

Global negotiations on climate finance: what role can fairness play?

1 Introduction

Assessments of the relative success or failure of the United Nations Framework Convention on Climate Change (UNFCCC) climate conference held in Copenhagen in 2009 vary widely, but many observers concur that divergences between developed and developing countries continued to represent an important factor obstructing agreement. This dynamic shaped negotiations on many of the major issues debated at Copenhagen, including how to share the burden of mitigation, generate global climate finance, and monitor parties' actions. Despite its disappointments on several fronts, one of the more positive outcomes of Copenhagen was a commitment by developed countries in the Copenhagen Accord to provide short- and medium-term climate finance to developing countries. Although these commitments fell short of a number of credible estimates of need, they could provide significant benefits (if delivered effectively) to those individuals most vulnerable to climate change, most of whom live in poor countries.

Issues of fairness and equity among developed and developing countries have loomed large in the UN climate negotiations. The Copenhagen outcome on financing raises a number of important empirical and normative questions about what role fairness can play in negotiations. An obvious question is whether the financing provisions in the Copenhagen Accord could be considered fair according to some plausible measure. I consider that the financing provisions are an important step towards a fairer climate regime, although much more needs to be done. However, the focus of my paper is more specifically about the influence that fairness-based arguments made in the finance negotiations have (and should have) on theory and practice.

In Section 2 I provide some background to negotiations and research on climate finance. I also outline the methods applied in the paper for (a) assessing the influence of ethical arguments on practice, and (b) using empirical evidence of negotiators' arguments to inform theories about fairness. In Section 3 I undertake some empirical analysis of the influence of arguments about fairness in the climate finance negotiations to date. I argue that despite developed countries' resistance to the notion that they are required to repay a 'climate debt', there is some evidence of a limited emerging international norm recognising an obligation to provide climate finance. In Section 4 I consider how findings from the empirical analysis should inform theory and practice. I consider how the climate debt debate can help inform our theorising on the nature of climate-related obligations, and argue that an alternative concept such as a global carbon budget is more appropriate as a theoretical basis as well as more likely to be accepted in practice. Finally I consider how the fairness of the emerging climate finance regime and the associated norm of

obligation could be strengthened through specific policy measures, including improving transparency in burden-sharing.

2 The role of fairness in the practice and theory of climate finance: overview and methods

2.1 Climate finance: background to the negotiations

Climate finance, as understood in this paper, encompasses global transfers of resources aimed at addressing climate change and its impacts.¹ It may involve both 'finance' in the strict sense of monetary transfers, but may also comprise in-kind resource transfers such as technical assistance.² Sources of climate finance may be public (provided by governments) or private (including through market-based mechanisms such as emissions trading), and may be provided by international, national, corporate or individual actors.

The question of financing has become one of the two most critical issues in the current UN climate negotiations, alongside agreement on the scale and distribution of global mitigation efforts. Many of the opportunities for reducing emissions at low cost are located in developing countries, whose resources for doing so are limited by the demands of domestic economic and social development (Hepburn 2009:409). At the same time, although developing countries have contributed less to causing climate change than developed countries, they are the most vulnerable to the impacts of climate change, which could have serious impacts on poverty and development (World Bank 2009; IPCC 2007). Estimates of developing countries' climate financing needs exceed current levels of overseas aid of around US\$120 billion annually (Pickering and Wood 2011 [forthcoming]; see also Garnaut 2008, Chapter 10).

As far back as the signing of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, developed countries have made broad pledges to support developing countries in addressing climate change. However, until very recently those pledges have not been backed up with substantial resources. The initiation of the UNFCCC's Bali Action Plan in 2007 envisaged a substantial scaling up of finance, accompanied by agreement on the part of developing countries to increase progressively increase their contribution to global mitigation. The major outcome of the Bali process to date has been the Copenhagen Accord, agreed by most parties to the UNFCCC in December 2009 (although not a formal UNFCCC agreement). Under the Accord, developed countries commit to providing a figure approaching US\$30

¹ Some climate finance may also involve domestic transfers, but for simplicity I will use 'climate finance' as shorthand for global or international climate finance.

² For this reason, some prefer to refer to a more general category of 'support', but this term is problematic since it has connotations of 'assistance' that may run contrary to views that climate finance should be delivered as a matter of rectification. In addition, 'support' does not readily accommodate market-based financial transfers.

billion between 2010 and 2012 (frequently referred to as ‘fast-start finance’), scaling up to US\$100 billion a year by 2020 (medium-term finance).³ Work continues under the UNFCCC’s Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA) to embed financing commitments and institutional arrangements into a formal UNFCCC agreement within the next few years.

Parties and stakeholders in the negotiations on climate finance have raised a range of fairness-related concerns. From a very broad perspective, these concerns can be grouped into three areas: (i) how finance is generated; (ii) how finance is distributed; and (iii) how the institutions of climate finance are governed (Parker et al. 2009:26–27). The first two areas primarily raise questions of substantive or distributive fairness, whereas the third area is mainly concerned with procedural fairness. In this paper I will focus on the first area, considering in particular questions of how to characterise the nature of the obligation to provide climate finance (in terms of its normative foundations and stringency), and what principles should apply to distributing obligations among individual parties.⁴

2.2 Ethical and policy research on climate finance

While research on the ethics of climate change has for the most part considered broad questions about how the burdens of addressing climate change should be shared, relatively little work to date has applied ethical principles in a critical way to analyse policy options systematically, or to generate practical and politically feasible policy recommendations (Klinsky and Dowlatabadi 2009:88). To the extent that some ethical research has considered potential policy instruments, it has tended to focus more on the question of how emissions entitlements should be equitably distributed than on how financing for developing countries (which may not be linked specifically to emissions entitlements) could also form part of a fair overall climate agreement. Most of the analysis of climate finance that has taken place within the field of ethics has formed part of a broader ethical analysis of climate policy (see e.g. Vanderheiden 2008). However, some recent work paves the way for greater attention to financing mechanisms as a means of securing fairness in climate policy (see Caney 2009; also Grasso 2010).

Likewise, relatively little work has been done within the field of International Relations on normative aspects of the climate finance negotiations (see below), although some surveys of attitudes towards normative issues of policymakers and others working in the field of climate change have compared degrees of support for various equity principles.⁵

³ Copenhagen Accord, para 8.

⁴ In this paper I will use the terms ‘obligations’ and ‘duties’ interchangeably, while recognising that often a distinction is drawn between (natural) duties and (political) obligations.

⁵ See e.g. Lange et al. 2007 and Birdsall and von der Goltz 2010:7.

Climate finance has received considerably more attention in fields outside ethics (primarily in economics and public policy analysis). Much of this literature still has a strong emphasis on equity concerns, but has been developed in relative isolation from research in ethics. Substantial recent contributions on climate finance generally include UNFCCC 2007; UNFCCC 2008; Stewart et al. 2009; Hepburn 2009; Pendleton and Retallack 2009; and Parker et al. 2009.

Acknowledging the considerable gap between the broader literature on normative aspects of climate change and policy-oriented research on climate finance, this paper seeks to make some progress in bridging that gap and encouraging findings from the two areas to inform one another.

2.3 The influence of ethical arguments on negotiations and practice

Perceptions of fairness and ethical arguments have can have both intrinsic and instrumental importance in theory and practice. On the one hand, we could argue that the simple fact that people generally care about fairness in their interactions with others makes it a legitimate object of inquiry and practical effort. On the other hand, a key question for researchers and advocates with an interest in informing or influencing climate negotiations (as well as for negotiators themselves) is whether ethical arguments are capable of exerting a real and observable influence on negotiations. In this paper I will focus on the latter (instrumental) question, but before outlining in more detail the approaches used to address it, it is important to distinguish several key concepts and terms.

2.3.1 Fairness, justice and ethical arguments

Participants in negotiations may use a range of arguments in an attempt to persuade others of their point of view. Some may appeal to practical reasons (for example the strategic interests of other parties), while others may be explicitly 'ethical' or 'normative' in nature, in other words, arguments about what should be done based on some principle of what it is right to do in particular situations (Crawford 2002:14).⁶ I will refer to these types of arguments respectively as 'practical arguments' and 'ethical arguments'.⁷ Ethical arguments may not necessarily involve the explicit invocation of concepts such as fairness or justice, but could be based implicitly on related beliefs.

For conceptual clarity in discussing fairness, it is useful to distinguish between the concept of fairness, and conceptions of fairness. For the purposes of this paper, I will consider the concept of fairness to refer to a general principle of even-handed or non-arbitrary treatment of persons and groups in the distribution of goods (compare

⁶ For the purposes of this paper I will use 'ethical' and 'normative' interchangeably.

⁷ Crawford also lists as other types of argument 'scientific' and 'identity' arguments (Crawford 2002:14), but these are of less concern in the present paper.

Rawls 1999b:5). I take the concept of fairness to be roughly equivalent to the idea of equity that is invoked in the UNFCCC (Article 3.1). Even if parties hold some common ground about the concept of fairness, they may have very different conceptions of what fairness requires in a given situation, and an important way of expressing those conceptions is through ethical argument. Some authors consider the concept of justice to involve particularly stringent requirements of fairness that people owe (or are owed) as a matter of duty (or right) (e.g. Rawls 1999b:3–6; Vallentyne 2007:548). While I only specifically examine arguments about fairness in the paper, much of the discussion could also be relevant to arguments about justice.⁸

2.3.2 Ethical arguments and the role of norms in international relations

There is a wide range of ways in which we could conceive of the instrumental importance of ethical arguments and conceptions of fairness. On a realist conception of international relations, what matters most in explaining action is material interests; ethical arguments are likely to be merely self-serving and have no independent causal role (Crawford 2002:83). Somewhat less minimally, some argue that agreements that are perceived to be fair are often more likely to be effective in practice, particularly in international negotiations where agreements must generally be ‘self-enforcing’ in the absence of legitimate supra-national means of coercion (Barrett 2003:xiv). Another view of a relatively limited role for fairness is that it functions a ‘soft constraint’ on self-interest, or a guide to decision where self-interest does not prescribe a conclusive course of action (Ringius et al. 2002:3). In this paper, however, I argue that ethical arguments may play a stronger causal role, in particular through their role in the creation and maintenance of international norms.

In recent years research in the field of International Relations, particularly on the part of constructivist theorists, has devoted increasing attention to ethical arguments through analysis of the role and diffusion of norms internationally, (Price 2008:317). Norms may be defined as ‘shared expectations about appropriate behavior held by a community of actors’ (Finnemore 1996:22), and may entail ‘a collective evaluation of behavior in terms of what ought to be done, a collective expectation as to what will be done, and particular reactions to compliant versus noncompliant behavior’ (Raymond 1997:218). A two-way relationship exists between norms and ethical argument: parties’ ethical arguments may be based on existing norms (such as that of non-interference in the affairs of sovereign states), but ethical arguments may play an important – albeit non-exclusive – role in the formation and alteration of norms (Crawford 2002:85, 100–01).⁹

⁸ Likewise some ethical arguments could be based on principles other than fairness (for example utilitarian arguments, or arguments about how a virtuous person or country should act in a particular situation).

⁹ Ethical arguments may have causal effects other than norm creation (for example, they may prompt other parties to adopt particular attitudes of trust or mistrust towards the party making the argument, which then have an influence on other areas in which they interact). However, given the important role

2.3.3 International climate norms

The literature that has emerged on the role of norms in climate and environment negotiations has established some solid findings about the existence of a limited range of broad norms, including the ‘common but differentiated responsibilities and respective capabilities’¹⁰ of countries for protecting the atmosphere (Rajamani 2006; Okereke 2008). Equity norms are frequently considered to have more weight in global environmental policy than in other issue areas in international relations (Okereke 2008:36; compare Birnie et al. 2009:378). This may be due to the nature of specific aspects of the issue of climate change, such as clearer evidence of causality or responsibility on the part of certain parties for the problems that need to be addressed through negotiation, and the scope for vulnerable groups to exert some leverage in negotiations (Okereke 2008:37). Despite the acknowledgement of normative issues, limited progress to date on global mitigation suggests that the adoption of some broad norms in climate policy has not necessarily translated directly into concrete action in fulfilment of those norms or into the creation of more specific subsidiary norms with regard to particular issues of concern. While some researchers have argued that the Copenhagen Accord signals the emergence of a norm ‘to maintain green-house gases (GHG) emissions [sic] to a level that will not raise the atmosphere’s temperature to close to 2 °C’ (Garcia 2010), arguably the failure of states to make pledges sufficient to meet that target suggests that if such a norm exists, it is at best relatively weak at present. One factor accounting for these failures of implementation and specific norm creation could be long-standing divergences between developed and developing countries about what constitutes a fair approach to climate policy, which are in turn shaped by persistent global economic inequalities (Timmons Roberts and Parks 2007).

2.3.4 Methods for identifying and characterising norms

Identifying and characterising norms pose a number of methodological challenges for which International Relations has developed a range of descriptive and explanatory tools. First, it may be difficult to identify whether the creation of a norm has been influenced primarily by ethical argument or also by strategic or practical arguments. Second, an actor’s behaviour may provide evidence of the existence and content of a norm, although it is possible that the behaviour is motivated by a different norm. As Finnemore and Sikkink note (1998:892):

We can only have indirect evidence of norms just as we can only have indirect evidence of most other motivations for political action (interests or threats, for example). However, because norms by definition embody a quality of “oughtness” and shared moral

that norms play in structuring what states and individuals do in practice, it is the relationship between ethical arguments and norms that is of most interest in this paper.

¹⁰ See UNFCCC, Art 3.1. The phrase is sometimes abbreviated as ‘CBDR’. Although the acronym only encapsulates the first part of the phrase, I will use it to imply the inclusion of ‘and respective capabilities’ as well (compare the usage in Dellink et al. 2009:412).

assessment, norms prompt justifications for action and leave an extensive trail of communication among actors that we can study.

To assess claims about whether a norm relating to the obligation to provide climate finance is emerging, I will draw on a range of evidence, including what parties have said (in their submissions) and what parties have committed to do (in the Copenhagen Accord as well as some quantitative data comparing commitments that countries have announced to date). To present a solid case, we also need evidence for what parties actually do. Some climate finance is already flowing, and while it may only become clear over the longer term whether parties have fully complied with their commitments, I believe there is already sufficient evidence to justify preliminary conclusions about whether or not a norm is emerging.¹¹

2.4 How relevant are negotiators' perspectives on fairness for theory development?

In the effort to develop a normative framework for a given policy area, a controversial question of method is whether one should focus primarily on applying general ethical principles to the particular context, or also incorporate a critical assessment of the normative views that stakeholders put forward in negotiations and public debate. Some authors argue that it is first essential to develop an 'ideal' theory (which assumes, for example, that people fully comply with the normative principles espoused by the theory) before developing a 'non-ideal theory' that takes greater account of empirical evidence and people's moral motivations (see e.g. Rawls 1999a:90; Simmons 2010:31–36). Other authors give popular views about fairness or justice a vital role in theory development from the outset (see e.g. Miller 1999; Walzer 1983). Popular views may help, it is argued, to delineate the different spheres in which certain principles (such as need, desert or equality) should operate, and to establish current horizons of political feasibility for particular principles.

Some approaches that use empirical evidence of attitudes to inform theory development are open to the criticism that they too quickly assume that what people do think should necessarily inform what people should think (compare Stemplowska 2008:339). However, a sophisticated approach could justify recourse to views on fairness on the basis that a theory of justice, which envisages and requires implementation through political institutions, will only be feasible and legitimate if it can be publicly accepted or justified through political debate (Rawls 1993).¹² In such cases, theory is not compelled to accept at face value what people say, since people may have tactical or other reasons not to say what they think (or only part of what they think), and in any case what they think may be tainted by ignorance or prejudice. However, theory may be guided by those views that are expressed following appropriate reflection and deliberation, or may subject uncritical opinions

¹¹ This evidence is presented in section 2.4 below.

¹² Hepburn and Stern 2009 note the possible value of Rawls's idea of 'reflective equilibrium' in mediating among different ethical frameworks for addressing climate change (39).

to modes of scrutiny that are themselves publicly acceptable (Swift et al. 1995:22). As Norman Daniels notes, agreement among groups may not be merely a 'moral compromise but a principled moral solution to a policy problem' (Daniels 1996:15).

I believe that assessing attitudes of stakeholders is particularly important for theory development in the context of climate policy. First, in a complex area of policy and science such as climate change, applying the methods and priorities of a single discipline may not always be sufficient to identify the issues of greatest importance to those affected by the issue. Critical assessment of stakeholders' views may play a useful role in identifying what the international community considers to be the most pressing concerns of fairness, and can help set priorities for theory development accordingly. Second, stakeholders' views may help us to assess the persuasiveness of different possible theoretical 'frames' we could use to analyse the rights and responsibilities associated with climate change, for example, whether the atmosphere can appropriately be seen as a 'global commons'. Finally, if we take seriously the concern that theories should not only be coherent but feasible as well, evidence of stakeholders' positions can provide vital indications of what kinds of approaches are likely to be the most workable. This does not in itself imply making concessions to political realities, but at the very least it suggests that when presented with two options of equal ethical integrity, we should (other things being equal) select the more feasible option. If we recognise that the horizons of feasibility may change over time as progressive steps in reform are taken, evidence of stakeholders' views about feasibility can help us think more rigorously about a sequence that could be adopted to implement a normative framework over time (Gilabert 2008:416).

3 The basis for states' obligations to provide climate finance: ethical arguments and norm emergence in the negotiations

This section provides a descriptive account of different perceptions of fairness and ethical arguments raised by negotiating parties relating to the obligation to provide climate finance, and assesses whether these arguments have resulted in the development of a corresponding international norm. I will begin with a discussion of the issue of climate debt, which highlights questions about both the nature of the general obligation and the specific principles that should apply to distributing obligations among countries.

3.1 The climate debt impasse

The question of whether developed countries acquired a 'climate debt' (sometimes referred to as 'carbon debt') to other countries as a result of their greenhouse gas emissions has been a prominent and controversial issue in recent climate negotiations. Bolivia, for example, argued in a recent submission to the UNFCCC that

developed countries owe a two-fold climate debt comprising an 'emissions debt' and an 'adaptation debt' (2009:46–47):

By over-consuming the Earth's limited capacity to absorb greenhouse gases, developed countries have run up an "emissions debt" which must be repaid to developing countries by compensating them for lost environmental space, stabilizing temperature and by freeing up space for the growth required by developing countries in the future. ... The historical emissions of developed countries, as well as denying developing countries the atmospheric space they need for development, are harming poor countries and people who live daily with rising costs, damages and lost opportunities for development. ... Developed countries are thus responsible for compensating developing countries for their contribution to the adverse effects of climate change as part of an "adaptation debt" owed by developed countries to developing countries.

The concept of climate debt, which has been proposed in similar form by a number of other developing countries and observers,¹³ is not exclusively related to the issue of finance. Emissions debt could be repaid by developed countries through reducing their emissions and/or by providing finance to developing countries to help them reduce their emissions, while adaptation debt would generally need to be repaid in the form of finance.

In contrast to these views, the United States' chief climate negotiator Todd Stern expressed his clear opposition to climate debt to a press conference in Copenhagen:

I actually completely reject the notion of a debt or reparations or anything of the like. ... Let's just be mindful of the fact for most of the 200 years since the Industrial Revolution, people were blissfully ignorant of the fact that emissions cause the greenhouse effect. It's a relatively recent phenomenon. It's the wrong way to look at this. We absolutely recognize our historical role in putting emissions in the atmosphere that are there now. But the sense of guilt or culpability or reparations, I categorically reject that. (Samuelsohn 2009; see also Walsh 2009)

Stern's statement drew the following response from Bolivia's ambassador to the United Nations:

Admitting responsibility for the climate crisis without taking necessary actions to address it is like someone burning your house and then refusing to pay for it. Even if the fire was not started on purpose, the industrialised countries, through their inaction, have continued to add fuel to the fire. As a result they have used up two thirds of the atmospheric space, depriving us of the necessary space for our development and provoking a climate crisis of huge proportions. ... We are not assigning guilt, merely responsibility. As they say in the US, if you break it, you buy it. (Climate Justice Now 2009)

Given these stark differences of perspective, it is not surprising that the Copenhagen Accord does not acknowledge the existence of climate debt. Some possible underlying reasons for this resistance are discussed below (section 4.1.1). The debate is likely to continue in some form, with the current AWG-LCA draft

¹³ See also Third World Network 2009:1–2; Christian Aid 2009:2; and Klein 2009.

negotiating text on finance including a bracketed (or non-agreed) reference to climate debt.¹⁴

3.2 Applying ‘common but differentiated responsibilities and respective capabilities’ to finance

Some developing countries have sought to characterise the stringency of climate finance obligations in a somewhat different way, albeit one that may still be compatible with the idea of climate debt. India, for example, has sought to use the principle of CBDR to argue for an obligation that is legal rather than discretionary in nature, and thus distinct from the obligation to provide aid:

unlike in the case of “development finance”, there is clear legal recognition in the UNFCCC of the “*common but differentiated responsibilities and respective capabilities*” of Parties for addressing climate change. Accordingly, the provision of financial resources for climate change must relate explicitly to this legal principle in any future climate change arrangements, and cannot be subject to decisions of developed country Governments and legislatures. The providers of finance cannot be discretionary “donors”, but must be legally obligated “assesses”. This would also rule out repayable financial contributions;¹⁵ legal obligations premised upon responsibility are not repayable. (India 2009:41; see also see also India 2008b:28 and India 2008a:147)

Developed countries, no doubt wary of exposing themselves to potential litigation, have not been keen to accept the characterisation of climate finance as a legal obligation. However, they have been willing to accept the applicability of CBDR as a general principle for allocating climate finance obligations, although they have drawn different conclusions about how it should be applied. Thus, for example, the EU’s 2009 communication on climate finance appears to interpret ‘responsibility’ with reference to causal responsibility for emissions, but focuses on current or prospective responsibility rather than retrospective responsibility (see European Commission 2009:13).¹⁶

3.3 Is a norm of obligation to provide climate finance emerging?

Although it is relatively clear that a norm based on the concept of climate debt has failed to take root, there is still the question of whether a more limited norm obliging countries to provide climate finance is emerging. Certainly there is enough evidence in the rhetoric of some developed countries to suggest a specific recognition of

¹⁴ ‘developed country Parties shall provide developing country Parties, especially those that are vulnerable, with long-term, scaled up, adequate, new and additional to official development assistance commitments and predictable and grant-based finance from public sources in the order of at least [x billion] [x per cent of the gross domestic product of developed country Parties] as part of the repayment of their climate debt’ (UNFCCC 2010:32).

¹⁵ For example loans.

¹⁶ Using current emissions would require developing countries with rapidly increasing emissions (notably China and India) to bear a substantially greater proportion of the overall financing burden than they would bear under an approach based on cumulative emissions.

obligation. The UK, for example, stated in a major policy paper leading up to Copenhagen (United Kingdom 2009:10, 33):

Climate change involves a fundamental injustice: it has been largely caused by the industrialised countries' historic emissions, but it is the poorest and most vulnerable people who will suffer its worst and earliest effects. It is very important therefore that the Copenhagen agreement provides support to developing countries for both coping with and acting on climate change.

However, in order to justify a claim that a limited norm is indeed emerging, it is necessary to address three potential objections. First, rather than being a norm in its own right, obligations relating to climate finance could be seen merely as an application of the broader norm of CBDR. Second, there is considerable evidence that a norm of obligation to provide development assistance has emerged since the Second World War (Lumsdaine 1993), and it is possible that some countries could see climate finance as merely an extension of the general obligation to provide aid. Third, since climate finance forms part of the broader climate bargaining process, it is possible that developed countries have made climate finance commitments as part of a strategy of 'side payments' to enable them to make certain other demands of developing countries (such as scaling up their mitigation actions), rather than out of any independent sense of obligation.

On the first issue, the fact that a broader norm exists that is consistent with obligations in a narrower area does not invalidate the possibility of a narrower norm forming. It may make sense to speak of 'sets' or 'complexes' of norms,¹⁷ and indeed it seems difficult to articulate the content of a norm such as CBDR without reference to a set of more specific norms relating to its application in particular contexts. For example, the mitigation norm posited above by Garcia (2010) could be seen as belonging to a set of CBDR norms, but in that instance one that does not in itself require or specify an obligation to provide climate finance.

On the second issue, several pieces of evidence could justify the identification of a norm that is distinct from the obligation to provide aid. Perhaps most important is the recognition by both developed and developing countries that the obligation stems at least in part from causal or harm-based responsibility for past emissions, rather than primarily from obligations of humanity or charity. The distinctness of the climate finance obligation is reinforced by a commitment that climate finance should be 'additional' to aid (Copenhagen Accord, para 8). While considerable disagreement remains about how 'additionality' should be defined, and there are some indications that countries may in any case seek to provide finance that is non-additional (see IIED 2010 and Fallasch and De Marez 2010), there is at least some degree of commitment that sets the climate finance obligation apart. Developed countries also appear to acknowledge that climate finance should be subject to fewer conditions

¹⁷ Compare Bernstein (2000:468), who uses the term "norm-complex" to refer to 'a set of norms that govern practices in a particular issue area'.

than aid generally, notably with their support for developing countries' 'direct access' to funds through the recently established Adaptation Fund under the Kyoto Protocol. Even if this falls short of an acknowledgement by developed countries that climate finance is owed to them as a matter of entitlement, it still constitutes recognition of a more stringent obligation than aid generally.

Quantitative assessment of individual parties' climate finance commitments presents a mixed picture of how parties perceive their climate finance and aid obligations relative to one another. Attachment A sets out proportional commitments of the top five contributors to fast-start finance (Japan, EU, US, Norway and Australia in descending order) compared with indicative measures of capacity and responsibility, as well as other examples of burden-sharing (aid generally, and contribution to the World Bank's concessional lending arm). Interpretation of the data is made somewhat difficult by the fact that Japan's contribution (37%) is disproportionately in excess of its share on any of the other measures (8–14%), which in turn seems to be partly a consequence of different countries using different accounting methods for compiling their pledges.¹⁸ Japan aside, it appears that the EU's proportional climate finance contribution is more comparable to measures of responsibility and capacity than to its aid commitment, whereas the opposite is the case for the US. While not providing conclusive evidence of what factors have influenced climate finance commitments, the data is consistent with the idea that different factors are at work in determining climate finance commitments as compared with aid.

The third issue regarding the possibility of strategic appeal to an ostensible norm is perhaps the most significant challenge to the claim that a norm is emerging. It also challenges claims about the causative influence of ethical argument, on the view that practical arguments appealing to countries' self-interest are the motivating factor behind countries' behaviour. Most of the major developing countries whose mitigation actions were vital to securing an ambitious level of emissions reductions were not likely to be major recipients of public finance (e.g. China, Brazil and South Africa; India being the likely exception).¹⁹ On the other hand, there is some evidence that developed countries have withheld climate finance from developing countries that did not sign up to the Copenhagen Accord,²⁰ suggesting that climate finance may have played in part a bargaining function at Copenhagen. Nevertheless, it seems clear that developed countries treated their financing commitments much less explicitly as bargaining chips than their mitigation commitments. A number of

¹⁸ For example, Japan's US\$15 billion Hatoyama initiative (announced in 2009) appears to have wholly absorbed the funding allocated to the \$10 billion 'Cool Earth Partnership' announced in 2008, and includes some private sector funding (see Fallasch and De Marez 2010:7).

¹⁹ This does not preclude the possibility that climate finance was being used to entice low-emitting developing countries to participate. However, to argue that this was the sole purpose of the financing commitments may overestimate developed countries' concerns about the risk of not all parties being able to reach consensus (particularly when other fora involving only high emitters, such as the G20, were potentially available for reaching agreement on mitigation).

²⁰ For example, the US has withheld climate finance from countries such as Bolivia and Ecuador on this basis (Vidal 2010).

developed countries (including Australia and the EU) made their mitigation targets expressly conditional on the strength of the mitigation actions of others, including developing countries. The fact that no countries made their financing commitments conditional in this way, while falling short of providing positive evidence for a specific obligation, suggests that at the very least developed countries were reticent about the perception of using finance simply as a bargaining tool.

4 Prospects for a fairer climate finance regime

Without articulating a broader theoretical framework for evaluating issues of fairness in climate finance, it is not possible to make a comprehensive assessment here of the fairness or otherwise of the Copenhagen Accord's provisions on financing. Some preliminary observations could be made; for example, it is clear that while the Copenhagen financing commitments are not trivial, they are towards the lower end of independent estimates of global financing needs.²¹ In the remainder of the paper, however, I will focus on the more limited task of considering how the future climate finance regime could be made fairer, first by strengthening the emerging norm of obligation, and second by implementing policy measures that are consistent with the norm.

4.1 Strengthening the financing norm: alternatives to climate debt

As I have argued above, recent climate negotiations culminating in the Copenhagen Accord provide evidence for the emergence of a limited norm of obligation to provide climate finance. However, the Accord evinces a range of shortcomings (some noted above, such as likely inadequacy to meet needs, and some discussed further below) which suggest that a future climate regime could be made fairer in a number of ways. The question then arises whether the best means of doing so is to tackle individual shortcomings one by one (e.g. agreeing on an independent process for assessing financing needs) or whether it is also necessary to reorient the more basic characterisation of the norm. I argue here that there would be value in a more fundamental reframing of the way that climate finance obligations are characterised, and that the concept of a global carbon budget may be better suited than climate debt to helping to achieve a fairer regime.

4.1.1 Evaluating the concept of climate debt

There are a number of reasons why appeals to the concept of climate debt have not translated into the formation of an associated norm. First, developed countries have resisted the notion that they owe an especially stringent or quasi-legal obligation, no

²¹ Of the US\$30 billion committed for fast-start finance globally, Project Catalyst has estimated that around US\$28 billion globally has been pledged by individual countries, compared with estimated needs of US\$21–54 billion during 2010–12 (Project Catalyst 2010:15, 19).

doubt in part as a result of concerns that recognition of such a debt could expose them to litigation in pursuit of the debt. Second, developed countries have rejected certain assertions associated with the climate debt argument, such as the idea that they should be held responsible for all of their emissions, regardless of their knowledge about the harmful effects of those emissions, and the idea that only developed countries hold any debt. Finally, it appears that developed countries have reacted in part to the mere rhetoric of debt and reparations, possibly due to associations with issues such as reparations for slavery and colonial injustices. Each of these claims bears critical assessment, which can also shed light on the appropriateness of the concept for developing a theory of fairness in climate finance.

A key initial question is whether 'debt' is an appropriate way of capturing the stringency of the financing obligation compared with other obligations. Although debts are most commonly thought to be acquired through voluntarily engaging in contractual arrangements and are frequently associated with legal obligations, it is nevertheless not unusual to speak of debt in a broader sense, as when we talk of someone owing a 'debt to society' as a result of wrongdoing, or indebtedness to someone who has done a favour. Common to this more figurative notion is a sense of special obligation that arises in addition to general obligations of assistance or charity. Considering this figurative sense in the context of climate change, we may note that there are valid arguments in favour of seeing the atmosphere as a 'global commons' that should be subject to certain criteria of fair use (however they may be defined). Accordingly, it is conceivable that patterns of use could result in overuse by some, resulting in obligations towards those that have used less than their fair share. When coupled with the fact that overuse of the atmosphere also generates specific economic and social harms resulting from climate change, it seems relatively clear that obligations of high-emitting countries towards countries vulnerable to climate change cannot be characterised merely as obligations of assistance, but something more fundamental. This seems to suggest that the notion of debt is not *prima facie* illegitimate.

On the question of the scope of the debt, climate debt proposals generally argue for strict liability for developed countries' emissions. This may appear to be a corollary of the global commons concept, whereby overuse creates a debt regardless of whether the country knew about the effects of the emissions. However, in other contexts there are various reasons why we may not accept a debt or part thereof even if this is to the disadvantage of the creditor, for example in cases of 'odious debt' acquired by illegitimate heads of state. For this reason, the notion of climate debt does not seem inherently to imply strict causal liability irrespective of fault. Nor does the notion of a debt inherently preclude consideration of countries' capacity to repay the debt.²² However, in situations of debt the capacity to repay does not generally come into play unless repayment would bring the debtor below some

²² Multilateral debt relief programs such as the Heavily Indebted Poor Countries (HIPC) initiative, for example, provide conditional debt relief to countries least able to repay their debts.

critical level of wellbeing. Proponents of the climate debt have indicated that capacity could play a role in assessing the magnitude of countries' debts,²³ but this may sit somewhat awkwardly with the basic debt analogy.

The third issue of rhetoric is not only a question of whether the presentation of an issue is likely to be unproductive owing to some parties' sensitivities (which may or may not be grounded in justifiable beliefs). It is also a question of whether an unfavourable may suggest an underlying problem with the 'frame' of debt. The fact that notions of debt or reparations may be associated with other notions of obligation rejected by developed countries does not in itself justify rejecting the concept. And the Bolivian representative is correct to point out that responsibility does not necessarily imply 'guilt' (as is evident from areas of law dealing with civil or non-criminal liability). However, one aspect of the concept of debt that is difficult to escape is its retrospective emphasis. It is true that developed countries' past actions have been largely responsible for the present problem of climate change. However, addressing this problem requires not only taking account of the past, but also working out a fair distribution of rights and responsibilities for the future. Developing countries' emissions are growing rapidly, and will eventually exceed those of developed countries even in cumulative terms, thus some countries that were previous creditors may ultimately become debtors, and vice versa. This suggests that we should consider the viability of alternative frames that capture adequately the legitimate underlying concerns of developing and developed countries but which have the potential to avoid some of the shortcomings of the concept of climate debt.

4.1.2 The carbon budget as an alternative concept

Another somewhat different characterisation of obligation relevant to climate finance derives from the idea of a global 'carbon budget', which is being used increasingly in policy analysis for quantifying the maximum level of global emissions that is permissible over time to avoid dangerous climate change (see for example TERI 2009, Pan et al. 2009, WBGU 2009). The carbon budget concept is often discussed primarily in the context of mitigation, but is also capable of generating financing obligations in that those that have used more than their fair share of the budget may be required either to reduce their domestic emissions or finance the reduction of emissions internationally (either through emissions trading or direct financial transfers). Similarly, obligations for financing adaptation could be quantified by reference to the extent of parties' overuse of their share of the carbon budget.

The concept of a carbon budget, while compatible with recognition of the existence of climate debt, does not depend on the acceptance of the premise of climate debt, and has several advantages over an approach built exclusively around climate debt. First, it has a clear connection with scientific findings about the persistence of

²³ See e.g. Bolivia 2009:51.

emissions in the atmosphere, and the implication that the atmosphere can only safely absorb a finite amount of emissions over a very long time period.²⁴ Second, the carbon budget concept can also encompass more readily than the climate debt concept a forward-looking approach to the distribution of emissions entitlements, while also taking into account past emissions. Third, the concept can be used as a basis for applying accepted principles such as CBDR in order to generate calculations of fair shares, and to prescribe responsibilities that flow from overuse. Finally, although some of the rhetoric associated with a budget may appear similar to that of climate debt (e.g. countries' budgets may be in 'deficit' and others' in 'surplus'), the carbon budget idea does not emphasise a potentially divisive two-way relationship between debtors and creditors, but rather suggests that all countries participate in a broader common enterprise (balancing the budget).

The carbon budget concept is one of a number of concepts that could be employed. However, I believe it has advantages over some other common attempts to frame the issues (such as the allocation of 'atmospheric space' or 'development space') since it incorporates a greater degree of specificity and a conceptual framework that people are familiar with through other budget processes.

4.2 Promoting transparency in burden-sharing

Implementation of a norm of obligation to provide climate finance could be significantly strengthened if a stronger link were established between principles underlying the norm and resulting commitments that countries make. If it is relatively clear that the overall Copenhagen financing commitment falls somewhat short of what fairness requires (on the basis that complete fairness would require meeting needs adequately), it is much less clear whether individual contributing countries are doing their 'fair share' of the overall commitment. The Copenhagen financing package emerged in a relatively ad hoc manner as developed countries announced their commitments following some consultation with one another, but without reference to agreed criteria. While in that sense each party could be said to be contributing what they consider to be fair, an approach involving voluntary pledges of this kind creates considerable risks that some parties will do less than what most would agree to be their fair share.

A number of theorists, observers and parties have proposed that climate finance obligations (like mitigation obligations) would be most fairly and transparently distributed using an index-based approach, whereby relevant principles for assigning obligations (such as polluter pays or historical responsibility and capacity) are quantified and then combined into a single figure according to an agreed weighting.²⁵ Reaching agreement would require resolving significant points of

²⁴ See e.g. Allen et al. 2009.

²⁵ Some precedents for this approach include national submissions such as that of Mexico (Mexico 2008); policy proposals such as Greenhouse Development Rights Framework (which could be applied to

tension, in particular how to define ‘responsibility’, how to weight it relative to ‘capacity’, and whether such an index should be mandatory (‘assessed’ in UN parlance) or only indicative.²⁶ However, I believe it is possible to resolve these issues to arrive at an approach that is a significant improvement on the current system of voluntary pledges. At least one country (Switzerland) has explicitly based its fast-start contribution on a similar approach.²⁷

First, responsibility could be understood as that portion of a country’s cumulative emissions that is both (a) in excess of its fair share of the carbon budget and (b) for which it should be held morally (i.e. not merely causally) responsible. This could mean that states would not be held liable for a basic level of per capita emissions required to meet subsistence needs (compare Vanderheiden 2008:72, 243). Nor would they be held strictly liable for emissions about whose harmful effects they were reasonably unaware (e.g. emissions prior to the publication of the first IPCC report: see Vanderheiden 2008:190). Second, given that this more limited notion of responsibility would not be sufficient to determine which countries should remedy the harmful impacts of emissions falling outside the scope of fault-based responsibility (e.g. pre-1990 and subsistence emissions), capacity to pay would inevitably need to play a significant role in the generation of an index. Further empirical analysis would be required to determine whether the equal weighting of responsibility and capacity (a technique frequently contained in index-based proposals) reflects appropriately the proportion of global cumulative emissions to which fault-based responsibility should apply. Finally, it may also be possible to introduce such an index as an indicative measure, and progressively move towards a more mandatory system as the approach became more widely accepted.

Even if an index-based approach were adopted, some consequential measures would be required to ensure comparability of countries’ nominal financing commitments. In particular, measures are required to address developing countries’ concerns that contributing countries may divert funding from other purposes (e.g. overseas aid originally intended for health and education) in order to meet their climate finance commitments. While the Copenhagen Accord calls for funds to be ‘new and additional’, there is little transparency around how developed countries have accounted for their climate financing commitments to date. Several proposals for additionality criteria are being discussed in policy debates (see e.g. IIED 2010). There has been almost no attention to the question of additionality in the literature on climate ethics, but several arguments could be mustered to justify a strong

mitigation and financing) (Baer et al. 2008) Oxfam’s Adaptation Financing Index (Oxfam International 2007); and research modelling such as Dellink et al. 2009.

²⁶ The current AWG LCA text includes both options (see UNFCCC 2010, Chapter III, para 5).

²⁷ Switzerland’s contribution is based on a combination of emissions in 1990 (75% weighting) and 2009 GDP (25% weighting). While the EU has also proposed an index-based approach to finance, it has indicated that this does not apply to its fast-start contribution (which it considers to be a voluntary pledge), although leaves open the possibility that such an approach could apply to longer-term finance (Fallasch and De Marez 2010:6).

requirement of additionality, including the idea that an actor is generally not entitled to be relieved of a moral obligation simply because another emerges.²⁸ A strong requirement of additionality would oblige states to contribute finance that is not only additional to what they are providing now, but also additional to what they have already committed to provide in future.²⁹

5 Conclusion

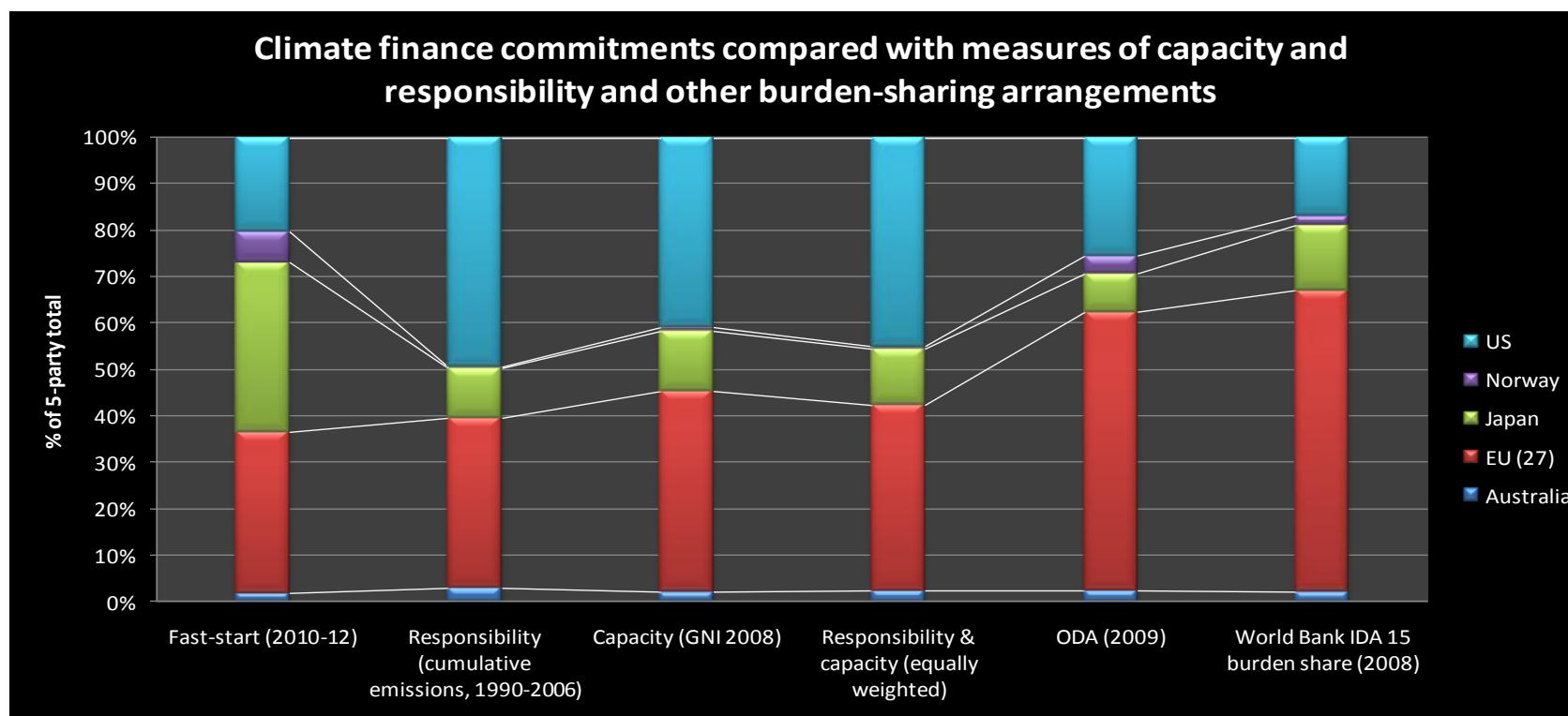
In this paper I have aimed to demonstrate that arguments about fairness are important not only for understanding how change occurs in negotiations but also for informing our theories about what kinds of change are ethically preferable, and what practical recommendations we may derive from those theories. Examining negotiators' perspectives on climate debt helps to highlight both analogies and disanalogies between the idea of climate debt and suitable theoretical frameworks for characterising the obligation to provide climate finance. My analysis suggests that we need to look to alternatives to the climate debt concept not simply for reasons of expedience (due to the political baggage that the term carries) but also because other frames may function better in helping us understand the nature of finance-related obligations and may strengthen the limited norm of obligation that has emerged to date. The carbon budget concept appears to be a promising alternative basis that deserves further exploration.

While this paper has sought to set out evidence for the existence of a limited norm of obligation, clearly further investigation is necessary to build a strong case for the presence or absence of such a norm. In addition, a more comprehensive analysis could also provide a sound basis for policy recommendations on a range of other contested issues in the area of climate finance, including what kinds of conditions may permissibly be placed on the delivery of finance, and whether any developing countries also have an obligation to contribute some finance.

²⁸ Generally trading off obligations would only be permissible if it were not possible to meet both at the same time. However, in most cases it would involve little adverse impact on short-term domestic welfare for countries to meet both their overseas aid and climate finance responsibilities. I discuss this issue further in a working paper entitled 'Additionality as a principle for the fair allocation of climate finance for developing countries'.

²⁹ Some have argued that finance should only be considered additional if it exceeds aid flows that fulfil the UN's aid target of 0.7% of Gross National Product. This may be a worthy longer-term definition, but it is less likely to be relevant in the short term given that many donors' aid budgets currently fall well below this target.

6 Attachment A: comparison of major contributions to fast-start climate finance with other measures



Sources by column: (1) Project Catalyst 2010 (grant equivalent figures used, i.e. where countries have committed some funding in loans, only the net grant amount is counted excluding the value of repayments from recipient countries); (2) WRI Climate Analysis Indicators Tool; (3) World Bank 2009:378-79 (gross national income; purchasing power parity); (4) derived from columns 2 and 3; (5) OECD Development Assistance Committee (<http://webnet.oecd.org/oda2009/>); (6) World Bank 2008:62.

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