



Politics of Negotiation of Climate Change Agreement: The North – South Dichotomy

Christopher M. Inwang LLB, BL, LLM, PhD

**Adjunct Lecturer, Faculty of Law,
University of Uyo, Uyo, Akwa Ibom State, Nigeria**

ABSTRACT

Negotiation of environmental agreement, is marked with tension and split between the global North, developed countries, and the global South, developing countries. The South contends that the North use fossil fuel as source of energy for its development hence heavily emit Green House Gases, GHGs, responsible for climate change. That the North should take responsibility and bear the burden of climate change obligations. The South is unwilling to compromise their development to climate change obligation. The North argue that Brazil, Russia, India, and China, are developed countries and heavy emitters and should not be so classified and have refused to commit to climate change obligation, US is a typical example. This dichotomy has affected negotiation and execution of several environmental agreements. This article argues that obligation imposed by environmental treaties, should assume the status of *erga omnes*, non-derogable and peremptory norm owed towards all, binding on parties and non-parties. The work proposes effective enforcement and monitoring mechanism of treaties outside the treaty body. Finally, the principle of common but differentiated responsibilities should be given prominence in the enforcement of Multilateral Environmental Agreements - MEAs.

Keywords: climate change agreement, negotiation

1.0 INTRODUCTION

Negotiation of climate change agreement, over the years, is marked with severe tension and interest-based split between the global North - Australia, Canada, Israel, Hong Kong, Macau, New Zealand, Japan, Singapore, South Korea, Taiwan, the United States and all of Europe - developed countries, and the global South - Africa, the Caribbean, Pacific Islands, the Middle East - developing or third world countries. Other notorious contentious groupings that participate in the negotiation process include; the G-77 (a UN based block of developing countries that was formed in 1964); the BASICS Group (Brazil, Russia, India, China, and South Africa); the CRIB (China, Russia, India and Brazil), the low-lying states (victims of climate change) and the oil producing states (beneficiaries of fossil fuel development). The global South argues that the North acquired its development from the use of fossil fuel and consequentially polluted the environment hence should take responsibility of climate change obligation. They are therefore reluctant to compromise their development for emission reduction. The North argue that Brazil, Russia, India, and China, are developed countries and heavy emitters and should not be so classified and have refused to commit to climate change obligation, US being a typical example. The politics of climate change has marred effective negotiation and execution of MEAs.

Every country is preoccupied with developmental policy. Poorly planned or totally unplanned developmental policy has consequences on the human environment. Without deliberate and conscious steps to address the developmental impacts on the environment, our life and the earth, our common home, may stand the risk of imminent collapse.

The composition of the atmosphere is rapidly changing due to emissions of tons of GHGs from industry, transportation, agriculture and consumer practices. With this thickening blanket of gases, the atmosphere is gradually warmed and the resulting climate change and its deadly impacts eg increased

droughts and floods, rising sea-levels, and more extreme temperatures.¹ Ideally, the willingness of countries around the world to cooperate in the negotiation of treaties, agreements and conventions to address this global problem is absolutely desirable and sine qua non.

Though climate change is a global problem, the global north and south are not all equally responsible for causing same; their contribution is according to their level of development and reliance on fossil fuel as the only source of energy for the development. Climate change is caused overwhelmingly by emissions from rich, developed and highly industrialised countries. Developing countries are rightly concerned about the consequences of restraining the growth and development of their economy due to the irrevocable need to rely on the very expensive and almost unaffordable renewable energy source of development. This supports the argument embodied in the principle of 'common but differentiated responsibilities' in the United Nations Framework Convention on Climate Change (UNFCCC), which holds that the high-income countries should lead in emission reduction, given both their historical responsibility and their significantly higher per capita emissions today.² We all are responsible for emission but according to our level of development per time.

The need and time to play down on the politics of the global North and South, cooperate and close ranks at the negotiation, implementation and execution of MEAs and specifically the climate change agreement for sustainable development and ultimate protection of the environment is now.

2.0 The North / South Divide

The North-South Divide is a socio-economic and political differentiation which exists between developed and developing countries. The term emerged in transnational and postcolonial studies and refers to 'First World' and 'Third World' countries - developed and less developed or developing countries respectively. North-South negotiation is the process through which the developed and developing countries engage over desired changes to the international economic system generally or in this case negotiation by Conference of Parties, COP to UNFCCC or Conference Meeting of Parties, CMP, to Kyoto Protocol for climate change treaties.

The debates are characterised by controversies between protagonists from the different sides, three of which can be distinguished; the climate change sceptics,³ who posit that the present-day agitations are manipulated. To them, fluctuations in climate are constant feature of world history produced by natural causes. Some of the sceptics accept the existence of climate change though humanly induced, but claim that its threats are exaggerated.

The second is the mainstream view published by the Inter-Governmental Panel on Climate Change IPCC by the world's best environmental scientists after intensive research. In successive publications,⁴ IPCC has forecasted possible future scenarios and outcomes.

However, there is a further divergence of opinion today between the mainstream authors and researchers who think that climate change poses even greater and more urgent threat than is ordinarily known. There are the 'radicals',⁵ who argue that there are threshold effects in climate change, as the naturally-induced climatic fluctuations we know, reveal.

¹Conserving Biodiversity; a research Agenda for Development Agencies (1992) <https://www.nap.edu/read/1925/chapter/2>.

² Article 3 Principle 1 UNFCCC.

³Climate change denial; dismissal or doubt of the scientific consensus on the rate and extent of global warming, its significance, or its connection to human behaviour, in whole or in part.

⁴IPCC First Assessment Report 1990 (FAR); 1992 Supplementary Reports; IPCC Second Assessment Report: Climate Change 1995 (SAR); IPCC Third Assessment Report: Climate Change 2001 (TAR); IPCC Fourth Assessment Report: Climate Change 2007 (AR4); IPCC Fifth Assessment Report, 2014.

⁵ Michael Bloomberg; former Secretary of the Treasury and former CEO Goldman Sachs, Hank Paulson, and former Secretary of State George Schultz.

Other radicals eg James Lovelock⁶ - believe that the world is self-regulating hence too late to avoid dangers of climate change. Others opine that we can still avoid the dangers by acting now.

2.1 The North/ South Divide in Environmental Issues

The two groups manifest their position openly during negotiation. They usually adopt positional approach to negotiate their interest and only submit to the terms that are beneficial to them. Since inception, negotiations in the COP have been characterised by selfish considerations and economic conflict of interest. The form of these conflicts cannot be conceived as rigid but have varied in their strength and intensity over time.

Conflict arose at the inception of the negotiation over the question of who had to take responsibility for the causation of man-made climate change.⁷ In Rio,⁸ this question was comparatively easy to answer using industrialisation as the determinant. Industrialization of the Global North since 1850 had been the main producer of greenhouse gases. This led the industrialised countries to accept the 'historic responsibility' and concede to a 'common but differentiated responsibility'.⁹ From a normative point of view this seemed mandatory as in 1990, 10 out of all industrialised countries were responsible for 75% of the total greenhouse gas emissions.¹⁰ Furthermore, the industrialised countries accepted the necessity of contributions as they recognised the need to provide adequate financial support and the establishment of technical capabilities for developing countries to address the problem.¹¹ At the same time the historic responsibility set the ground for another big conflict between the two groups but unfortunately some of the countries in the North eg the US were insincere about the commitment as it can be seen in their immediate summersault to invite developing countries to likewise contribute to the reductions measures.

The non-inclusion of developing countries was one of the main reasons the US-senate refused to ratify the Kyoto protocol. Conversely, the recent economic developments of the BASIC group (Brazil, South Africa, India and China), more than ever, blurred the former clear distinction between developing and industrialised countries.¹² India and China's enduring self-perception and deceit, as developing countries, is another conflict against the accord of the developing countries. While in the beginning, developing countries were united in their aspiration to prevent any obligations that might harm their economic development, this consensus became more and more fragmented throughout the negotiation process.¹³ This fragmentation is grounded in the increased vulnerability of least developed countries.

Industrialised countries are endowed with a higher capacity to adapt to climate change impacts than developing countries. Developing countries will therefore not only need the capacities to adapt to the impacts of climate change but likewise have to reduce their contribution to the problem. Countries like China, India and Brazil are supposed to intensify their commitment. The BASIC states have become some of the greatest emitters of greenhouse gas would therefore be classified as emerging countries.¹⁴ Nevertheless, while AOSIS and the least developed countries request that all countries, in line with the FCCC, should take reduction measures seriously, the BASIC members are reluctant to do so, as they fear that these measures could harm their economies.

⁶James Lovelock CH CBE FRS (English independent Scientist, environmentalist and futurist) Proponent of Gaia hypothesis that the Earth functions as a self-regulating system.

⁷ Biermann, F. (1997). *Weltumweltpolitik zwischen Nord und Süd: die neue Verhandlungsmacht der Entwicklungsländer*, Nomos, Baden-Baden.

⁸The Rio Declaration On Environment and Development (1992).

⁹ Article 4, Principle 1 UNFCCC.

¹⁰ Hoffmann, M.J. (2013). 'Global Climate Change', *The Handbook of Global Climate and Environment Policy*, John Wiley & Sons Ltd, pp. 3–18.

¹¹ Article 3 Principle 4 & 5 UNFCCC.

¹² Qi, X. (2011). 'The rise of BASIC in UN climate change negotiations', *South African Journal of International Affairs*, Routledge, Vol. 18 No. 3, pp. 295–318.

¹³ Lederer, M. (2014). 'Die Macht des Südens in der globalen', Springer Fachmedien Wiesbaden, pp. 319–335.

¹⁴ Ibid (n.15).

Since the negotiation for climate change framework convention in the early 1990s, the South had united under two unalterable key bargaining positions that; developing countries will not accept responsibility for climate mitigation – and thus, will not commit to GHG emission reduction; and that developed countries should take responsibility for financing the adaptation of the most vulnerable countries. In fact, the South succeeded in institutionalizing these provisions under the FCCC and the Kyoto Protocol.

3.0 Negotiation of Environmental Agreements

During the early stages of international environmental negotiations, it was already evident that a consensus would not emerge between developed and developing countries on the issue of global environmental protection. ‘Late-developers’ feared restrictions on their economic growth but instead emphasized the North’s wasteful use of planetary resources. They advocated redistributive programme that would benefit them economically and hasten their transition towards industrialisation. Developed countries, on their part, pushed to get the issues of Northern consumption off the negotiating table; to have the Southern population growth on the agenda, and the use of nonbinding language on issues of financial assistance and technology transfer. Neither negotiating bloc was willing to concede in this adversarial negotiating atmosphere.¹⁵

Despite (or possibly due to) Southern resistance to this new environmental international agenda, in the post-Stockholm era, the economic and social concerns of the South became predominant in interstate relations. By the mid-1970s, the North-South divide had intensified even further. In 1974 the South, organized in the Group of 77, succeeded in their efforts to make the UN General Assembly – dominated by developing nations - adopted the Declaration on the Establishment of a New International Economic Order (NIEO). This instrument was inspired by the idea of overcoming injustices in existing international law system.¹⁶ The adoption of the NIEO could have been seen as an increase in the negotiation leverage of South over their northern counterparts.

By the late 80s, international negotiation processes entered a new phase of less divisive politics with the unexpected end of the Cold War. This brought with it a new momentum in global negotiations on key environmental issues, broadly opening up the prospects for developed and developing countries to engage in a revitalized dialogue.¹⁷

4.0 The Politics of Negotiation

As in many global environmental issues, differences which exist between the industrialised (developed) and the developing countries, particularly because of consumption of fossil fuels (and thus the release of greenhouse gases) is viewed as inextricably linked to economic development. Developing countries have not yet accepted any commitment through the climate change negotiations that will slow their economic growth. The international concern with the climate change, arguably, distracts attention from the more pressing national environmental concerns of urban air pollution and lack of safe drinking water. Moreover, by most measures, industrialised countries are primarily responsible for the current composition of atmospheric impurities. Although China now ranks as the highest annual emitter of greenhouse gasses, it is in the opinion of the writer, not as bad as the United States of America. To developing countries, there is every justification for requiring the industrialised countries to make significant reduction in greenhouse gas emissions first, as the trailblazers. To balance the argument, however, emissions are growing fastest in the global South, and no effort to curb climate change solely by reducing emissions in industrialised countries will be successful.

A North-South negotiation framework was not clearly in place at the initial climate dialogues which took place at the end of the 1980s. However, the successful negotiation process of the Montreal Protocol on Substances that Deplete the Ozone Layer¹⁸ provided encouraging perspectives for a constructive negotiation process on climate change between developed and developing nations.¹⁹

¹⁵Haas, P., R. Keohane and M. Keohane (eds.), 1993. *Institutions for the earth: sources of effective international environmental protection*. Cambridge: MIT Press.

¹⁶Beylerlin, U. 2006. ‘Bridging the North-South Divide in International Environmental Law’ *Heidelberg Journal of International Law* 66.

¹⁷Ibid (n.15).

¹⁸ The Montreal Protocol was signed in 1987 and entered into force in 1989.

¹⁹Porter, G. and J. Brown. 1996. *Global Environmental Politics*, Colorado, Oxford: Westview Press. 44

At this early stage, developing countries did not explicitly block the proposal of a climate regime, nor did they assume a leading position. The global warming issue, the same as the ozone layer, was seen to be a “Northern” problem for which they had no causal responsibility. Their agenda reasonably prioritized poverty and economic developmental issues like sanitation, urban pollution and desertification.²⁰

However, once the climate epistemic community began extensively reporting on the potentially catastrophic impacts of climate change in the South, some developing countries firmly took sides and assumed regime leadership. In this sense, marked divisions erupted between the cartel of the Organization of Petroleum Exporting Countries (OPEC), whose economies were completely dependent on oil trade, and the Association of Small Island States (AOSIS), whose very geographical survival was at risk, and which consequently demanded ambitious emissions reductions.²¹ Unsurprisingly, the AOSIS was the first coalition to introduce a concrete proposal for legally binding emissions reduction, and eventually their paradoxical influence²² reached the point of becoming the official position of almost all developing countries when the G-77/China assumed a great part of their proposal as its official stance. In the end, the desire for unity in order to avoid a detrimental negotiation outcome outweighed internal diversity and differences, allowing for quite a unified Southern bargaining position at this early negotiation stage.²³

From the side of the North, divisions manifested with the major emission emitters of the United States, Japan and the then Soviet Block, rejecting the idea of explicit targets and timetables. This contrasted with the position of several European countries that had strong domestic environmental movements, particularly Denmark, the Netherlands and Germany, which recognised global warming as being a real threat and consequently acknowledged the need for a legally binding international agreement.²⁴ The political bargaining began visibly at a conference in Toronto in 1988; ‘The Changing Atmosphere: Implications for Global Security’, which was attended by government officials, scientists, and representatives of industries and environmental NGOs from 46 countries, concluding with a proposal for a reduction in carbon dioxide emissions.²⁵

After several other conferences and changing negotiating positions from different actors, the regime bargaining finally entered the realm of an official framework when at the end of 1990, the UN General Assembly established, by Resolution 45/212, that the Intergovernmental Negotiating Committee (INC) for a Framework Convention on Climate Change would be a single intergovernmental negotiating process. For the next fifteen months, states gathered in five different sessions in which they intensively discussed the shape of the climate regime. During the first INC session in Washington in February 1991, the discussions reflected strong points of contention that can be conceptualised in terms of a North-South struggle.

This divide became particularly visible when just days before the second INC session, China organised a widely attended ‘Ministerial Conference of Developing Countries on Environment and Development’. The outcome was the ‘Beijing Declaration’, which more than explicitly framed the climate regime negotiations process in North-South terms by asserting that:

²⁰Adil Najam; The Developing Countries and Global Environmental Governance: from Contestation to Participation to Engagement.

²¹Prum, V 2007. ‘Climate Change and North-South Divide: Between and Within’, *Forum of International Development Studies* 34. (223-244).

²²AOSIS members have, in average, the smallest population and economies of the world.

²³Najam, A. 2004 ‘The View from the South: Developing Countries in Global Environmental Politics’, in R. Axelrod and D. Downie, et al., (eds.), *The Global Environment: Institutions, Law and Policy*.

²⁴Grubb, M. 1995. ‘European Climate Change Policy in a Global Context’, in H. Bergesen, G. Parmann and O. Thommessen (eds.), *Green Globe Yearbook of International Cooperation on Environment and Development 1995*. Oxford: Oxford University Press.

²⁵Houghton, R. and G. Woodwell. 1989. ‘Global Climatic Change’, *Scientific American* 260. (42-43).

The FCCC currently being negotiated should clearly recognize that it is developed countries which are mainly responsible for excessive emissions of greenhouse gases, historically and currently... Developing countries must be provided with full scientific, technical and financial cooperation to cope with the adverse impacts of climate change...²⁶

In the subsequent INC session held in Geneva in June 1991, the Beijing Declaration's main component was incorporated, namely the limitation and reduction of CO₂ emissions of Northern countries. This factor was included despite resistance and counterproposals from Northern parties; with for example, the UK and Japan proposing a 'pledge and review' process which would allow countries to set their own targets and include not only industrialised but also rapidly industrialising nations. An idea fiercely rejected by China and India.²⁷

4.1 The Kyoto Protocol and the Marrakesh Accords

After the UNFCCC became operational in early 1994, the Intergovernmental Negotiation Committee (INC) had six more sessions before COP-1 in 1995. The original priorities of the INC were to define a 'financial mechanism', and to decide on the controversial 'flexible mechanisms', by which developed countries would push for cost effective solutions to comply with their potential climate commitments, even outside their national frontiers. At the centre of contention was the issue of the developed countries' struggle to define to what extent they would assume the costs of both mitigation and adaptive capacity in the Southern countries and economies in transition.²⁸

The Southern camp suffered some moments of friction when the AOSIS independently submitted a concrete proposal for a 'protocol' demanding 'new' commitments for developed countries.²⁹ During the 10th INC session in Geneva in August 1994, China, fearing that a new commitment would require a more active Chinese role, reacted at the INC-11 in New York in February 1995, by vigorously attacking the findings of greater certainty in the anthropogenic causality of climate change included in the IPCC Second Assessment published in early 1995.³⁰ Eventually, the G-77 and China accepted the proposal by AOSIS as their own. However, for developed countries, this was just the beginning of a long and painful North-North struggle.

A significant feature of this stage of the regime was the veto coalition interaction dynamics. The first and most prominent of such coalitions where the US-led JUSSCANNZ, was ironically formed in part by countries which previously held progressive and leadership stances in the building of the Climate Convention like Norway, New Zealand and Australia.³¹ The composition of this coalition showed the extent to which a shift in the domestic balance of political interests can affect the international level of negotiations. More fundamentally, this veto coalition building process also exemplified the perceived great economic implications that responding to the climate issue required.

Interestingly, COP-1 in Berlin in April 1995 assessed that the commitments of the Convention for developed countries (Annex I Parties) was not adequate and responding to considerable pressure from the South, with the strong support of key European countries, assured that no new commitment would be introduced to developing countries. This partial North-South cooperation move reflected a dramatic shift in the evolution of the climate regime in which early negotiations followed a more overarching North-South divide logic. The 'Berlin Mandate' initiated a new process and a new 'Ad hoc Group on the Berlin Mandate' (AGBM) to negotiate a 'protocol or another legal instrument' with binding 'quantified emission limitation and reduction objectives' (QELROs) for reducing emissions of developed countries.³²

²⁸Kiliparti, R. 2002. 'The UNFCCC: History and Evolution of the Climate Change Negotiations', in L. Gomez-Echeverri (ed.), *Climate Change and Development*. New Haven, Connecticut: Yale School of Forestry & Environmental Studies. (47-62).

²⁹(A/AC.237/Misc.36) unfccc.int/resource/docs/a/misc33add3.

³⁰Carraro, C. (ed). 2000. *Efficiency and Equity of Climate Change Policy*. Dordrecht: Kluwer Academic Publishers.

³¹Ibid (footnote. 38).

5.0 CONCLUSION

Very few aspects of the climate change debate are uncontroversial, several others are. The controversies between the protagonists are often intense and even bitter. As in many global environmental issues, differences exist between the global North - Annex 1 Parties and Global South - developing countries, particularly because economic development is inextricably linked to consumption of fossil fuels. The US and other developed countries oppose the classification of Brazil, China and other BASIC countries among the Global South - developing countries. Developing countries are reluctant to accept binding climate change commitments that will slow their economic growth and instead blame developed countries, the heavy emitters who have refused to take responsibility of GHG emission; the refusal of the North to assist developing countries to acquire the needed technology for sustainable development. This work has identified the dichotomy as the reason for the non-commitment by states to yield to climate change obligation. The work has strongly proposed that all efforts should be made to raise the status of environmental obligations to *erga omnes* obligation, ie non-derogable peremptory norm, which may be compared to the resolution of the UN Security Council. The research further opines that the Common interest considerations should override personal interest of states in the negotiation and enforcement of MEAs. That States need not be parties to Environmental Agreement to be bound by its obligation, Environmental Treaty obligation should bind all states. It is further recommended that peer review mechanism should be introduced to enable sovereign states act as check on one another. Joint investigation and monitoring of neighboring states would be effective to prevent violation and ensure that violators take responsibility of their acts. Monitoring of compliance and implementation of MEAs should be enforced by an external body established independently for the purpose. Violation of MEAs must be viewed seriously and offenders should be sanctioned. Violation of environmental treaty obligations should be treated as business unusual and not anymore as business as usual. The divisive wall of Global North or South in the negotiation of climate change/ environmental agreements and the associated tension should be brought down by reclassification of countries into the schedule which they truly belong according to their level of development. Sincerity and transparency should guide countries to accept themselves their level of development and consequential emission of GHGs, hence their commitment to obligations imposed by negotiated agreements. In matters of climate change or any agreement affecting the environment, our common heritage, division along the North, South, East or West should not be tainted with tension and global politics.

³²*FCCC/CP/1995/7/Add.1*. 6 June 1995. Original: ENGLISH. CONFERENCE OF THE PARTIES. First session. Berlin, 28 March - 7 April 1995; <https://unfccc.int/resource/docs/cop1/07a01>.