The Durban Platform and Developing Countries: Incorporating equity into the future climate agreement

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The United Nations Framework Convention on Climate Change (or UNFCCC) is a global mechanism that aims to provide an intergovernmental platform to mitigate the effects of climate change globally. Membership is almost universal across the world with 194 countries listed as members of the UNFCCC.

The ultimate objective of the UNFCCC is to stabilise the level of greenhouse gas emissions in the Earth's atmosphere as to stop any major disruptions to the world's environments and ecosystems as a result of human induced interference with the climate system. It was established at the Rio Earth summit in 1992 in response to international concerns about climate change. Its establishment was a formal recognition that climate change was an issue that simply could not be resolved by individual nations; a coordinated response was required.

Member-states attend an annual 'Conference of Parties' (or COP) to assess the level of progress in mitigating the effects of climate change and establishing legally binding obligations for countries to reduce their emissions. In 2012, the main COP will be held in Qatar.

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Abstract

We sit at an important juncture in the context of climate change negotiations in that the Durban Platform for Enhanced Action has launched the process to create a new climate agreement. The text is too vague and ambiguous to discern what the future agreement will be. However, through the omission of the Convention's principles of 'equity' and 'common but differentiated responsibilities and respective capabilities' in the Durban Platform text, it throws into doubt the possibility that they will play a role in the future agreement. This essay contends that the Convention must continue to respect these principles in the future agreement. In order to do so, it should adopt an approach which builds from the bottom up, in order to get widespread participation needed in the short term and lay down the foundations to develop a stringent rules-based regime to hopefully cut down emissions severely in the long term. Along with this, the paper suggests that the Convention reconsider its Annex groupings to bring them in line with the contemporary international political economy and play a facilitative role in encouraging Parties to pursue pledges based on their new Annex's differentiated expectations. In this way, a wider range of countries can commit to pursuing differentiated and nationally appropriate mitigation efforts, building trust in one another in the meantime, and then build up towards a future agreement with a top-down architecture with enforceable rules.

Introduction

The 17th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) held in Durban in December 2011 was unprecedented in the history of climate change negotiations with regard to the climate equity debate. This debate has focused on what a fair allocation of climate change mitigation responsibilities worldwide should be. The resulting Durban Platform for Enhanced Action entailed the extremely significant decision to adopt a *universal* legal agreement, applicable to all, on climate change mitigation by 2020.

The agreement is to be negotiated by 2015 and will take place under a negotiating track called the Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-ADP). Its aim is to help meet the global goal of holding the international temperature rise below 2 degrees Celsius above pre-industrial levels[1]. Subsequently, for the first time in the UNFCCC's history, the focus of the climate equity debate has shifted more towards favouring symmetrical responsibilities rather than differential responsibilities[2]. This came as a result of the widely held view that economic and political realities had changed significantly since the signing of the UNFCCC treaty in 1992 and countries formerly viewed as developing had now become more responsible for carbon emissions and more financially capable to try to mitigate them[3].

This essay defines equity and the role that the equity debate plays in the climate change negotiations. It also examines the forthcoming Durban Platform and its roadmap to create a legally binding agreement applicable to all parties. In particular, it observes the impact the roadmap might

[1] Kibrom Tadesse, 'Summary of Durban outcomes of the 17th session of The Conference Of The Parties' (COP 17/CMP 7), *Forum for Environment* (2011), p. 3
[2] Lavanya Rajamani, 'THE DURBAN PLATFORM FOR ENHANCED ACTION AND THE FUTURE OF THE CLIMATE REGIME', *International and Comparative Law Quarterly*, 61 (2012) , p. 502
[3] Ibid, p. 508

have on developing countries and analyses whether the Convention is being directed away from its foundational principles of 'equity' and 'common but differentiated responsibilities and respective capabilities' (CBDRRC). This essay is therefore well equipped to suggest what the new agreement should look like with regards to equity and puts forward policy aims to be focussed on at the upcoming COP in Doha.

Defining the Issue: The role of equity and CBDRRC in climate change negotiations

The concepts of 'equity' and CBDRRC are two of the guiding principles underpinning the climate change framework. They deal with issues of inequality and fairness in negotiations between developed and developing countries and are enshrined in Article 3, Clause 1, of the Treaty, which states:

> 'The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.' [4]

The insertion of the two principles stipulates countries' different requirements in combating climate change. Their incorporation was deemed necessary due to the perceived imbalances – both contemporary and historic – across member-states which made some of them either more capable or more responsible to protect the climate system and others less capable and/or less responsible. They have since formed the legal and philosophical basis for the existing legal obligations set up under the UNFCCC. For instance, the 1995 Berlin Mandate launched a process to commit Annex I countries (developed countries as of 1992) 'to quantified greenhouse gas emissions reductions within specified time periods', which exempted Non-Annex I Parties from any new commitments from then on[5]. The Kyoto Protocol continued on with this trend of setting Annex I Parties higher mitigation commitments than Non-Annex I Parties.

However, neither of the principles has been explicitly defined in a policy capacity, and both have been left open to interpretation throughout the history of the Convention. 'Equity', for instance, is a particularly vague term. In the UNFCCC context, it denotes the 'fair distribution of the burdens of reducing climate change risks'[6], taking into account the imbalances across member-states mentioned above and the potential consequences of emissions allocations on states' economic wellbeing[7]. The phrase, 'common but differentiated responsibilities and respective capabilities', refers to the fact that all signatories to the UNFCCC have the common need to act to combat climate change, but to varying degrees depending on their particular responsibilities (vis-a-vis how much they emit and have emitted in the past) and economic and practicable capabilities. What these responsibilities and capabilities are exactly has always been a matter of debate, however. Nevertheless, CBDRRC has been the 'touchstone for the international climate equity debate', as it has largely been via states' differential needs and responsibilities that developing and developed

[4] Article 3 of the United Nations Framework Convention on Climate Change, <http://unfccc.int/essential_background/convention/background/items/1349.php (14/10/2012)>, accessed 14 October 2012

[5] Stavins, R, 'An Unambiguous Consequence of the Durban Climate Change Talks', *Review of Environment, Energy and Economics*, March 09 2012 Environment edition (2012), pp. 1-2

[6] Marina Cazorla & Michael Toman, International Equity and Climate Change Policy, *Resources for the Future Climate Issue Brief 27*, Resources for the Future (2000), p.4

[7] Mattoo, Aaditya & Subramanian, Arvind, Equity in Climate Change, An Analytical Review, *Policy Research Working Paper 5383*, The World Bank Development Research Group Trade and Integration Team, (2010), p. 5

countries have negotiated over what is fair and equitable to set as mitigation targets for one another[8]. Idealistically, in order for the new agreement to meet the principles of equity and CBDRRC, it must first unequivocally explain what they intend.

The Climate Equity Debate

What constitutes 'fairness'?

As alluded to above, there are many different perceptions of what *fairness* means and for whom it should be for. This explains why there are constantly misunderstandings and breakdowns in communication between the rights and responsibilities of developing countries in climate change negotiations. Developing countries see it as unfair to have to commit to binding mitigation commitments, citing both the historical and per capita responsibilities in greenhouse gas (GHG) emissions of already developed nations, as well as their own financial incapability of doing so and the need for them to focus on sustainable development[9]. On the contrary, developed countries want 'greater assurance on when and how developing countries would start assuming greater responsibilities', given that great economic development and population growth will cause developing countries to emit as much as, if not more than, developed nations in the future[10][11]. The most patent example of this variance came about through the Byrd-Hagel resolution, when the US Senate voted unanimously not to ratify the Kyoto Protocol until developing countries committed to binding emissions limits under the same time frame as the US, deeming the situation *unfair* for the US[12]. On the other hand, developing countries felt discouraged by the fact that the US, the world's single greatest emitter throughout history, rescinded from its responsibilities. This ongoing debate illustrates how differently Party-States interpret what constitutes fairness or equity in climate change mitigation efforts.

The main reason there is such divergence regarding conceptions of fairness and equality is simply because of the conflicts of interest amongst the plethora of countries that are Party to the Convention. On one hand, the Convention's outcomes have been dictated by the interests of the more powerful nations, 'shaped by material self-interest, bargaining power and the ability to strong-arm weaker states through more coercive forms of power'[13]. On the other, different countries with different needs and interests come to the negotiating table with divergent perceptions of fairness and this overabundance of varying self-interests largely creates a logjam in the negotiating process.

In the context of the equity debate, there are numerous proposals and theories about how the burden of responsibility should be distributed. Parks and Roberts outline four conflicting types of carbon-accounting approaches that have proposed throughout the history of climate change negotiations: 'grandfathering', 'carbon intensity', 'historical responsibilities' and 'per capita contraction and convergence'; each scheme betrays a different conception of what constitutes fair

[8] Loc. Cit.
[9] Mattoo & Subramanian, Ibid, p. 10
[10] Marina Cazorla & Michael Toman, Loc. Cit.
[11] Bradley C Parks & J Timmons Roberts, 'Inequality and the global climate regime: breaking the north-south impasse', *Cambridge Review of International Affairs*, 21:4 (2008), p. 629
[12] Stavins, R, Loc. Cit. p. 2
[13] Parks & Roberts, Op. Cit., p.622

(a summary of each is offered in *Table 1a* in the Appendix)[14]. Interestingly, developed nations tend to champion the first two approaches, due to their practicality and favour of absolute gains (and disregard for accountability of past emissions), while developing nations advocate the latter two due to their campaign for climate justice and the indemnification of climate debt. Nonetheless, with all these diverse approaches to climate equity – and there are more still (see *Table 1b* in Appendix) – it is no wonder why agreements are hard to reach. As this paper goes on to demonstrate, the new climate agenda needs to somehow pick an approach to equity which is ethical and fair for all parties, whilst also achieving what Bodansky calls 'climate effectiveness': the most effective pathway of keeping GHG concentration levels low enough to cap a temperature increase deemed safe[15].

Fair for whom? Defining the Developing Countries

One of the biggest problems in the debate over climate change equity relates to defining who exactly the developing and developed countries are in climate change negotiations. When the Convention's Treaty was signed in 1992, Party-States were divided into three main groups according to their differing expectations and commitments: Annex I Parties, Annex II Parties and Non-Annex I Parties[16]. Annex I Parties included states considered to be industrialised, such as Organisation for Economic Co-operation and Development (OECD) members and countries whose economies were deemed to be in transition (the EIT Parties) from Communism. The Annex II Parties were the OECD members of Annex I which were thought of as being the most modernised and were required to provide financial and technological assistance to developing countries to help them reduce emissions and help them adapt to adverse affects of climate change. Non-Annex I Parties were the ones considered to be 'developing' or 'underdeveloped' when the Treaty was signed. The 49 countries classified as 'least developed countries' (LDCs) by the United Nations were also given special consideration under the Convention[17]. This is generally how the battlelines were drawn, so to speak, in the climate equity debate throughout the Convention's history.

However, twenty years ago the global economic and political landscapes were quite different to how they look today. Some formerly poor and Non-Annex I Parties such as members of the BASIC group (Brazil, South Africa, India and China) have transformed into some of the world's major economies, which are now emitting as much as (and in the case of China and India, more than) most developed countries in real terms as a result of their rapid development[18]. This was reflected in the high growth rates in the national carbon emissions of Non-Annex I Party-States between 1990 and 2010; in this time frame, China's emissions grew by 257 per cent, India's by 180 per cent, Indonesia's by 194 per cent, Saudi Arabia's by 159 per cent, South Korea's by 134 per cent and Brazil's by 96 per cent, for example[19] (see *Table 2a* in Appendix). The most noticeable indicator of this transition has been the fact that China has gone from being a medium-scale polluter to

[14] Ibid, 624

[15] Bodansky, Daniel, 'The Durban Platform Negotiations: Goals and Options.' Policy Brief, Harvard Project on Climate Agreements, *Belfer Center for Science and International Affairs*, Harvard Kennedy School [online journal], July 2012. <http://belfercenter.ksg.harvard.edu/publication/22196/durban_platform_negotiations.html> accessed 19 October 2012

[16] United Nations Framework Convention on Climate Change, 'Parties & Observers', *United Nations Framework Convention on Climate Change* [web page] (2012) <http://unfccc.int/parties_and_observers/items/2704.php> accessed 17 October 2012

[17] Loc. Cit.

[18] Olivier, J. Janssens-Maenhout, G. Peters, J. Wilson, J. "Long-term trend in global CO2 emissions: 2011 report", PBL Netherlands Environmental Assessment Agency [web document] (2011) p. 14, <http://edgar.jrc.ec.europa.eu/news_docs/C02%20Mondiaal_%20webdef_19sept.pdf>, accessed 19 October 2012

[19] Olivier, J. Janssens-Maenhout, G. Peters, J. Wilson, J., Ibid

nowadays being the world's single largest GHG emitter, having overtaken the US in 2007[20] (see *Table 2b*). Overall, 'Non-Annex I Parties increased their share of global emissions from 33.1 per cent in 1990 to 48.3 per cent in 2006' and their economies are still growing, so their emissions are expected to continue skyrocketing as a result[21]. Thus, any new direction the climate change regime takes has to factor in the great changes in the international political economy and determine who the developing countries in the system are.

The new path towards a future agreement over equity under the Ad Hoc Working Group on the Durban Platform for Enhanced Action

The decisions taken at Durban will undoubtedly have profound implications for developing countries and the equity debate as a whole. Some of these implications aren't entirely negative. For instance, the Kyoto Protocol was extended for a second commitment period that is expected to continue until 2020 (although this is still under negotiation), reinforcing CBDRRC and developed country leadership in the climate change regime in the short term. However, it can also be said that the degree of reinforcement of these principles is limited, given that the already low number of developed countries who ratified the Protocol is diminishing, with Japan, Russia, Canada and New Zealand leaving it, while Australia has only agreed to continue with a low level of ambition[22] [23]. Additionally, the Green Climate Fund was officially launched to distribute the US$100 million in assistance pledged by developed nations annually by 2020 for developing nations and the future of the Clean Development Mechanism (CDM) was secured[24]. The Durban Conference also took several decisions to fulfil promises made at the Cancun Agreements, designed to reinforce the knowledge base and information flow of mitigation actions and targets; this has been built up as a confidence-building exercise to build trust between developing and developed nations[25].

However, some implications for developing countries are not as positive. A deadline was negotiated for the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), set up by the Bali Action Plan. It was extended for just one more year, and it is expected to be terminated at COP18 in Doha in December, 2012. Developing countries – such as those belonging to the Alliance of Small Island States (AOISIS) – wanted the AWG-LCA to be the means of producing a Protocol or legally-binding instrument, as they saw its mandate in the Bali Action Plan as producing a 'firewall' between developed country mitigation commitments and expectations and those of developing countries[26]. This was because it committed all countries to 'nationally appropriate' mitigation commitments, which for developing countries meant allowing them to focus on pursuing sustainable development, capacity building and emissions reduction schemes at their own pace[27]. Despite this, developed countries – in particular the US – wanted to move away from

[20] Falkner, Robert, Hannes, Stephen & Vogler, John, "International Climate Policy after Copenhagen: Towards a 'Building Blocks' Approach", *Global Policy*, Volume 1, Issue 3, October (2010), p.257
[21] Olivier, J. Janssens-Maenhout, G. Peters, J. Wilson, J., Ibid
[22] Boston, Jonathan. "A New Global Climate Change Treaty – Can Humanity Deliver? Our Challenge After Durban for 2015", Speech notes for the University of Otago, 14 March (2012)
[23] Arup, Tom. "Australia and New Zealand divided over 'Kyoto 2'", *The Sydney Morning Herald*, November 9 2012 [web article] (2012) <http://www.smh.com.au/opinion/political-news/australia-and-new-zealand-divided-over-kyoto-2-20121109-292hu.html> accessed 9 November 2012
[24] Holman Fenwick Willan LLP., 'The UNFCCC's Durban Platform Explained', *Energy & Climate Change*, January 2012 [web document] (2012), <http://www.hfw.com/__data/assets/pdf_file/0016/17422/Client-Brief-UNFCCCs-Durban-A4-4pp-January-2012.pdf> accessed 19 October 2012
[25] Lavanya Rajamani, Op. Cit. pp.515-16
[26] Ibid., p.505
[27] Loc. Cit.

the Bali 'firewall' and instead initiate a new course of action to negotiate a future climate regime which was 'less susceptible to such seemingly extreme interpretations of differentiation between developed and developing countries'[28].

What will the new future agreement look like and what will it mean for developing countries?

The AWG-ADP was set up 'to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention *applicable to all Parties*' (emphasis added), to be finalised in 2015 and adopted in 2020[29]. This new pathway would be a marked contrast to the one proposed under the AWG-LCA and would essentially symbolise a change in equity policy from favouring differential responsibilities towards favouring the 'common' aspect of CBDRRC. It was also interesting that CBDRRC was completely omitted from the text. The reason for its noticeable exclusion was because, throughout the Durban COP, a debate raged over the need to recast the definition of CBDRRC, 'in light of contemporary economic realities'[30]. While developed country Parties, such as the EU, argued the future agreement 'must contain a broader spectrum of differentiation ... than is currently the case under the Convention', other developing countries, especially India, 'argued in response that this would be tantamount to amending the FCCC'[31]. The way the COP decided to overcome this stalemate was to qualify the text as having been settled under terms of the Convention, creating an ambiguous indication that it adheres to its equity principles, whilst also giving Parties the option of resolving the issue in the future.

Just because an instrument is universally applicable, it doesn't necessarily mean it's applicable in a symmetrical manner to all, though. While the FCCC and Kyoto Protocol are applicable to all, they do not contain symmetrical commitments for all Parties[32]. It must also be noted that the legal agreement being proposed need not include the least developed countries, such as the AOSIS, LDC and Africa Group nations[33]. Nevertheless, the change in rhetoric has political significance and may signal that the future regime will move towards symmetrical obligations, applicable even to some developing country Parties, a move seen as radical in the context of UNFCCC negotiations.

However, nothing about the process to negotiate a future climate agreement under the AWG-ADP is yet set in stone, given the abovementioned vagueness and ambiguity of the outcomes at Durban. The results of this process are dependent on 'the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the outcomes of the 2013–2015 review and the work of the subsidiary bodies'[34]. But at this juncture what the future agreement may look like, based on the inclinations of the Parties at the Durban COP, is some form of a legal agreement which entails a multilateral, rules-based regime, the likes of which was referred to in the introduction of the Durban Platform. Some commentators are even pointing to the possibility of a global carbon budget, with sanctions imposable on countries which go over their carbon limits[35]. Even though the terms, equity

[28] Loc. Cit.
[29] Stavins, Ibid, p. 1
[30] Rajamani, Ibid, p. 508
[31] Loc. Cit
[32] Ibid, p.505
[33] Kibrom Tadesse, Op cit p. 3
[34] Para 6, Durban Platform
[35] Mukul Sanwal, 'Shaping the rules of the new climate regime: International cooperation should focus on meeting the objective of the Convention', *India Environmental Portal* [web page] (2012) <http://www.indiaenvironmentportal.org.in/blogs/shaping-rules-new-climate-regime-international-cooperation-should-focus-meeting-objective>, accessed 19 October

and CBDRRC, were left out, the insertion of the phrase, 'under the Convention', has also allowed for flexibility for future negotiations to reinterpret and qualify the matter of differentiation in the future agreement, as the principles of equity and CBDRRC are covered under the Convention. Also, even the agreement's legality is a matter for debate. The vagueness of terms such as 'legal instrument or an agreed outcome with legal force' leaves room for a fresh set of possibilities for the legal form of the agreement to be decided on in the future[36]. Thus, all of the future agreement's elements, including its legal form, design and position on differentiation, must begin to be negotiated at the upcoming COP in Doha.

What *should* the future agreement look like?

The future agreement must balance the need to provide climate justice with the need to come to a framework to achieve 'climate effectiveness', the most effective pathway of keeping GHG concentration levels low enough to cap a temperature increase deemed safe[37]. To do this, the new agreement must accommodate three major concerns; to meet the environmental need to cap the global temperature rise first and foremost; to diminish the ambition gap to garner the widespread participation needed to do this (especially of the 20 countries which emit 80 per cent of global emissions); and to find an equitable solution to the distribution of mitigation commitments to ensure climate justice for developing countries.

The approach used to come up with a framework for the future agreement, also known as the 'policy architecture' the regime chooses, is crucial to the agreement. We very much sit at a fork in the road in this regard, as the choices that the COP makes from here onwards will determine which of two possible pathways the climate regime will take. The first is the top-down approach, which would 'involve strong global coordination, be centred around the pursuit of a common objective and be implemented through targets and timetables based on commonly agreed rules'[38]. The second is the bottom-up approach, where policies are designed and implemented at the lowest levels of political organisation[39]. Whereas the Kyoto Protocol exemplifies the top-down policy architecture, through its setting up of goals and timetables in which to meet those objectives, the recent agreements made at Copenhagen and Cancun reinforce the bottom-up approach by encouraging national climate policies and a pledge-and-review system at an international level[40]

If agreed to, a top-down approach could work best to achieve its environmental goals through its universal coverage (and linkage of carbon markets), explicit and quantified long-term goals, unequivocal allocation mechanism or burden-sharing agreements with a specific formula and common accounting and monitoring rules[41]. However, it requires an outcome which is amicable for all Parties (which is unlikely to occur given everyone's differing self-interests and perceived responsibilities and capabilities), while major emitters like the US and China look unfavourably to signing another Kyoto-like agreement because of the uncertainty surrounding the net benefits compared to the real prospect of losing some of their autonomy. Moreover, Bodansky argues that

[36] Lavanya Rajamani, Op. Cit. p. 507
[37] Bodansky, Ibid
[38] Hare et. al, The architecture of the global climate regime: a top-down perspective, *Climate Policy*, vol. 10, no. 6 (2010), p. 601
[39] Rayner, S, How to Eat an Elephant: A Bottom-up Approach to Climate Policy, Climate Policy, Volume 10, Issue 6 (2010), p. 3
[40] Bodansky, Daniel, A Tale of Two Architectures: The Once and Future U.N. Climate Change Regime, *Arizona State University*, March 1, 2011. <http://ssrn.com/abstract=1773865>, pp. 7-13
[41] Boston, 14

many states are reluctant to accept a top-down approach because they view climate change 'more through a domestic prism than an international one':

> 'Climate change implicates virtually every aspect of domestic policy, including industrial, agricultural, energy, transportation, and land-use policy ... Building a domestic coalition to address the problem is enormously complicated as it is, and would be made even more difficult by internationally-negotiated requirements that constrain a state's flexibility.'[42]

So, a top-down approach would fail at reducing the ambition gap and acquiring the widespread participation needed to achieve such environmental goals, at this point in time.

A bottom-up approach seems more practical and efficient purely because it is *achievable* and would garner more widespread participation, through giving the option of allowing states to pursue mitigation commitments in their own way and at their own pace. It is more promising for the least developing nations which are most vulnerable to the adverse effects of global warming which *need* countries to start acting to reduce emissions; for them, any agreement is better than no agreement – which is the most likely result of pursuing a top-down approach. If a bottom-up approach could be complemented by a COP which plays a facilitative role, encouraging and reinforcing activities 'bubbling from the bottom up' on the ground at national and sub-national levels, it could perhaps foster a climate of trust and cooperation which could in the future lead to the signing of treaties and the possibility of a future top-down regime[43]. However, a bottom-up approach will also have weaknesses that would need to be addressed. It would most certainly promote a free rider attitude in some Parties, who wouldn't feel the immediate need to reduce emissions without stringent obligations being enforced on them. A lack of cohesion and uniformity across carbon markets and in carbon-accounting rules would also lead to confusion and make agreements complicated. More critically, lack of a stringent commitment designation might render it unlikely to cap the temperature rise to 2 degrees Celsius (and would instead be likely to do so at 3 to 4 degrees).

To ensure an effective and equitable solution to mitigation commitment allocations, this essay suggests promoting at Doha a framework with a mix of both policy approaches to make gradual developments and proceed incrementally from the bottom up to the top, so to speak. Such a step-by-step approach would start off with a legal agreement obligating Parties to submit their own national pledges to the COP for review, appraising them based on nationally-appropriate commitment expectations (using a commonly defined carbon-accounting process). Meanwhile, the COP acts as a facilitator, encouraging participation at national and sub-national levels, and a mediator of conflicts in negotiations. This should balance the need for stringency with the flexibility desired to obtain cooperation, as countries are still *encouraged* by an assertive COP to meet minimum expectations, but are enabled to do so through whatever domestic policy they choose.

Then, as time goes on and Parties continue to trust one another about their mitigation pledges, the COP will initiate multilateral agreement talks to build upon the previous ones. This 'building blocks' approach was how the World Trade Organisation developed, as in time it 'allowed countries to adjust their expectations and identify common interests in a process of repeated negotiations'[44]. These building block agreements should thus work to consolidate different sub-

[42] Bodansky, 2011, Ibid, p. 16
[43] Bodansky, 2012, Ibid
[44] Falkner, 260

sections of the climate regime. For example, treaties could be launched to strengthen the future regime's market mechanisms and carbon-accounting rules; technology innovation and the transfer of funds and technology from developed to developing countries to help with their pledges (and, subsequently, the necessary adjustments to the copyright regime); adaptation funding; deforestation mechanisms and sectoral approaches for industrial sectors, among other things[45]. This will be an ongoing process and should be designed to accommodate future deepening and broadening by allowing entry points for new participants to enter at a later stage, possibly based on conditional entry requirements, as the European Union has[46].

In order for this developmental process to preserve climate justice, the matter of CBDRRC must be addressed in a way that doesn't deter participation. One way the COP could do this would be to come up with new Annex classifications to bring the groupings in line with the contemporary economic realities, as argued by the EU at Durban. Within these new Annex groupings the COP sets out, Parties can negotiate separate sets of minimum commitment expectations for themselves, through which the COP may then appraise the appropriateness of the Parties' national pledges. Furthermore, even though India argued that broadening the spectrum of differentiation would be the same as changing the rules to the Convention, there legally is room to change around the Annex groupings[47].

The Convention should seriously look into this as an option as it would force current-day major emitters, such as the US, EU, China and India, to work at reducing emissions together – instead of doing nothing as a result of the others' inaction. It would also meet the need to define who the real developing – and needy – countries in the system are and who are hiding under the camouflage of the 'developing' label to avoid serious emissions reductions commitments. Accordingly, only the most underdeveloped of nations, such as the AOSIS, LDC and Africa Group nations, who neither emit much nor have the capability of reducing emissions anyway, should remain in Non-Annex I. However, one way to distinguish between the responsibilities of already industrialised nations who have emitted the most historically (and on a per capita basis) and those countries which have only recently entered the forefront of the global emissions scene would be to put more onuses on Annex II nations (the OECD nations who are most responsible for emissions, both historically and on a per capita basis) to make concerted efforts to provide funding and technological assistance to help developing countries with their pledges. This would allow Annex II Party-States to facilitate sustainable development and lessen emissions growth in Non-Annex I nations, whilst allowing their newly graduated Annex I counterparts to feel like there is still a reasonable level of differentiation to justify pledging their own commitments.

Recommendations for policy aims at Doha:

- Lay down the foundations of a 'building blocks' approach, to build from a bottom-up approach of deciding mitigation commitments at national levels, to the top-down architecture of having a consolidated rules-based regime.
- Reconsider the groupings under each Annex to bring them in line with contemporary economic realities and separate the developed nations, with historical responsibilities for

[45] Ibid, 258
[46] Ibid, 259
[47] Rajamani, 508

creating emissions, from the intermediate economies that have just entered the emissions scene, from the most underdeveloped nations.

- Establish a pledge-and-review system in the short term, with a view to initiate further treaties to consolidate parts of the Protocol in the future.
- Allow the Convention to play a facilitative role, encouraging Parties and sub-national actors to do more, and appraising Parties' pledges based on the expectations of their Annex grouping.

Conclusion

The wording of the Durban Platform is too vague and ambiguous to discern what the pathway to a future agreement under the AWG-ADP will be. Although, the trends set by the recent agreements at Copenhagen and Cancun suggest that the Convention is moving towards the trend of adopting a bottom-up approach with mitigation policies to be adopted at domestic levels. As the majority of major emitting Parties seem to prefer this negotiating track – and as it is necessary that they be included in the future agreement – it may be beneficial to work out ways to adopt a bottom-up approach to advantage.

A way this could work is by adopting a 'building blocks' approach, starting from the bottom, at national levels, and gradually building our way to the top – by moving step-by-step in initiating different treaties for different parts of the future regime – to consolidate a multilateral, rules-based regime based on past experiences and confidence-building. In the meantime, the Convention could play a facilitative role and encourage Parties to do more in a pledge-and-review type of system. However, it must be acknowledged that this is only the second-best outcome and only an alternative to a stringent, rules-based top-down approach which would force Parties to commit to emissions reductions targets by a set time and punish them if they do not comply. The reason a bottom-up approach would only be better in today's current context is because otherwise the need to garner widespread participation would be conceded, due to the denunciation of Kyoto-style agreements by important nations such as China, India, Russia and the US.

In order for this new approach to not deviate from the Convention's principles of equity and common but differentiated responsibilities and respective capabilities, it is suggested that the Convention reconsider the Annex groupings and encourage Parties to work at submitting pledges relative to the agreed-upon expectations of their particular Annex. This would mean the Convention would have to help Parties achieve their commitments through promoting confidence building measures and initiating treaties to consolidate the different sections of the regime which would help Parties achieve their pledges. This will take a lot of time and effort, but at this juncture, but it looks like what is needed is, as Falkner et al put it, a building blocks approach which 'combines the long-term objective of a global climate architecture with a dose of political realism in the process of creating this architecture'[48].

[48] Falkner, p 258

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Appendix

Table 1a

Carbon Accounting Approaches

Carbon Accounting Approach	Theory	Understanding of fairness
Grandfathering	The notion that countries should reduce their emissions incrementally from a baseline year (1990). Large polluters, therefore, had their high discharges of greenhouse gases grandfathered in, and committed to relatively minor emission reductions averaging 5.2 per cent for the foreseeable future.	The **entitlement principle** that individuals are entitled to what they have produced
Carbon Intensity	Introduced by the World Resources Institute and favoured by the second Bush administration starting in 2002, calls for voluntary efficiency changes to drive emission reductions. Under this approach, the goal is to have strong economic growth with as few carbon emissions as possible	The **utilitarian principle** that since everyone is worse off in the absence of joint gains, inefficient solutions are also unjust.
Historical Responsibility	Places the onus on countries that put greenhouse gases in the atmosphere in past decades to reduce their emissions quickly, most notably the United Kingdom (UK) and the US: a few developing countries have supported this approach and demanded that some indemnification be paid for the so-called 'carbon debt'.	Historical responsibility represents **'the polluter pays' principle**

Per capita contraction and convergence	India, China and much of the developing world favour a per capita approach, in which each person on earth is given an equal right to the ability of the atmosphere to absorb carbon. Under the per capita proposal, countries whose per capita consumption of fossil fuels is significantly lower than the world average would be given significant room to grow and emit. Most per capita plans would allow them to trade their extra carbon emission credits for the capital they need for development. By comparison, countries with highly fossil-energy-intensive economies would face sharp requirements to cut their consumption of fuels. Brazil also introduced a proposal in 1997 that would take into account the amount of damage done by nations in the past to the atmosphere's ability to absorb more greenhouse gases.	The **egalitarian principle** that every human should have equal rights to global public goods, such as atmospheric stability.

Extracted from Parks, Bradley C & Roberts, J Timmons, 'Inequality and the global climate regime: breaking the north-south impasse', Cambridge Review of International Affairs, 21:4 (2008) p. 625

Table 1b

Alternative Equity Criteria for Climate Change Policy

Equity principle	*Interpretation*	*Implied burden-sharing rule*
Egalitarian	People have equal rights to use atmospheric resources.	Reduce emissions in proportion to population or equal per capita emission.
Ability to pay	Equalize abatement costs across nations relative to economic circumstances.	Net cost proportions are inversely correlated with per capita GDP.
Sovereignty	Current rate of emissions constitutes a status quo right now.	Reduce emissions proportionally across all countries to maintain relative emission levels between them ("grandfathering").
Maxi-min	Maximize the net benefit to the poorest nations.	Distribute the majority of abatement costs to wealthier nations.
Horizontal	Similar economic circumstances have similar emission rights and burden sharing responsibilities.	Equalize net welfare change across countries so that net cost of abatement as a proportion of GDP is the same for each country.
Vertical	The greater the ability to pay, the greater the economic burden.	Set each country's emissions reduction so that net cost of abatement grows relative to GDP.
Compensation (Pareto rule)	"Winners" should compensate "losers" so that both are better off.	Share abatement costs so that no nation suffers a net loss of welfare.
Market justice	Make greater use of markets.	Create tradable permits to achieve lowest net world cost for emissions abatement.
Consensus	Seek a political solution that promotes stability.	Distribute abatement costs (power weighted) so the majority of nations are satisfied.
Sovereign bargaining	Principles of fairness emerge endogenously as a result of multistage negotiations.	Distribute abatement costs according to equity principles that result from international bargaining and negotiation over time.
Polluter pays	Allocate abatement burden corresponding to emissions (may include historical emissions).	Share abatement costs across countries in proportion to emission levels.
Kantian allocation rule	Each country chooses an abatement level at least as large as the uniform abatement level it would like all countries to undertake.	Differentiate by country's preferred world abatement, possibly in tiers or groups.

Source: Burtraw, Dallas, and Toman, Michael, 'Equity and International Agreements for CO2 Containment', *Journal of Energy Engineering* 118(2): 122–35. (1992)

Table 2a

Growth in Greenhouse Emissions between 1990-2010

CO_2 emissions in 2010 (million tonnes CO_2) and CO_2/capita emissions 1990-2010 (unit: tonne CO_2/person)

		Per capita emissions						
	Emissions 2010	1990	2000	2010	Change 1990-2010	Change in %	Change in CO_2, %	Change in population, %
Annex I *								
United States *	5.250	19,7	20,8	16,9	-2,8	-14%	5%	23%
EU-27	4.050	9,2	8,5	8,1	-1,1	-12%	-7%	6%
EU-15 **	3.150	9,1	8,8	7,9	-1,2	-13%	-5%	9%
- Germany	830	12,9	10,5	10,0	-2,9	-22%	-19%	4%
- United Kingdom	500	10,2	9,2	8,1	-2,2	-21%	-15%	8%
- Italy	410	7,5	8,1	6,8	-0,7	-9%	-3%	7%
- France	370	6,9	6,9	5,9	-1,0	-15%	-5%	11%
- Poland	320	8,2	7,5	8,3	0,1	1%	2%	1%
- Spain	290	5,9	7,6	6,3	0,4	7%	26%	18%
- Netherlands	180	10,8	10,9	10,6	-0,2	-2%	9%	12%
Russian Federation	1.750	16,5	11,3	12,2	-4,2	-26%	-28%	-4%
Japan	1.160	9,5	10,1	9,2	-0,4	-4%	0%	4%
Australia	400	16,0	18,6	18,0	1,9	12%	46%	30%
Canada	540	16,2	17,9	15,8	-0,4	-2%	20%	23%
Ukraine	310	14,9	7,2	6,9	-8,0	-54%	-59%	-12%
Non Annex I								
China	8.950	2,2	2,9	6,8	4,6	205%	257%	17%
India	1.840	0,8	1,0	1,5	0,8	100%	180%	40%
South Korea	590	5,9	9,7	12,3	6,4	109%	134%	12%
Indonesia	470	0,9	1,4	1,9	1,1	126%	194%	30%
Brazil	430	1,5	2,0	2,2	0,7	51%	96%	30%
Mexico	430	3,7	3,8	3,8	0,1	4%	39%	35%
Saudi Arabia	430	10,2	12,9	15,6	5,3	52%	159%	70%
Iran	400	3,7	5,2	5,4	1,6	44%	94%	35%
South Africa	380	7,3	6,9	7,6	0,3	4%	42%	36%
Taiwan	270	6,3	10,1	11,1	4,8	77%	118%	23%
Thailand	240	1,6	2,7	3,4	1,8	115%	160%	21%

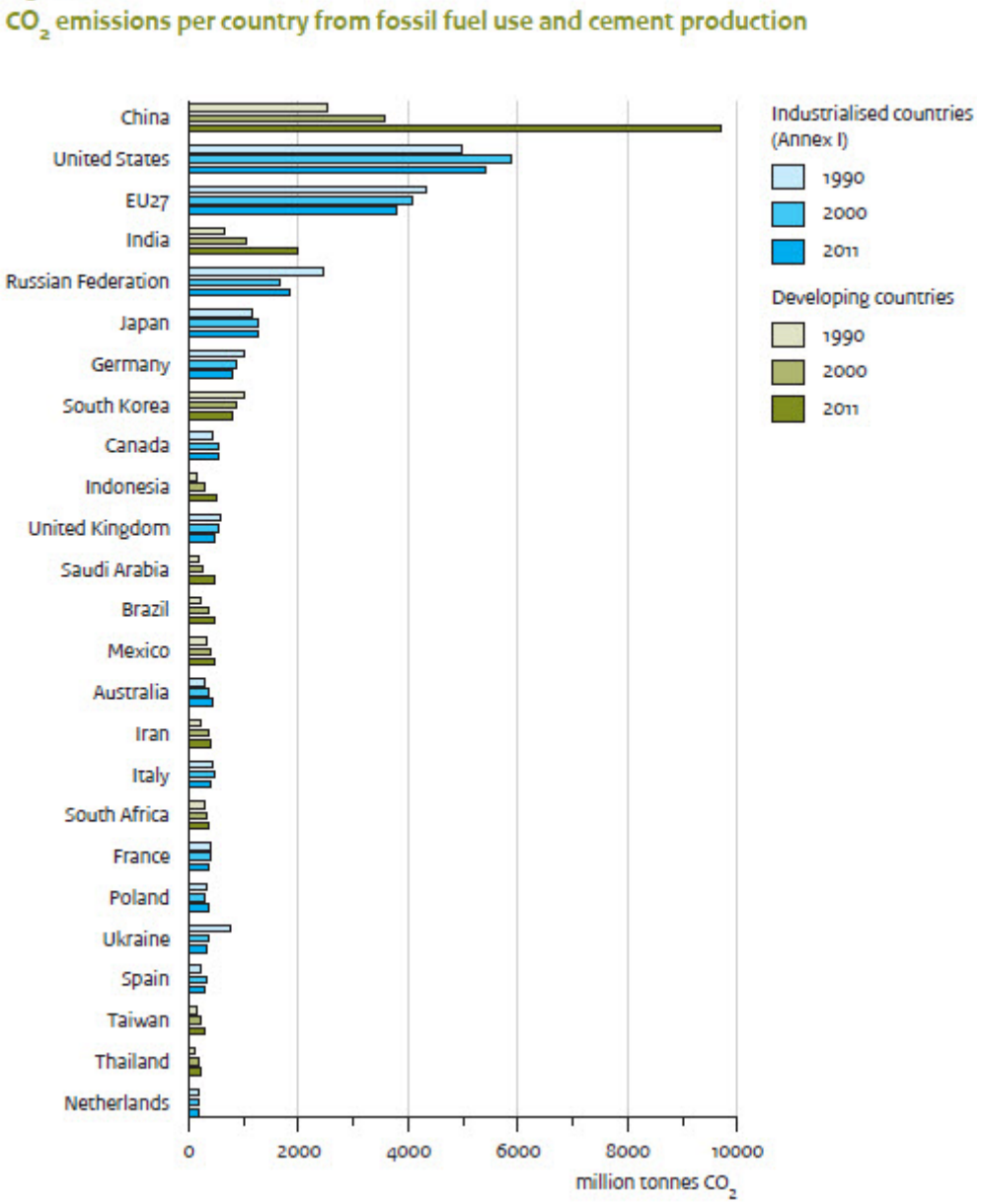
** Annex I countries: industrialised countries with annual reporting obligations under the UN Framework Convention on Climate Change (UNFCCC) and emission targets under the Kyoto Protocol. The USA has signed but not ratified the protocol, and thus the emission target in the protocol for the USA has no legal status.*

*** EU 15 = 15 EU Member States at the time the Kyoto Protocol was ratified.*

Source: Olivier, J. Janssens-Maenhout, G. Peters, J. Wilson, J, 'Long-term trend in global CO2 emissions: 2011 report', *PBL Netherlands Environmental Assessment Agency*, p. 14 (2011)

Table 2b

The Top 25 CO2-emitting countries in 1990, 2000 and 2010



Source: Olivier, J. Janssens-Maenhout, G. Peters, J. Wilson, J, 'Long-term trend in global CO2 emissions: 2011 report', *PBL Netherlands Environmental Assessment Agency*, p. 13 (2011)

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