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Conceiving the Rationale for International Climate Law

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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. This article proposes a reflection on the elusive rationale for international climate law. It contends that references to, inter alia, "equity," "common but differentiated responsibilities" and "respective capabilities" in existing climate law provide little guidance, reflecting an agreement to disagree rather than any common vision of the objectives of climate law. The articulation of a new, persuasive rationale is needed to foster international cooperation through climate law. The analysis in this article is mainly inspired by constructivist theories in international law and international relations. According to this analysis, ethical narratives cannot suffice to constitute a consensual rationale for climate law, as Northern and Southern societies (broadly speaking) are unable to agree as to whether climate change is mainly a question of solidarity or rather about causal responsibility (reparation for wrongful acts). On the other hand, an interest-based narrative, theorized by Posner and Weisbach, is fails to explain why interest-seeking states would agree to cooperate instead of attempting to free ride on other states' efforts. Therefore, this article argues that a hybrid narrative needs to be conceived, which would reconcile moral aspirations with pragmatic constraints by "talking ethically to states' interests." After examining several alternatives, this article suggests that the concept of complex interdependence could become a persuasive rationale for climate law.

Key words: Climate law, rationale, ethics, international relations, complex interdependence, state interests.

1. Introduction

A growing trend of literature in moral philosophy reflects about what climate law ought to 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 a justification for a specific norm or set of norms. A rationale is neither *pure ethics* (it can be unethical), nor *pure politics*: it is the principial narrative that is constructed to justify law. At first, a rationale may differ from the real motivation of individual decision-makers, but it immediately becomes more than a pure façade, as it provides a common ground on which interpretation and further developments of the law can be constructed. While the "object and purpose" of a treaty are to be considered when interpreting it (1969 Vienna Convention on the Law of Treaties, art. 31.1), the influence of rationales also follows from, firstly, the social demand for discursive consistency (attributing social costs to inconsistencies) and, secondly, their ability to frame the expectations of social actors who receive them as a form of public ethical discourse.

Some of the first climate negotiations in Nairobi in 1991 focused on defining a principial approach of climate law (INC 1991, 17), but they only led to the definition of some vague principles – "equity," "common but differentiated responsibilities" and "respective capabilities" (1992 Framework Convention on Climate Change [UNFCCC], art. 3.1) – whose meaning remains essentially contested. The following two decades of climate talks have focused on concrete provisions rather than on the reasons to adopt them, as if no time was to be wasted – but much time was wasted by the lack of common vision.

The reflection proposed here is largely a normative one about what a persuasive rationale for climate law *should* be, rather than a descriptive analysis of existing law. It is inspired by constructivist theories of international law and international

relations, in particular habermasian analyses of the reception of arguments in international politics (Crawford 2009; Risse 2000) applied here in order to identify the ability of specific narratives to justify climate law. Thus, this article may be seen as participating to an attempt at developing a constructivist perspective on climate law against recurring realist assumptions.

This article suggests that cooperation with regard to climate change should be analysed as guided by an inextricable mixture of ethics and interests, and that a hybrid rationale for climate law should prove able to reconcile both by, so to say, "talking ethically to states' interests." The following sections discuss ethical (2) and pragmatic interest-based narratives (3), revealing their inability to form respectively a consensual or a coherent rationale, before exploring hybrid narratives that try to surmount these difficulties by bridging ethics and politics (4).

2. Ethical narratives

Unlike many fields where cooperation is seen as pursuing mutual interests, climate law stands along with human rights law as an exception where ethics is often expected to play a more decisive role (Humphreys 2010). However, there is no consensus as to how to characterize climate change as a moral issue – as a question of either responsibility or solidarity. This disagreement undermines the role of ethics in constituting a consensual narrative for climate law.

2.1. The responsibility narrative

One way to justify climate law is as a form of causal moral responsibility (corrective justice), conceived either as retribution or, perhaps more convincingly, as reparation (e.g. Caney 2005; Farber 2008). 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 unintentionally, partly without knowledge.

Responsibility is a firm ground for international cooperation. It is well established, for instance, 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). Even in the absence of any wrongs, the timid recognition of the doctrine of unjust enrichment may suggest that a state "unjustly" enriched at the expense of another may have a duty of restitution.[1]

International climate negotiations have recognized the relevance of the responsibility argument. 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 may argue that "responsibility," there, refers to the unspecific, prospective duty of assistance, instead of the causal, retrospective responsibility of the injurer. In the 2010 Cancun Agreements, however, states reaffirmed the leading role of developed states "*owing to [their] historical responsibility*" (2nd recital before ¶36).

2.2. The solidarity narrative

Another way to justify climate law relates to a broader consideration for global justice through social contract theories (e.g. Beitz 1975; Pogge 2002) or simply to

[1] This doctrine was implemented in *Factory at Chrozow* (1928) and *Norwegian Claims* (1922).

the humanitarian duty of the capable to assist the needy. John Rawls, first reluctant to consider justice beyond the national community, cautiously conceded a "duty to assist other peoples living under unfavourable conditions" (1999, 37). With regard to climate change, the solidarity narrative raises questions relating to our individual duty to support the needy, states' extraterritorial obligations, but also inter-species and intergenerational justice (Gardiner 2011).

Whereas the responsibility narrative relates climate law to specific claims for reparations, the solidarity narrative does not distinguish climate law from a multitude of other fields – poverty alleviation, humanitarian relief, or development more generally – where developed states *should* accordingly help the needy. The "soft" duty of assistance posited by the solidarity narrative stands in sharp contrast to the more specific hence stronger duty of repairing injuries that flows from the responsibility argument. The grand language of solidarity in international law – 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) – are not taken very seriously in contemporary international institutions. Didier Fassin (2012) describes humanitarian reason as an inextricable mixture of virtues and affects, ad hoc reactions to public moral sentiments.

Acknowledging climate change as "a common concern of humankind" (UNFCCC, 1st recital), the 1992 Rio Conference 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 [developed states] command" (Rio Declaration, principle 7). The decisions of the Conferences of the Parties to the UNFCCC (COPs) continue to hint at this narrative, for instance when the 2007 Bali Action Plan reaffirmed that "economic and social development and poverty eradication are global priorities" (2nd recital) just before calling for enhanced action on adaptation.

2.3. Ethical ambivalence and the North/South divide

The maintained ambivalence as to the moral grounds for climate law results from the insurmountable disagreement between, broadly speaking, developed and developing states (French 2000, 37). 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, III.28). 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 may have softened with the passing of a quarter Century, but essentially irreconcilable arguments continue to be made. As adaptation was increasingly being reduced to a display of international solidarity, developing states reiterated their claims for reparations through new discussions on loss and damage.

One may be tempted to explain the coexistence of two ethical narratives by the existence of irreconcilable *interests*. The responsibility narrative is accordingly utilized by developing countries to claim larger assistance with fewer conditions (as responsibility excludes interference). By contrast, for developed countries, the availability of an alternative ethical narrative may serve as a shield against such claims; through solidarity, as Peter Singer put it, "we do well if we give it, but we are not subject to blame or reproach if we do not" (Singer 1988, 116). I do not contest here that states may utilize ethical arguments strategically. However, I contend that this is only part of the story: it would be somewhat reductive to attribute the irreconcilable North/South disagreement solely and directly to a rational strategy of interest-pursuing states. No claim for historical responsibility was apparently voiced within the EU Council (1998) during negotiations on joint implementation,

despite some significant differences in the historical contribution of respective Member States. Instead of a strategic posture, this suggests that diverging ethical narratives are internalized in different societies (table 1).

Table 1: Comparison of the responsibility, solidarity and interests-based narratives

	Responsibility narrative	Solidarity narrative	Interests-based narrative
Geopolitical distribution	Southern societies	Northern societies (in part. Europe)	Northern societies (in part. USA)
Ground of differentiation	Historical / present contributions	Capabilities	Interests in climate cooperation
Main duty holder	Industrial states	Developed states	Developing states
Duties	Cessation and reparation (hard duty)	Assistance (soft duty)	Not to free-ride an "optimal" treaty (absolute duty)
Policy focus	Mitigation, adaptation, loss and damage.	Little guidance (do *something*)	Mitigation
Definition of identities	Victims vs. wrongdoers	Good-doers vs. needy	Rational actors with different interests
Main ideological background	Post-colonialism	Humanitarianism	Neo-liberalism

The reception of an argument depends on our cultural background or lifeworld – and ethical narratives are no exception (Crawford 2009, 110). 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 paved the way, since then, to a perception of climate change as another issue of reparations; references to a "climate debt" is constructed in parallel to the debt crisis of the Global South. To some extent, climate law replaced the declining international development law in a critical discourse; "economic refugees" were reconceived as "climate refugees."

But the success of new ideas also depends on their ability to relate to our collective identities (Crawford 2009, 119). The roles suggested by the responsibility narrative are of course 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, solidarity participates to a self-portrayal of the Northerner as a voluntary good-doer (if only through acknowledging that he does not do as much as he would like to) while confirming roles as hegemon and subalterns; what is perceived broadly as "humanitarian" assistance inevitably indebts the recipients toward their benefactors. Thus, the United States considers 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 largely unchallenged in the North, further protected by the invocation of an alternative, less demanding ethical discourse (solidarity). A Northern-centric academic literature has similarly supported the analysis of climate change as a distributive justice issue, downplaying claims for responsibility (Mayer 2013, 952-954). The accidental supporters of the responsibility argument could then be rejected as ideological or "fanatic" (US Congress 1997, S8117), diverging from the *pensée unique*. 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. Such argumentative avoidance is received with great hostility in Southern societies (Rajamani 2006, 87).

3. Interest-based narrative

Through the construction of two opposite narratives, ethics appears to offer little consensual guidance on climate law. Therefore, ethics came to be perceived as an obstacle, which, it appeared, could be avoided through a purely pragmatic approach

of climate cooperation. In particular through a discussion of Posner and Weisbach's offensive against climate ethics, this section shows that a conception of climate law as solely guided by states' economic interests is untenable: it rather appears that states' "interests" are defined by a social process, where values play an indispensable role in transforming scientific data into normative injunctions.

3.1. Opposing state's "interests" to ethical duties

The "ultimate objective" of the UNFCCC is defined as "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (art. 2). This could be taken to suggest that the success of climate law should be assessed on the sole basis of its ability to control climate change and its adverse impacts. Although ethical concepts might have been influential in defining this goal at the first place, the interest-based narrative proclaims the autonomous existence of climate mitigation, as an independent objective, in a managerial approach of fragmented international law (Koskenniemi 2005, 600-615).

Posner and Weisbach, two "law and economics" scholars of the University of Chicago Law School, offer the most detailed account of this narrative, where ethical arguments are seen as "both vulnerable in principle and dangerous in practice" (2010, 190), and where rational states (should) 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" (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" (84) in order to ensure that each state agrees to participate. They insist that such side-payments "need not benefit the poor" (84). Their assumption is indeed that developing states have a stronger interest in mitigating climate change, and that, as Poser 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."

Early evidence of the potential success of this narrative was provided by the Byrd-Hagel resolution, whereby 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" (S8117); an American diplomat reaffirmed more recently that "a stand-alone debate on equity would not be productive" (AWG-LCA 2012, ¶48). In the same vein, regional and domestic market-based mechanisms implement an approach of marginal cost equalization as efficient rather than fair: the European Union's Emission Trading Scheme was thus presented by the Commission (2001, 2) as "an environmental policy instrument to lower the costs of reducing greenhouse gas emissions."

Yet, Posner and Weisbach recognize that, "even if a nation is better off with a treaty than without it, it will be better off still if everyone else signs the treaty and it does not" (181). This is one aspect of a larger participation puzzle: rational states would not cooperate absent deterrent sanctions against free-riding. Yet, sanctions are unlikely, not only because international institutions are ill-equipped to force participation (ratifying an international treaty is a sovereign decision) or to enforce existing law, but also because free-riding may be difficult even to identify (let alone sanction), as predictions of the precise adverse impacts on each state are approximate and their valuation (including the valuation of uncertainty) depends to complex social processes. Trying to overcome this puzzle, Posner and Weisbach suggest that states would have a *moral duty* not to free-ride (183), thus suddenly renouncing to their previous assertion that states pursue their interests rather than their moral duties. In the absence of sanctions against free-riding, purely interest-seeking states would not participate in a climate regime.

Posner and Weisbach's acknowledgment that states should not free-ride an "optimal" treaty evidences that the interest-based narrative is grounded in some normative considerations. The demand for climate change mitigation is the normative keystone on which the interest-based narrative holds, replacing normative demands for responsibility or solidarity. Yet, there appears to be no

supreme normative ground to justify that climate mitigation should be a global priority superseding all other political goals. Nor is there any indication that the interest-based narrative would be able to foster global cooperation more successfully than other narratives. International climate negotiations have shown that many states value other goals, within the climate regime, such as development, adaptation, and loss and damages. For many, it appears clearly that climate change mitigation is a way to realize more general goals (e.g. human rights), not an end in itself. Limiting the scope of climate negotiations to mitigation would therefore fail to create a global political momentum comparable to the use of ethical arguments.

3.2. Redefining "interest" as a social construct

The assumption that states pursue their "interests" is tautological if "interests" are defined by reference to what states do pursue; but it is an untenable empirical claim if the consideration of "interests" is limited to their sole *economic interests*. Despite their immediate economic interests, oil-producing countries participated in the climate regime. The differences of economic situations between Northern America and Europe may not suffice to explain their diverging position. The same European leadership would be surprising if one follows Posner and Weisbach's assumption that Southern states have more "interests" in mitigating climate change.

The determination of states' economic interests remains impeded by the approximate nature of existing global and downscaled projections. How physical exposure translates into adverse impacts also depends on each society's ability to reduce its vulnerability through development (broadly understood). Furthermore, whether this impact is estimated in terms of economic valuation or of human lives may have significant consequences on the debate, as climate change may destroy more costly infrastructures in Northern countries while accounting for more casualties in the South. Northern states are able to attach a higher economic value to saving a human life through climate change mitigation than Southern states, where many lives can be saved with minimal spending (for instance through the distribution of life-saving medicines): adaptation may therefore appear as a more

acceptable response to climate change in developing countries than it does in developed ones.

More fundamentally, states only have the "interests" that are ascribed to them as a result of a social process. Within each state, there are diverging views as to what should be defined as national "interests." Domestic economic interests, often contradictory, are only some amongst many voices. At a higher level of abstraction, David Hume famously showed that statements about what *ought to* be cannot be deduced solely from statements about what *is*: normative arguments need to be anchored in values, rather than solely on descriptive data. Values are most evidently needed when defining our present interest in avoiding future events (Nordhaus 2007) or in assessing a state's interest in avoiding harm to the populations of other states.

The interest-based model related by Posner and Weisbach describes short-sighted states that only pursue what appears predominantly as the short-term economic interests of national elites. This model might often be descriptively correct, but there are also many empirical counterexamples of international solidarity. More importantly, many citizens would disagree with a blank *normative* claim that states should only defend their citizens' interests, and some would even agree to substantive sacrifices in the name of international solidarity. Social demands convey some moral concerns, and myriad environmental NGOs convey a social interest for moral concerns.

Despite Hume's law, the interest-based narrative blends a descriptive statement that states generally pursue their rational interests with a normative argument: interest-seeking being "*normal*," it is therefore *acceptable*, even *commendable*. This complacent discourse is likely to be politically successful when it builds upon an accepted neoliberal ideology, in particular in Northern America. The interest-based narrative attributes the stalling of climate negotiations to the unrealistic character of ethical narratives; but its dismissal of the special responsibility (causal or not) of developed countries creates unrealistic expectations in the North. Posner and Sunstein's proposal for South-North side-payments is an obvious political non-

starter for developing countries, which may not agree with Senator Byrd that the time for pointing fingers is over.

As a dispassionate and rigid, managerial fixation on states' economic interests, the interest-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 corrective or distributive justice.

4. Towards a hybrid rationale

If no unique ethical narrative seems able to make consensus, and an interest-based narrative necessarily reflects some controversial normative assumptions, this last section suggests that climate law may more convincingly be justified by reference to a hybrid rationale – one that is based on the analysis of states' interests in implementing a broadly ethical form of cooperation. A reconciliation of developing and developed countries can only occur through a mid-way rationale which would allow all, or most of the countries to cooperate without losing face.

4.1. Civil society proposals

The attempts to define a rationale within the UNFCCC system have met a limited success. "Common but differentiated responsibilities" remain the high-water mark of a blur international consensus defined more than two decades ago. It is an important concept, but one that remains too narrowly ethical. Why would states agree to behave ethically, when governments are only accountable to their domestic constituencies? Why would their domestic constituencies look at what they could just as well decide to ignore?

Rather, a rationale that would reconcile states' interests and ethical duties in a persuasive fashion may help foster climate cooperation. However, today, by contrast with the early 1990s, states seem unenthusiastic to discuss principial questions within the UNFCCC, as evidenced by the rejection of India's proposal for the inclusion of an agenda item on equity at COP 17. The task of initiating the definition of a vision for the development of climate law has consequently fallen back onto civil society movements.

A trend of advocacy that developed in recent years has promoted the concept of "climate justice," a rallying cry that assembles the proponents of diverse ethical arguments for distributive, corrective, and environmental justice. In particular, the Universal Declaration of the Rights of Mother Earth, adopted by a large gathering of civil societies representatives 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 as to why states should agree to act ethically at the first place.

The same may be said of the idea of extending the framework on a responsibility to protect, to climate change. 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.[2] Yet, Kofi Annan's report warned that "[t]o try to extent [this

[2] The framework on a responsibility to protect may allow a state to provide assistance and intervention in certain circumstances, but it never obligates any state to protect the population of another state.

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.

A more powerful rhetoric, which puts interests and virtues together, stems from non-traditional security concepts such as "human security" or "climate security." 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 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. Securitization comes at a price, however, 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. Including climate change in "high politics" may also impede the role of NGOs, usually conceived as more influential on "low politics," in promoting cooperation. More essentially, 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" (Dalby 2013, 21). 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.

4.2. The prospects of "complex interdependence"

By associating human welfare with the concept of security, the discourse on "human security" alludes to our growing global interdependence. First developed as an explanatory model alternative to the realist portrait of states pursuing their own economic interests (Keohane and Nye 1977, 24), the concept of a "complex interdependence" has also become a justification for international cooperation: in a growingly interdependent world, states are likely to identify similar issues that they want to address and can only address through cooperation. This narrative

transcends the calls for solidarity or responsibility, or for states to act in a specific way in pursuance of what appears to be their interests. It is grounded in the widespread perception of our growing interconnectedness, witnessed in particular through global environmental change, economic globalisation, and multiple cultural intercourses – "a world in which events in the most remote reaches of the planet would have inevitable repercussions on all" (Akhavan 2005, 974). A sense of complex interdependence is conveyed by the 2000 Earth Charter: "we must decide to live with a sense of universal responsibility." Rather than directly an argument for climate cooperation, it constitutes the theoretical background on which substantial claims for responsibility and solidarity may be more openly discussed, like a moral Trojan horse intruding the political world.

Climate change may be approached both as the consequence of our failure to understand complex interdependence and as a reason for renewed efforts in mitigating climate forcing. Overall, it also calls for a turn toward finally taking into account the extraterritorial consequences of *any* conduct. The concept relates for instance to how the neglect of Afghanistan by the international community during the 1980s and 1990s, despite the severe crisis encountered by its population throughout the soviet war and the ensuing civil war, created the circumstances in which international terrorism could thrive and foment an attack against the World's superpower. The concept of global interdependence suggests that no severe humanitarian crisis is of purely domestic concern. It bridges the barriers between ethics and politics by suggesting that, to certain extent, *doing what is perceived as one's moral duty may be the best way of ensuring one's interest in a complex, unpredictable global game*. It is accordingly 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 "human security," "sustainable development" or a "responsibility to protect," "complex interdependence" does not present climate cooperation as a *sacrifice* of Northern populations' "interests" on ethical grounds,

but rather as a rational and prudent conduct for states unable to predict what could otherwise be the costs of inaction.

5. Conclusion

This article submitted the prolegomena of a reflection on the rationale for climate law. A rationale for international cooperation through climate law cannot consist in either ethical concepts or states' interests taken in isolation. Instead, the concept of global complex interdependence may be a promising way to hybridize ethical and interest-based narratives within a coherent and persuasive rationale. This article suggests that clarifying the reasons for climate cooperation through such a hybrid rationale may help, on the long term, triggering support for the costly measures that are indispensable to respond to the growing claims for justice.

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