

DISCUSSION

The funeral of CBDR in the climate change regime

KATRIN KOHOUTEK — 11 February, 2015



Despite some progress, the draft elements of the future agreement on climate change may serve as the gravestone to the common but differentiated responsibility principle when it comes to climate.

There is no denying the fact that the so-called developed countries (this problematic term is used here as it is used in the relevant instruments, probably to handle the many groups of states involved in negotiations) historically did contribute more to global warming than the so-called developing countries. In order to reflect this fact and to strengthen the position of the developed countries in international negotiations, the principle of “common but differentiated responsibility” (CBDR) has been used. It is said to be a binding principle of the international law on climate change. In general, the principle could be read in two different ways: It could be a mere statement of the different historical contributions to the common problem of climate change without entailing any commitments. This would contradict the understanding as a binding principle of climate change law. The other interpretation would be that the different historical contributions to the accumulation of greenhouse gases in the atmosphere entail also different obligations to tackle the common problem. This would confirm the classification as a binding principle. With regard to the international regime on climate change the relevant treaty law called for the latter interpretation. The UN Framework Convention on Climate Change (UNFCCC) imposes different obligations on developed and developing countries. Only the former have to limit their greenhouse gas emissions. The latter enjoy flexibility regarding their information obligations. Furthermore only developed country Parties are obliged to support developing country Parties financially and technologically. Additionally the obligation of developing country Parties to implement the convention depends on this transfer of technology and financial means. Thus the Convention imposes more strict mitigation obligations on developed countries. They also have to support developing countries so that the latter can implement the Convention, too. The Kyoto Protocol with its specified emission reduction targets only for Annex I-Parties to the Convention calls for an obligation-oriented understanding of the CBDR principle, as well. Hence the treaties on climate change implemented the CBDR principle by imposing different obligations on different parties, thereby providing for an obligation-oriented understanding of the CBDR principle. This understanding of the principle in climate change law might change because of the regime on emission limitation obligations in the draft agreement.

The draft elements of the future agreement are annexed to the [Lima Call for Climate Action](#). Although there will be differences in the eventual agreement, the draft shows already options, how the CBDR principle might develop. It is mentioned quite often (21 times) in the text and certainly influences the obligations of the different Parties: The general goals of achieving a low greenhouse gas emission economy and limiting the global temperature increase to at least 2°C are formulated with references to CBDR. Similarly the usual methods to implement CBDR are part of the draft: there are differentiated commitments regarding the mitigation of climate change (No. 16.4). Developed countries shall support developing countries in adapting to a changing climate environment (Nos. 25 et seq.). Probably, developed countries will be obliged to support developing countries with technology-transfer and capacity-building (Nos. 56 and 58). More or less explicitly the draft states that developing countries will be able to implement the agreement only with financial support of developed countries (both Options of No. 34 regarding the general regulation on finance). Developed and developing countries have different reporting obligations (e.g. in No. 68). All commonly used methods of implementing CBDR can be found in the draft agreement.

However, the foundation of the CBDR principle as interpreted in climate change law today is responsibility. It entails the common obligation to mitigate climate change but differentiates in the extent of this obligation. There has to be a tangible commitment to reduce the emission of green house gases. It is questionable, whether this obligation-oriented interpretation will be implemented in the future agreement. There are positive signs: twice a global emission budget is mentioned, which shall be divided between all Parties according to different criteria (No. 5 Option 4 as part of the objective of the agreement and No. 13.2 b. as long-term aspects of mitigation. Regarding the latter there is no alternative option.). This would implement the idea of CBDR quite successfully, following demands that have been uttered since the beginning of international negotiations on climate change.

Yet the chances of this idea to finally come into being seem quite small. The whole draft is tainted with the idea of nationally determined commitments that will somehow add up to the desired emission pathway. This procedural change from internationally determined maximum amounts of greenhouse gas emissions (cap and trade procedure) to voluntary national mitigation contributions with reviews at the next COP/MOP (procedure of pledges and reviews) has been introduced into the negotiations at [COP 15/MOP 5 in Copenhagen](#). In the draft agreement the whole section on mitigation commitments rests on the idea of voluntary pledges. Every option on the global mitigation goal allocates the main influence on the contributions to the Parties. They shall either nationally determine their commitments (No. 16 Option 1), or communicate and implement successive mitigation commitments (Option 2) or prepare differentiated commitments (Option 3). Thus each state defines its own contribution to the limiting of greenhouse gas emissions. That finding is underlined by the draft regulation No. 73 on the scope of commitments. Option 1 includes the possibility that the scope of the commitments will be determined by the agreement, but also the alternative, namely national determination of the commitments. Option 2 defines only the substantial scope of implementation and ambition, which shall cover mitigation as well as finance, technology and capacity-building support to developing countries for developed countries and mitigation and/or adaptation for developed countries. According to this option, the future agreement would be implemented through national reduction pledges only. Thus only one alternative of Option 1 foresees an internationally determined emission cap.

It seems as if the negotiators departed from the idea of a responsibility shared by all

states and turned to a reading of the CBDR principle that allows every State Party to determine itself its share of the common burden. The idea of piling up national pledges is in conflict with the recent understanding of the CBDR principle in climate change law. Recent nationally determined pledges, according to the [International Panel on Climate Change](#), will not suffice to reach a 50% chance of meeting the 2°C goal, they merely will not foreclose meeting this goal. Thus states once again try to circumvent the deep truth that in order to mitigate climate change we all have to cut emissions and therefore need to restructure our economies. This leads to the conclusion that the common responsibility to tackle climate change is sacrificed in order to make as many states as possible ratify the future agreement. However, what is the worth of an international regime that has the task of mitigating climate change but is designed so that the goal cannot be reached?

A response to this contribution can be found [here](#).

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