Interview with Joyeeta Gupta¹

1. *Your dissertation, published in 1997 under the title 'The Climate Change Convention and Developing Countries - From Conflict to Consensus?', already anticipates a central theme of your academic career, namely North-South relations in international environmental governance. How would you say that often complicated relationship has evolved in the two decades since, especially in the area of climate governance? Are you more or less optimistic in 2017 than you were in 1997?*

When I began working on my PhD thesis in the early 1990's I was struck by how fast the consensus was moving on a very complicated issue as well as how fast the ratification process went; especially when one compared that with other environmental treaties on fresh water and oceans at the time. This, despite the fact that, while the issue was clearly contentious from a North-South perspective, there were many provisions to ensure 'fairness' in the Convention. And yet, when I completed the book, I had to add the question mark at the end of the title – because my interviews had revealed that the consensus was very fragile. This confirmed the doubts raised from undertaking a legal analysis of the text – where the positioning of commas, the framing of adaptation, the insertion of a last-minute footnote to the Convention tried to weaken its equity component. And curiously many of the broad issues raised in the book are still valid today – and the commitment of countries to addressing the problem seriously has been tested time and time again over the last thirty years. I am an inherently optimistic person, and am convinced that the climate change problem will be addressed; but I think that the developing countries need to focus more on the risks of stranded assets if they wish to further develop a fossil-fuel-based economy, as well as the risks of continued adaptation if the climate problem is not quickly addressed, as I am not convinced that the equity argument is likely to be very

successful especially in a world of changing geo-politics. I think the leadership has to come from the countries of the South, where pension funds, savings, infrastructure and lifestyles are as yet less locked in to the carbon economy.

2. *One of your latest books covers the history of global climate governance. Based on your research for that book and your observation of the negotiating process, what do you think the past tells us about the future of international climate cooperation? Some recent developments in climate diplomacy seem to have earlier parallels – is there a pattern of history repeating itself?*

When doing the research for the Cambridge University Press book on the history of global climate governance, I went back to re-read the original speeches of countries at the negotiations. I was struck by the fact that in 1989, the US delegate had said at the Noordwijk Conference: 'We fully endorse, and even share, the aspirations of the developing world for economic development'. In doing so, the US had clearly stated that they contested the notion that the rich countries should try to make space for the South to develop. Ultimately, as long as the world uses fossil fuels to power its development, there will be a major struggle between the industrialised and developing/emerging countries as to who has the right to use the remaining carbon budget. The winners in this debate will be those who can decarbonise rapidly. But the negotiations tend to focus less on the issue of how to decarbonise rapidly and more on creating all kinds of market, reporting and transparency mechanisms which require huge bureaucracies to enforce – much of this in my view is a red herring that distracts from the main efforts of large scale and swift greenhouse gas reductions. For example, we have put in a lot of effort in making countries ready for REDD, but I am not convinced that REDD will take off, and we have a huge history of failed agreements on forests.

3. *Although climate change has been a consistent theme in your scholarly work, other issues, such as the international governance of water resources,*

1 Dr Joyeeta Gupta, Professor of Law and Policy in Water Resources and Environment, Amsterdam Institute for Social Science Research at the University of Amsterdam and IHE Delft Institute for Water Education. The interview was conducted by CCLR Editor-in-Chief Michael Mehling in August 2017.
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have also featured extensively in your research. Looking back at how the academy has focused and shifted resources and attention across issues over time, do you feel that current preoccupation with climate change has crowded out other issue areas? Or has there instead been a process of mainstreaming and integration, affording greater weight to the nexus between climate change and other topics?

I was very lucky in that I was teaching water law and policy while researching on climate change since the early 1990s and very soon I realised that the climate and water issues are interlocked (eg through salt water intrusion, changing hydrological patterns), but that the negotiations on both issues were divorced, undertaken in different political arenas with different equity principles and different goals. The Water Conventions have yet to be climate-proofed, and the Climate Convention has yet to be water-proofed. Many water experts feel that climate change has got the monopoly of political attention, even though water is such a critical and more immediate issue. I am less concerned with the issue of crowding out; I am more concerned with the need to urgently reduce greenhouse gas emissions and to climate-proof other relevant agreements, whether bilateral or multilateral, and to use the available scholarly knowledge to preempt disasters. Although there is a lot of talk of policy coherence, mainstreaming, and integration – a fundamental problem is that if we want to discursively engage in decision-making and allow stakeholders from different fields and levels of governance to participate, we will inevitably get policy incoherence and fragmentation – as different political arenas will make different choices. This is why I have often argued that in global politics fragmentation is inevitable, and that we need a global constitution against which we can test whether the various decisions made in fragmented arenas are constitutionally valid. Of course, getting to the stage of a global constitution is itself complicated, but I think that as we

approach the centennial celebrations of the UN Charter, we should think of ways to combine the Sustainable Development Goals, the Rio Principles on Environment and Development, human rights law, and other key legal developments into a new global constitution.

4. *Finally, do you have any advice for young or prospective scholars interested in climate change and the law? Are there emerging issue areas you might recommend looking into?*

I think that while it is essential for legal scholars to ensure that they have a strong disciplinary core, environmental lawyers need to get out of their comfort zone and engage much more with other social and natural sciences if they wish to proactively shape the future of international law, rather than merely reacting to problems and addressing only the challenges in individual articles. For me climate change is so serious that compromises should not be sought in how and where one places a comma to avoid responsibility, but it should be about how to develop a world of mutual respect, where the substantive rule of law governs, where principles are used to determine how rights, responsibilities and risks are allocated to peoples and countries. For me, law is not just a technical exercise, but a search for a just world where legal principles constrain political power – this is the normative quest that makes law a scholarly field that raises it above other social science fields. Finally, in the context of the Anthropocene, I think lawyers need to engage less with end of pipe solutions to ecological challenges and far more with how development should be defined, debated and implemented – it has to be at the forefront of trying to figure out how law can effectively imagine a world where the spirit of the Sustainable Development Goals can be enduringly implemented and then create the principles of world order within which they are implemented.