, 'CSE Charts an Agenda for Action in Poznan, Calls for Tough Action to Reduce Emissions and an Agreement Based on Equity' (Press Release, 4 December 2008) <http://www.cseindia.org/AboutUs/press_releases/press_20081204.htm>.

⁴⁶ UNFCCC, above n 15, art 4(10).

⁴⁷ *China's Views on the Fulfillment of the Bali Action Plan and the Components of the Agreed Outcome to be Adopted by the Conference of the Parties at Its 15th Session* (Submission, 6 February 2009) 2 <http://unfccc.int/files/kyoto_protocol/application/pdf/china060209.pdf>.

entitlements that reflect more nuanced distinctions between nations that take into account actual consumption levels.⁴⁸

It is all too easy to dismiss the idea of the ‘global South’ as opportunistic posturing or naïve pleading. At worst, it appears to be an artificial coalition in which the larger developing countries hide behind the smaller, and differences are denied or swept under the carpet. At best, it could be seen as a quaint invocation of platitudes about solidarity and shared aspirations. Yet these types of criticisms have been raised against any and every attempts by developing countries to capitalise on the strength in numbers that has tended to be a poor substitute for real economic clout and political leverage. For, in the end, what may be most remarkable about the idea of the South is its staying power. The idea that developing countries are united by more than what divides them has a resonance that somehow transcends the passage of time as well as changes in circumstance and nomenclature.

Another possibility comes to mind. It is that ‘rethinking’ does not necessarily mean rejecting or abandoning. Perhaps it is time to rethink the ‘North–South’ divide by re-embracing it, because we now recognise that long-standing demands for global justice are no longer abstract or theoretical. Rather, they are concrete, real and quantifiable. We cannot ignore either historical disparities in contributions to greenhouse gas concentrations or present day inequalities in per capita emissions. Both result in unequal contributions to a problem, the effects of which will be felt throughout the international community, and are likely to have particularly tragic consequences among the world’s most vulnerable and marginalised populations. A genuine engagement with inequality with regard to both responsibility and vulnerability might lead to a different way of approaching climate change. However, this would require a fundamental change in approach.

IV A NEW KIND OF CLIMATE CHANGE POLITICS

To a very large extent, climate change politics over the last 20 years seems to have been all about the politics of the possible, what is acceptable within the parameters of mainstream political, economic and social thinking. Looming above this bureaucratic logjam, however, are the truly frightening implications of climate change for all life on this planet. Galbraith’s statement quoted above seems to encapsulate our current dilemma. Governments (as well as industry and individuals) have resisted the unpalatable prospect of re-evaluating many of our assumptions at a fundamental level. On the other hand, the disastrous implications of maintaining the status quo are invoked with increasing frequency and urgency. The ramifications are increasingly difficult to ignore.

⁴⁸ See, eg, Paul Baer et al, ‘Greenhouse Development Rights: Towards an Equitable Framework for Global Climate Policy’ (2008) 21 *Cambridge Review of International Affairs* 649, 649. The authors note that:

By taking into account the distribution of income and emissions within countries, and calculating national obligations as if they were the aggregated obligations of individuals, the framework treats every global citizen identically, and allocates obligations even to poor countries that are proportional to their actual middle-class and wealthy populations.

Somehow, then, we need to move beyond a politics of the possible. Some might argue in favour of a pragmatic ‘politics of the unpalatable’, which is an acknowledgment that we need to shift away from ‘business as usual’ in order to meet the challenge posed by climate change. Others might boldly embrace Bataille’s ‘politics of the impossible’, a subversion of all accepted wisdom, which some may see reflected in the global justice movement worldwide and its demands for radical reform.⁴⁹ What may be required, however, is a politics of the improbable — more demanding than the first option, more modest than the second. And it is here that notions of climate justice will have to play a central role. The pragmatists’ assumption that we need a ‘win/win economic opportunity framework’ may be setting our sights too low. After all, appeals to enlightened self-interest seem to have met with limited success to date. It may be time to call for an ethic of responsibility instead.

A politics of the improbable would be based on the recognition that what we are facing requires a leap of faith, an acknowledgement of how far beyond our comfort zones we are. It would be based, above all, on a sense of hope, that *Homo sapiens* as a species, that we as a collective, no matter how unlikely it may seem, will be able to meet the challenge before us and change course before it is too late.

⁴⁹ See Jean-Michel Besnier, ‘Georges Bataille in the 1930s: A Politics of the Impossible’ (1990) 78 *Yale French Studies* 169 (Amy Reid trans).