

COMMON BUT DIFFERENTIATED
RESPONSIBILITIES & RESPECTIVE
CAPABILITIES IN A REGIME
'APPLICABLE TO ALL'

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Lavanya Rajamani, Professor in International Law,
Centre for Policy Research, New Delhi

Outline

- CBDRRC in a regime ‘applicable to all’
- Forms of Differentiation
- Constituent Elements of Differentiation
- Design Options for Differentiation in the 2015 agreement
- Design Options in Play in the 2015 negotiations
 - ▣ Strengthening the FCCC/Kyoto Model
 - ▣ Disciplining the Self Differentiation Model
- Conclusion: Key Messages

CBDRRC in a Regime 'Applicable to all'

- The Durban Platform launched negotiations 'to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties'
 - 'Applicable to all' signals universality of application not uniformity of application, but it is a **political signal**

- CBDRRC conspicuous by its absence but is still central to the 2015 agreement:
 - The Durban Platform decision – 'under the Convention'
 - The Doha ADP decision - ADP 'shall be guided by the principles of the Convention'

CBDRRC & Differentiation

- CBDRRC must, however, be reinterpreted in a less broad brush and more nuanced fashion if it is to guide the design of the 2015 agreement

- This requires a consideration of:
 - the forms of differentiation
 - the constituent elements of differentiation
 - the design options for differentiation

Forms of Differentiation

Legal Form

- Obligations that are binding for some and voluntary or non-existent for others

Central Obligations

- Targets and Timetables for some and lack thereof for others

Implementation

- Stringency
 - Context/Language
 - Subsequent Base Years
 - Soft Approaches to Non-compliance
- Timing
 - Delayed Compliance Schedules
 - Delayed Reporting Schedules

Assistance

- Financial Assistance
- Technology Transfer
- Capacity Building
- Technical Assistance

Constituent Elements of Differentiation

Categories of Commitments

- Central Obligations
 - Obligations of Effort (Eg: Policies and Measures)
 - Obligations of Result (Eg: Targets and Timetables)
- Assistance Obligations
- Reporting Obligations
- Others

Categories of Parties

- Definition Method (objective criteria)
- Listing Method (self-identification, external factors/membership etc)
- Combination

Differentiation → Matching Commitments to Parties

Design Options for Differentiation

| | Categories of Commitments (in relation to central obligations) | No Categories of Commitments (in relation to central obligations) |
|--------------------------|--|---|
| Categories of Parties | Instrument matches categories of Parties to categories of Commitments (FCCC/Kyoto) (prescriptive) | Instrument permits defined categories of Parties to select their own commitments |
| No Categories of Parties | Instrument permits each Party to select a defined category of commitments | Instrument permits each Party to select its own commitments (facilitative) |

Design Options in Play - 2015 negotiations

- The FCCC/Kyoto Model

- Annexes sacrosanct
- Differentiation in favor of developing countries

Challenges: ineffective (excludes large emitters), unfair

- The Self-Differentiation Model

- Annexes bypassed or rendered irrelevant/inoperational
- Differentiation for all – self-differentiation through self-selection
 - Variation 1: Defined categories of commitments
 - Variation 2: No categories of commitments

Challenges: ineffective (how will 'bottom up' add up?), unfair

The FCCC/Kyoto Model is incompatible with the Self-Differentiation Model

Strengthening the FCCC/Kyoto Model

- Categories of Parties + Categories of commitments + Matching
- To address the concerns raised, the Annexes could be made dynamic
 - ▣ FCCC Articles 15 and 16 & Kyoto Article 20 and 21 - these could be amended to make movement between Annexes more fluid, less cumbersome
- Movement between Annexes
 - ▣ COP review of Annexes (FCCC Article 4 (2) (f) – however, time bound)
 - Based on multilaterally agreed objective criteria
 - Based on multilaterally agreed objective criteria + negotiation
 - Based on membership in another club i.e. EU, G-20, OECD etc
 - ▣ Based on self-selection – FCCC Article 4(2) (g)

Disciplining the Self-Differentiation Model

- No categories of Parties

- Creating categories of commitments
 - Absolute GHG mitigation targets
 - Energy Intensity targets
 - Policies & measures
 - etc

- Listing parameters for defining different categories of commitments
 - this would
 - enhance the clarity and transparency of individual commitments
 - ensure comparability between commitments of different Parties

Disciplining Self-Differentiation

- Mediating matching
 - ▣ Self-selection + Criteria (differentiated) to guide selection of categories of commitments
 - ▣ Self-selection + Criteria + Negotiation
- Introducing a review/assessment/consultation process on the basis of which the initial offers/pledges of mitigation commitments may be revised/adjusted in service of equity and effectiveness (including a 'ratchet' mechanism)
- Introducing an Equity Reference Framework which could play an important role both in matching and in the review phase

Conclusion: Key Messages

- CBDRRC, and differentiation, albeit a more nuanced interpretation and application of it, will form a central part of the 2015 agreement
- There are several forms of differentiation – some need to be preserved and others tailored to fit current needs
- The FCCC/Kyoto Model, if it prevails, can be strengthened from within
- The Self-Differentiation Model, if it prevails, will need to be ‘disciplined’ in the service of equity and effectiveness, including by:
 - Creating defined categories of commitments
 - Ensuring matching is mediated by the use of criteria and negotiation
 - Generating sufficient information to ensure clarity and comparability of commitments
 - Introducing a robust process to evaluate the effectiveness and fairness of the commitments (including an Equity Reference Framework)
 - Instituting a ratchet mechanism – however facilitative – to encourage countries to strengthen their commitments

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THANK YOU

