Conceiving the Rationale for International Climate Law

Benoît Mayer
PhD candidate, National University of Singapore Faculty of Law
bmayer@nus.edu.sg
+6598914648
5 impasse Sorano, 31100 Toulouse, France
http://www.benoitmayer.com

Abstract

A rationale is a reasoned narrative used to justify a norm or set of norms; in turn, it determines the expectations that one holds from the law and provides a framework in which complementary norms are bargained. This article proposes a reflection on the elusive rationale for international climate law. Its first, analytical claim is that there is currently no consensus on such a rationale – an absence likely to impede climate negotiations. References to "equity," "common but differentiated responsibilities" and "respective capabilities" in existing climate law provide insufficient guidance to ongoing negotiations, reflecting an agreement to disagree rather than a common vision. The construction of a rationale is prevented by protracted disputes regarding the ethical grounds relevant to climate law and by the ambivalence of national interests, which are essentially social constructs. A second, normative claim of this article is that the rationale for climate law should be construed as a hybrid narrative reconciling moral aspirations with pragmatic constraints. Thus, it is submitted that the concept of complex interdependence could be applied to climate change to emphasize existing national interests in fostering global sustainable development. Although important debates remain, complex interdependence provides essential guidance by calling states to take moral arguments into account, in their own interest – when such arguments are widely accepted by civil societies – in order to avoid human destitution and resentment and to preclude the possibility of disastrous consequences on international peace and security.

Keywords: Climate Law, Complex Interdependence, Ethics, International Relations, Rationale.

1. Introduction

A growing trend of literature in moral philosophy reflects on what climate law should be; while another trend, dominated by political scientists and lawyers, is interested in the technicalities of climate law – the specific architecture that could foster cooperation. Less attention has focused, in the interstice between ethics and law, on the construction of a rationale for climate law.

A rationale is a reasoned narrative to which different actors agree (explicitly or not) as justification for a specific norm or set of norms. A rationale is neither pure ethics (it can be unethical), nor generally pure politics: it is a narrative, grounded in principles, which justifies certain norms. At first, a rationale may differ from the real motivation of individual decision-makers, but, through the constraints of discourse consistency and the political dynamics that it initiates, it immediately becomes more than a pure façade. As a public moral discourse assented by the law, a rationale gives meaning to norms,[1] shapes new expectations, frames public debates, influences lawmakers and secures commitment for implementation. The difficulties encountered by international climate negotiations during the last two decades (in particular relating to the differentiation between developed and developing states) and the inability of the climate regime to achieve substantial targets may largely be related to the fact that the idea of climate change means different things to different people (Hulme 2009), hence raising different expectations for global governance ; that is to say, from the absence of a consensual narrative widely accepted as the rationale for climate law.

Some of the first climate negotiations, held in Nairobi in 1991, focused on defining a ground for cooperation (INC 1991, 17), but they only led to the formulation of some vague principles whose meaning remains essentially contested: "equity," "common but differentiated responsibilities" and "respective capabilities" (1992 Framework Convention on Climate Change [UNFCCC], art. 3.1). Negotiations over the following two decades focused on concrete provisions rather than on the reason for adopting them, as if no time were to be wasted. However, the absence of a common vision hindered negotiations. The inability of the UNFCCC regime to define a rationale for climate law has also impeded further developments in other forums, thus contributing to the fragmentation of climate law in "a varied array of narrowly-focused regulatory regimes" (Keohane and Victor 2011, 7).

This article submits that defining a rationale for international climate law would serve two main purposes. First, a coherent rationale would facilitate international negotiations by defining a common frame of reference and, most important, by building shared expectations (or at least by precluding unreasonable demands). Second, as a narrative not just about what ought to be but also about why one should strive for it, a persuasive rationale would strengthen public commitment and facilitate domestic implementation beyond the dangerous rhetoric of national interests.

This article argues that there is currently no such clear and consensual vision of climate cooperation because, on the one hand, the nature and relevance of ethical guidance is disputed, and, on the other hand, national interests are ambivalent social constructs. Moreover, it suggests that cooperation with regard to climate change is guided by an inextricable mixture of ethics and interests, and that a hybrid rationale bridging ethics and

[1] Thus, the "object and purpose" of a treaty provide support for interpretation of a norm (1969 Vienna Convention on the Law of Treaties, art. 31.1).

politics, which is possibly based on the concept of complex interdependence, should prove able to reconcile both by talking ethically to states' interests.

2. Disputed ethical narratives

Unlike many fields where cooperation is seen simply as pursuing national interests, climate law, together with human rights law, is different because ethics is often expected to play a more instrumental role (Humphreys 2010). However, there is no consensus about how to characterize climate change as a moral issue, either as a question of responsibility or one of solidarity. This profound disagreement, unlikely to be settled soon, undermines the role of ethics in constituting a consensual narrative that justifies climate law.

2.1. The responsibility narrative

One way to justify climate law is as a form of restorative justice: that is, as a regime in charge of implementing the cessation of wrongful conducts and, even more, the reparation of certain "injuries" caused by such wrongful conducts (e.g. Caney 2005; Rajamani 2006, 87). The argument raises a host of questions relating to the historical scope of the "injury" to be taken into account (in particular prior to the discovery of climate change, whenever this is held to be); to the individual or collective nature of such responsibility (and whether states can be held responsible for the conduct of previous generations); and to whether some inflexions of the principle of responsibility may be justified in cases of "mass tort" caused without intention and sometimes without knowledge.

Responsibility is in principle a firm ground for international cooperation, as it is well established that "[e]very internationally wrongful act of a State entails the international responsibility of that State" (ILC 2001, art. 1). In the classical 1941 *Trail Smelter* arbitral award, Canada was compelled to compensate the United States for transboundary environmental damage. The "no harm" principle, affirmed by principle 21 of the 1972 Stockholm Declaration on Human Development and principle 2 of the 1992 Rio Declaration on Environment and Development, is now part of customary international law (Sands and Peel 2012, 196; and generally Mayer 2014).

However, climate negotiations have not fully acknowledged the relevance of responsibility. Notoriously, the UNFCCC alludes to responsibility when it recognizes that "the largest share of historical and current emissions of greenhouse gases has originated in developed countries" (3rd recital) before affirming the duty of developed countries to "take the lead in combating climate change and the adverse effects thereof" (art. 3.1). Yet, the concept of "common but differentiated responsibilities" is ambiguous, for some construe "responsibility," there, as a reference to an unspecific duty of assistance, instead of the causal, retrospective responsibility of the injurer. Despite a provision of the UNFCCC calling for developed states to assist developing ones in "meeting costs of adaptation" (UNFCCC art. 4(4)), and although the 2010 Cancun Agreements reaffirmed the leading role of developed states "*owing to [their] historical responsibility*" (2nd recital before ¶36, emphasis added), developed states have consistently opposed the adoption of any language on "compensation" within the Conference of the Parties' (COP) decisions. While agreeing to the creation of the Warsaw International Mechanism on Loss and Damage, they also precluded any substantive trade-off with post-2020 commitments by disconnecting the review of this mechanism (at COP 22 in 2016) from the adoption of the outcome of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (at COP 21 in 2015).

2.2. The solidarity narrative

Another way to justify climate law relates to a broader consideration for global justice (Beitz 1975; Pogge 2002) or simply to the commitment of the capable to assist the needy. At first reluctant to consider justice beyond the context of national community, John Rawls cautiously conceded a "duty to assist other peoples living under unfavourable conditions" (1999, 37). With regard to climate change, the solidarity narrative raises questions on our individual duty to support the needy states' extraterritorial obligations – and obligations to cooperate – but also inter-species and intergenerational justice.

Although the solidarity narrative certainly promotes differentiation between states, it grounds such differentiation in capability-related circumstances, whereas the responsibility narrative is more inclined to develop a rhetoric of culpability. Thus, the solidarity narrative does not distinguish climate law from a multitude of other fields – poverty alleviation, humanitarian relief or development more generally – where it often appears that developed states *should*, but do not *have to* help the needy. The "soft" duty of assistance, or purely *ex gratia* assistance suggested by the solidarity narrative, stands in sharp contrast to the more specific and stronger duty of repairing injuries following on from the responsibility narrative. The grand language of solidarity in international law[2] is not taken very seriously in contemporary international institutions. Didier Fassin (2012) describes humanitarian reason as an inextricable mixture of virtues and affects resulting in ad hoc reactions to public moral sentiments.

Acknowledging climate change as "a common concern of humankind" (UNFCCC, 1st recital), the 1992 Earth Summit associated the recognition of "common but differentiated responsibilities" with mentions of "equity," states' "respective capabilities" (UNFCCC, art. 3.1) and the "technologies and financial resources [that developed states] command" (Rio Declaration, principle 7). The decisions of the COPs continue to hint at this narrative. For instance, the 2007 Bali Action Plan reaffirmed that "economic and social development and poverty eradication are global priorities" (2nd recital) before calling for enhanced action on adaptation; whereas the Cancun Agreements referred to the "implications" of adverse effects of climate change for the effective enjoyment of human rights (7th recital). Despite constant claims of developing states for adaptation funding, 95% of climate finance addresses mitigation (Buchner 2011), and the remaining 5%, mostly channelled through bilateral institutions, is generally bound to political conditions imposed by donor states.

2.3. The mixed reception of ethical arguments

The maintained ambivalence concerning the moral grounds for climate law results from the insurmountable disagreement between, broadly speaking, developed and developing states. From the start of the climate negotiations, developing states declared that "[s]ince developed countries account for the bulk of the production and consumption of environmentally damaging substances, they should bear the main *responsibility* in the search for long-term remedies for global environment protection and should make the major contribution to international efforts to reduce consumption of such substances" (1989 Caracas Declaration of the G77, ¶II–34). By contrast, developed states only conceded "a message of *solidarity* showing all nations working together as equal partners" (Helmut Kohl, in UNCED 1992,

[2] From the "inherent dignity and … the equal and inalienable rights of all members of the human family" (1948 Universal Declaration of Human Rights, 1st recital) to the "interdependence of all the members of the world community" (1974 Declaration on the Establishment of a New International Economic Order, ¶3).

III.28, emphasis added). Within the Ad Hoc Group on the Berlin Mandate, some developing states proposed that historical emissions be taken into account as a criterion for defining the mitigation commitment of individual developed states, but developed states negotiated solely on the basis of capacity-related criteria. The strong language of the first years has softened with the passing of a quarter century, but essentially irreconcilable arguments continue to be made. While adaptation was increasingly being reduced to *ex gratia* assistance, developing states reiterated claims for reparations through new discussions on loss and damage.

It is tempting to explain the parallel development of two ethical narratives as the product of the political utilization of ethical theories in support of conflicting national interests. The responsibility narrative generally provides a useful ground for developing countries to claim larger assistance with fewer conditions. By contrast, for developed countries, the availability of an alternative ethical narrative may serve as a shield against such claims; through *ex gratia* assistance, as Peter and Renata Singer put it, "we do well if we give it, but we are not subject to blame or reproach if we do not" (1988, 116). However, this political utilization of convenient ethical narratives is only part of the story. For instance, no claim for historical responsibility was apparently voiced within the EU Council (1998) during negotiations on joint implementation, despite significant differences in the historical contribution of respective Member States. Instead of a strategic posture, this suggests that various societies receive and internalize both ethical narratives in different ways.

The reception of arguments, including moral ones, depends in particular on our cultural background and on arguments' ability to relate to our sense of collective identities (Crawford 2009, 110, 119). Because previous ideas frame how new ideas are received, the prevalence of a discourse on a *right* to development and on postcolonial *responsibility* in the decolonized Global South of the 1970s and 1980s later paved the way for the perception of climate change as another issue of reparations – references to a "climate debt" are constructed in parallel to the debt crisis of the Global South. To some extent, climate law replaced the declining international development law in a refurbished critical discourse: "economic refugees" were reconceived as "climate refugees."

Likewise, the roles suggested by the responsibility narrative are more readily acceptable by the inhabitants of Southern countries (standing as "victims") than by those of Northern countries (branded as "culprits" or "injurers"). By contrast, the solidarity narrative participates to a self-portrayal of the Northerner as a voluntary good-doer (if only through acknowledging not doing as much as they would like to) while confirming roles as hegemon and subalterns; charity indebts the recipients toward their benefactors. Thus, the United States formally registered its understanding that the principle of common but differentiated responsibilities "highlights the special leadership role of developed countries, based on [their] industrial development, [their] experience with environmental protection policies and actions, and [their] wealth, technical expertise and capabilities" (written statement, in UNCED 1992, II, 17–18).

The lack of argumentative representation of Southern societies in developed countries let the self-serving solidarity narrative go largely unchallenged in the North. The fears that the responsibility narrative fuels through its ability to support claims that may destabilize developed countries may also have played a role in its summary dismissal, and the accidental supporters of the responsibility argument could be rejected in Western polities as ideological or "fanatic" (US Congress 1997, S8117). While a Western-centric academic literature has often rejected the responsibility narrative (Mayer 2013, 952–54), the latter remains clearly

dominant in developing countries. Consequently, ethics offers little consensual guidance on climate law.

3. The ambivalent interests-based narrative

Because ethical narratives give rise to protracted disputes that ethical theories, being "extremely underdeveloped in many of the relevant areas" (Gardiner 2011, 7), are unable to solve, a constant temptation in the academic literature as well as in the position of some states has been to do away with ethical arguments altogether. Cutting climate law from its ethical foundations, this approach generally puts emphasis on the "ultimate objective" of the UNFCCC: the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (art. 2). Accordingly, the rationale for climate law would be to ensure cooperation in order to pursue states' interests in mitigating climate change. This narrative construes mitigation as an autonomous objective, in a managerial approach that participates to the fragmentation of international law in multiple disconnected regimes (Koskenniemi 2005, 600–15).

Posner and Weisbach offer a theoretical account of this narrative, where ethical arguments are seen as "both vulnerable in principle and dangerous in practice" (2010, 190), and where rational states pursue their interests. The authors suggest that climate law "must satisfy … the principle of International Paretianism: all states must believe themselves better off by their lights as a result of the climate treaty" (ibid. 6). Accordingly, Posner and Weisbach argue that side payments should be paid "from states that have a stronger interest in a climate treaty to states that have a weaker interest in a climate treaty" (ibid. 84) to ensure that each state agrees to participate. They insist that such side payments "need not benefit the poor" (ibid. 84). Their assumption is indeed that developing states have a stronger interest in mitigating climate change, and that, as Posner and Sunstein (2007, 1569) once put it, an optimal agreement might be one where "the United States should be given side-payments in return for its participation."

The interests-based narrative has also pervaded international negotiations. Today, even more than in the early 1990s, influential states seem unenthusiastic to discuss questions of principles within the UNFCCC, as evidenced by the rejection of India's proposal for the inclusion of an agenda item on equity at COP 17. This narrative has been particularly influential on the US position, even since it opposed the definition of principles within the UNFCCC at the Earth Summit. Through the Byrd-Hagel resolution, the US Senate announced amidst the negotiations of the Kyoto Protocol that it would not ratify a treaty that "would result in serious harm to the economy of the United States" (US Congress 1997, S8138). Senator Byrd rejected ethical arguments by proclaiming that "the time for pointing fingers is over" (ibid. S8117). More recently, an American diplomat reaffirmed that "a stand-alone debate on equity would not be productive" (AWG-LCA 2012, ¶48).

Yet, fundamental flaws prevent the interests-based narrative from providing any definitive guidance, and thus from forming a rationale for climate law. In particular, Posner and Weisbach are unable to completely do away with any normative assumption. To ensure participation by interested states, which are inclined to benefit from the mitigation measures adopted by other states without doing much themselves, the authors suggest that states have a moral duty not to free-ride a Pareto-optimal treaty (2010, 183); this, however, is in direct contradiction with their original rejection of morality. The demand for climate change mitigation is the normative keystone on which the interests-based narrative holds, replacing

normative demands for responsibility or solidarity, but there appears to be no authoritative ground to justify that mitigation should be a global priority superseding all other political goals (e.g. adaptation or compensation, or justice more generally).

Moreover, national interests are constructed through social processes where, beside economic lobbies, moral arguments also play an essential role. From the valuation of scientific uncertainty, existential risks, life and future costs, to our altruistic concern for others' wellbeing and our interest in not causing harm to others, "interests" are subject to a vast array of possible interpretations, and may indeed convey any moral demand, to the extent that the proposition according to which states pursue their "interests" boils down to little more than a tautology: states essentially decide to do what they deem desirable because they consider it to be their "interest."

Proponents of the interests-based narrative often focus on the sole immediate economic interests of certain lobbies within their state, which is an arbitrary selection of interests to which many of those states' citizens are likely to object. Because of such biased assumptions, the interests-based narrative is unable to formulate a consensual vision of climate law. The proponents of this narrative attribute the stalling of climate negotiations to the unrealistic nature of some ethical arguments, but the dismissal of all ethical arguments creates unrealistic expectations. Surely, Posner and Sunstein's proposal for South-to-North side payments is a political non-starter for developing countries, some of which may, unlike Senator Byrd, consider that the time for pointing fingers is just about to come.

As a dispassionate and rigid, managerial fixation on states' economic interests, the interests-based narrative is unlikely to trigger the sort of widespread social support that leads to ambitious cooperation. Its unmitigated utilitarian premise is controversial even with regard to domestic measures within Northern countries, as shown by critiques of market-based mitigation schemes (Kaswan 2011, 240; Scott and Rajamani 2012). The argument is likely to be even more controversial in global politics and in developing countries, as it assumes that all states would agree to drop any alternative claims for differentiation on the ground of responsibility or, at the very least, solidarity.

4. The need for a hybrid rationale

There appears to be currently no clear and consensual vision of the principles justifying climate cooperation: ethical narratives remain disputed, and an interests-based narrative necessarily rests upon controversial normative assumptions. This last section proposes a new formulation of the rationale for climate law. It is based on the understanding that a purely ethical narrative is unable to justify climate law because states' conduct cannot be entirely based on ethics – at least not when very costly measures are being considered. Likewise, national interests have no independent existence: they are the result of social processes in which values and ethical arguments play an instrumental role. Consequently, the narrative proposed in this section is hybrid: it relates to what states are willing to do (i.e. what they define as their "interests"), while acknowledging that what states are willing to do is influenced by ethical discourses conveyed by social movements, public opinions, and political leaders' own values and convictions, in particular argumentative settings. In other words, such a hybrid narrative concedes to Posner and Weisbach that, in the absence of an enforcement mechanism, the climate regime, like most international laws, requires a general

consensus among states.[3] Yet, contrary to Posner and Weisbach's would-be amoral framework, this hybrid narrative inputs the influence of ethical arguments on the definition of national interests.

4.1. Possible conceptual foundations for a hybrid rationale

Several concepts, largely used by civil society organizations, have attempted to bridge existing disagreements on a common vision of climate law. For instance, a trend of advocacy that emerged in recent years has promoted the concept of "climate justice," a rallying cry for the proponents of diverse ethical arguments (solidarity, responsibility, but also, for instance, environmental justice. The Universal Declaration of the Rights of Mother Earth, adopted by a large gathering of civil society organizations at the World's Peoples Conference on Climate Change in Cochabamba in 2010, calls for cooperation on the ground of respecting the "inherent rights of Mother Earth." However, the claim for "climate justice" may only have a limited impact on large populations and on the definitions of states' interests, as it constitutes a purely ethical language asking for costly sacrifices to which some populations may be reluctant to agree in a binding document. Similarly, the discourse on a sustainable development calls attention to some ethical issues – in particular in relation to intergenerational justice – but says little about why states should agree to act ethically in the first place. The same applies also to the principle of "common but differentiated responsibilities," the high-water mark of a blurry international consensus defined more than two decades ago, which, besides the ambivalence of its ethical message, remains too narrowly ethical to justify cooperation. Why would states agree to behave ethically, when governments are only accountable to their constituencies? Why would their domestic constituencies look at what they could just as well decide to ignore?

Similar issues appear in connection to the idea of extending to climate change the framework on a responsibility to protect. Adopted by the World Summit in 2005, this framework was further elaborated by the UN Secretary General Kofi Annan in a report of 2009. It reaffirms the primary responsibility of states to prevent genocide, war crimes, ethnic cleansing and crimes against humanity within their jurisdiction. Its second pillar calls for cooperation through "international assistance and capacity building." A third pillar may justify an intervention when a state is "manifestly failing" to prevent such crimes. Yet, while the framework on a responsibility to protect may allow a state to provide assistance and intervention in certain circumstances, it never obligates any particular state to protect the population of another state. Moreover, Kofi Annan's report warned that "[t]o try to extend [this framework] to cover other calamities, such as HIV/AIDS, climate change or the response to natural disasters, would undermine the 2005 [World Summit] consensus and stretch the concept beyond recognition or operation utility" (UN Secretary General, 2009, ¶10b). Admittedly, the responsibility to protect reaffirms the duty of states to cooperate in alleviating human suffering – but this does little to convince reluctant duty-holders.

Some discourses on "human security" or, sometimes, "climate security," are more persuasive because they attempt to bridge interests and ethics; but they are also quite dangerous concepts. Initiated by a 1994 UNDP report, "human security" introduces a (transformed) protection agenda into the "high politics" of international security, where states have generally shown

[3] Such a consensus is instrumental to the application of international law generally, absent enforcement mechanisms. While states are already bound by certain laws, including the law on state responsibility and the no harm principle, even the application of such laws remains, in practical terms, subject to the goodwill of the states under specific obligations (e.g. responsible states).

readiness to invest more attention and resources. Conceiving climate change as a security issue resulted in the organization of the first debates within the UN Security Council. However, securitization comes at a high price, as it tends to take the place of "human rights" in the political debate – "human security" does not involve any individual entitlements that can be claimed before a jurisdiction – and because security and fears do not necessarily lead to sustainable policies. As Simon Dalby notes, "human security itself cannot be simply taken for granted uncritically as a universal norm without thinking through how it is to be provided and by whom" (2013, 21). Moreover, including climate change in "high politics" impedes the role of NGOs), usually conceived as more influential on "low politics," in promoting cooperation. The concept of "human security" is no panacea, but it suggests that broadly ethical cooperation may be framed not as a sacrifice or as charity, but as the pursuance of states' very interests.

This article suggests yet another conceptual framework to conceive a rationale for climate law. A narrative of "complex interdependence" appears able to justify roughly fair forms of cooperation between states following socially constructed national interests. This narrative suggests that it may be in the well-understood interests of states to take social demands into account – including social demands outside of its jurisdiction – to avoid the unforeseeable consequences of growing human destitution and resentment.

4.2. Complex interdependence as a rationale for climate law

The concept of complex interdependence provides an interesting ground to conceive the rationale for climate law. Developed as an alternative to the realist portrait of states pursuing their own economic interests especially through the use or threat of power, complex interdependence provides a useful analytic framework particularly in circumstances where "multiple channels connect societies," where "the distinction between domestic and foreign issues becomes blurred," and where "[m]ilitary force is not used by governments toward other governments" (Keohane and Nye 2012, 20–21). The reliance of all nations upon shared atmospheric commons, the ubiquity of transnational advocacy and the breadth of domestic policies involved in responses to climate change make the model of complex interdependence particularly relevant to approach climate change. While the adverse effects of climate change affect virtually any place on Earth, response measures have also important remote consequences, from the rapid industrial development and local environmental degradation of Chinese coastal provinces, to the risk for food production and land ownership of policies that incentivize biofuel production. By abandoning the assumptions of clearly hierarchized issues and cohesive states with well-defined interests, the model of complex interdependence suggests a greater role for transnational networks and advocacy in framing agendas and construing national interests: "[n]ational interests will be defined differently on different issues, at different times, and by different governmental units" (ibid. 29).

Complex interdependence analyses also highlight increasing needs for international cooperation in multiple fields where, in the absence of clearly defined state interests, game theories do not readily apply. At its most basic level, interdependence calls for cooperation, not only as a desirable good to achieve, but in the pursuance of the interest of states. It is, for instance, in the interest of developed states to prevent the outbreak of dangerous epidemics in developing states, for such epidemics would likely span over national borders, not only through international cooperation on health issues, but also by striving to prevent the circumstances (e.g. the concentration of populations in extreme poverty) that might facilitate such outbreak. In an interdependent world, nations can no longer thrive in isolation from one

another, no more than they can fail without affecting one another: as the Earth Charter put it, "we must decide to live with a sense of universal responsibility" (UNESCO 2000, preamble ¶5).

Yet, the most important analytical input of complex interdependence relates to its understanding of complexity: our conduct causes events that are not fully predictable. Thus, complex interdependence portrays "a world in which events in the most remote reaches of the planet would have inevitable repercussions on all" (Akhavan 2005, 974) and promotes the idea that, "[i]n the global village, someone else's poverty very soon becomes one's own problem: of lack of markets for one's products, illegal immigration, pollution, contagious disease, insecurity, fanaticism, terrorism" (UN 2001, 3). Complexity and unpredictability suggest additional caution as a ground for cooperation. Peter Singer argues that "[f]or rich nations not to take a global ethical viewpoint has long been seriously morally wrong," but "it is also, in the long term, a danger to their security" (2004, 13).

Thus, complex interdependence constitutes a theoretical framework able to convey substantial moral claims, like a moral Trojan horse intruding in the political world. The contribution of complex interdependence, compared with alternative concepts, is to highlight that, when states have little ability to foresee the exact consequences of their conduct, their own interest is to turn to cautious or "no-regret" policies that, often, involve adapting to social demands for perceived justice through significant concessions.

This narrative relates for instance to how the neglect of Afghanistan by the international community during the 1980s and 1990s – despite the ordeal suffered by its population throughout the soviet war and the ensuing civil war – created the ground on which international terrorism could thrive and foment an attack against the world's first military power, the United States. If similarly ignored by the international community because of a narrow conception of national interests, countries such as Bangladesh and Nigeria, already affected by the coincidence of adverse impacts of climate change and a range of other political, economic and demographic issues, might undergo a comparable fate in the coming decades – and this is unlikely to be without consequences for other states. Rather than a late military intervention with tremendous costs (including in human lives) and uncertain benefits, a greater awareness of our complex interdependence calls for developed states to support capacity building and sustainable development in these countries, while also significantly reducing their contribution to climate change, if only to avoid long-term security threats resulting from human destitution and resentment, and to provide a model that emerging economic powers are likely to follow in the coming decades.

Thus, by suggesting that no severe humanitarian crisis is of purely domestic concern, the concept of complex interdependence bridges the barrier between ethics and politics and implies that, at least to a certain extent, doing what is largely perceived as one's moral duty may be the best way to ensure one's interest in a complex, unpredictable global game. In this sense, it is because many consider climate change as a responsibility issue that industrial states should agree to some international funding for adaptation and loss and damage; because many consider it alternatively as an issue of solidarity that wealthy states should help the needy; and because many view the world as a "village" that all states should engage in a constructive global dialogue rather than rigidly fixing on their own, narrowly-conceived "interests." By contrast to ethical narratives, "complex interdependence" does not present climate cooperation as a sacrifice of Northern populations' "interests" on ethical grounds, but rather as a rational, prudent and commendable strategy for states unable to predict what could

otherwise be the costs of non-cooperation. Ethics, consequently, matter, because only an agreement that is largely perceived as roughly fair could possibly make a consensus among nations.

5. Conclusion

This article submitted the prolegomena of a reflection on the rationale for international climate law. Such a rationale cannot consist in either ethical concepts or states' interests taken in isolation: instead, the concept of complex interdependence may be a promising way to hybridize ethical and interest-based narratives within a coherent and persuasive rationale. The inability of international institutions to constrain states does not mean that states should, in their own "interests," only pursue the maximization of their economic power. In a complex and interdependent world, it is in every state's own well-understood interest to struggle against a phenomenon that may result in many situations of destitution and resentment with possibly significant consequences for their own security. The rationale for climate law, to this extent, is similar to the rationale for international cooperation in many other fields: it is about ensuring the perennial maintenance of international peace and security.

Clarifying the reason for states and individuals to support climate cooperation through such a hybrid rationale, it is posited, would facilitate international negotiations by building shared expectations (or at least by precluding unreasonable demands) and by strengthening commitment for implementation. No substantial response measure is in reach as long as climate change means different things for different people: envisioning climate law as a response to our growing complex interdependence could help to define consensual meanings and to provide a persuasive justification for commitment beyond the dangerous rhetoric of national interests.

Acknowledgments

Insightful comments were provided by the participants to a NUS Law doctoral seminar and to the Como workshop on Multi-disciplinary Perspectives on Climate Ethics, and by four anonymous reviewers.

References

Akhavan P (2005) Justice, power, and the realities of interdependence: lessons from the Milosevic and Hussein trials. Cornell Int Law J 38:973-982.

AWG-LCA (Ad Hoc Working Group on Long-term Cooperative Action under the Convention) (2012) Report on the workshop on equitable access to sustainable development. FCCC/AWGLCA/2012/INF.3/Rev.1.

Beitz C (1975) Justice and international relations. Philos & Public Aff 4:360-389.

Buchner B et al (2011) The landscape of climate finance. Climate Policy Initiative.

Caney S (2005) Cosmopolitan justice, responsibility, and global climate change. Leiden J Int Law 18:747-775.

Crawford N (2009) Homo politicus and argument (nearly) all the way down: persuasion in politics. Perspectives on Politics 7:103-124.

Dalby S (2013) Climate change as an issue of human security. In: Redclift M, Grasso M. (eds) Handbook on climate change and human security. Edward Elgar, Cheltenham, pp 21-40.

UNESCO (2000) Earth Charter (29 June).

EU Commission (2001) Proposal for a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. COM(2001)581 final.

EU Council (1998) Outcomes of the proceedings of the Environment Council of 16-17 June 1998. 9702/98.

Fassin D (2012) Humanitarian reason: a moral history of the present. University of California Press, Berkeley.

Gardiner S (2011) A perfect moral storm: the ethical tragedy of climate change. Oxford University Press, New York.

Hulme M (2009) Why we disagree about climate change: understanding controversy, inaction and opportunity. Cambridge University Press, Cambridge.

Humphreys S (2010) Competing claims: human rights and climate harms. In Humphreys S (ed) Human rights and climate change. Cambridge University Press, Cambridge, pp. 37-68.

ILC (International Law Commission) (2001) Draft articles on responsibility of States for internationally wrongful acts. A/56/10.

INC (International Negotiating Committee for a Framework Convention on Climate Change) (1991) Report of the third session (Nairobi, 9-20 September 1991). A/AC.237/12.

Kaswan A (2011) Reconciling justice and efficiency: integrating environmental justice into

domestic cap-and-trade programs for controlling greenhouse gases. In Arnold D (ed) The ethics of global climate change. Cambridge University Press, Cambridge, pp. 232-254.

Keohane R, Nye J (2012) Power and interdependence. Pearson, London (4th ed).

Keohane R, Victor D (2011) The regime complex for climate change. Perspect Politics 9:7-23.

Koskenniemi M (2005) From apology to utopia: the structure of international legal argument. Cambridge University Press, New York.

Mayer B (2014) State Responsibility and Climate Change Governance. Chinese J Int Law 13 (forthcoming).

Mayer B (2013) Climate change and international law in the grim days. Eur J Int Law 24:947-970.

Nordhaus W (2007) A review of the Stern review on the economics of climate change. J Econ Lit 45:686-702.

Pogge T (2002) World poverty and human rights: cosmopolitan responsibilities and reforms. Blackwell Publishers, Malden.

Posner E, Sunstein C (2007) Climate change justice. Georget Law J 96:1565-1612.

Posner E, Weisbach D (2010) Climate change justice. Princeton University Press, Princeton.

Rajamani L (2006) Differential treatment in international environmental law. Oxford University Press, Oxford.

Rawls J (1999) The law of peoples. Harvard University Press, Cambridge.

Sands P, Peel J (2012) Principles of international environmental law. Cambridge University Press: Cambridge.

Scott J, Rajamani L (2012) EU climate change unilateralism. Eur J Int Law 23:469-494.

Singer P (2004) One world: the ethics of globalization. Yale university press: New Haven.

Singer P, Singer R (1988) The ethics of refugee policy. In Gibney M (ed), Open borders? Closed societies? The ethical and political issues. Greenwood Press, New York, pp. 111-130.

UNCED (UN Conference on Environment and Development) (1992) Report. A/CONF.151/26 (Vol. I-III).

UN (2001) Report of the High-Level Panel on Financing for Development. A/55/1000.

UN Secretary General (2009) Implementing the responsibility to protect. A/63/677.

US Congress (1997) 143 Cong Rec (daily ed. 25 July) S8113-8139.