

Withdrawal of the United States from the Paris Agreement Time for a Level Playing Field & A Fair Framework?

Part 2. The Cornerstones: Sustainable Development-Equity-CBDR

Dr Ted Christie, 12 September 2017



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Two issues have proven to be problematic under the Paris Agreement: Whether obligations imposed under it were *fair* for all countries that had ratified it; and whether there was a *level playing field* for setting GHG emission reduction targets.

One outcome of the United States withdrawing its ratification from the Paris Agreement in June 2017 has been to ignite claims and counter-claims about the meaning and application of a “*level playing field*” and “*fairness*” for climate change.

For example, the **claim** by President Trump that although China will be able to increase emissions for 13 years, this did not apply for the United States.

This claim can be supported because obligations under the Paris Agreement (at Article 4.4¹) impose different standards for reducing emissions: -

- **Developed countries** are to take the lead by undertaking economy-wide absolute emission reduction targets.
- *But, in enhancing their mitigation efforts, **developing countries** are subject to a qualification: To move towards economy-wide emission reduction targets, over time, in the light of different national circumstances.*

In effect, the Paris Agreement requires developed countries to undertake more ambitious emission reduction targets than developing countries; who in turn, will enhance their contributions to achieve their emission reduction targets.

A further **claim** by President Trump was that the Paris Agreement allows China to build hundreds of additional coal plants, as well as allowing India to double its coal production by 2020. But, that it effectively blocks the development of clean coal in the United States.

The **counterclaim** to this viewpoint is that there was nothing in the Paris agreement that specifies which countries can and cannot build coal plants. Also, that China and India have agreed to climate measures that would prevent a major expansion of coal: China, by building fewer coal plants than had been planned and India, through goals set for reducing carbon intensity and for moving to a 40 percent non-fossil fuel capacity.

These two examples illustrate the uncertainty that must be resolved for finding a pathway to facilitate the return of the United States to the Paris Agreement: A pathway that needs to provide “a framework [that] is fair and where the burdens and responsibilities are equally shared among the many nations all around the world”.

The foundation for finding such a pathway lies in understanding the role of three key obligations that apply to all countries under the UNFCCC, the Kyoto Protocol and the Paris Agreement: ‘*Sustainable development*’, ‘*equity*’ and the principle of ‘*common but different responsibilities*’ (“CBDR”).

The **Paris Agreement** (at *Article 3*), gives effect to these the obligations for countries when undertaking their *Nationally determined contributions* (“NDCs”) as part of the global response to surface air temperature rise: -

- ***Sustainable development***: By strengthening global response to the threat of climate change in the context of sustainable development... (*Article 2.1*); &
- Implementation of the Paris Agreement is “to reflect ***equity*** and the principle of ***common but different responsibilities*** and respective capabilities, in the light of different national circumstances (*Article 2.2*).

The effective integration of these three obligations, as imposed by the Paris Agreement, provide the cornerstones of a problem-solving pathway for creating a level playing field and a fair framework:

CBDR is a key obligation for creating a *level playing field*. Sustainable development and equity are key obligations guiding countries to set emission reduction targets in their NDCs under a *framework that is fair*.

What do we Mean by a Level Playing Field for Climate Change?

The “*level playing field*” is now a common expression; it had its origin in the early 1980s. Its plain or literal meaning relates to “*a sense of fairness*”, “*equal chances*”, “*equality of opportunity*” or no “*competitive advantage*” for stakeholders.

It should be clear that the concept of a *level playing field* for climate change will need to resonate with **multiple obligations imposed by the Paris Agreement** for achieving its overall aim²: **Obligations that represent competing elements for preparing, communicating and reviewing emission reduction targets in NDCs.**

To enable consistency and predictability in decision-making, the challenge is to ensure that the meaning for this concept will not be open to different interpretations.

The **concept for a level playing field for climate change is complex**. Adopting the plain meaning approach to define it, in all likelihood, would be problematic for its application and as a decision-making aid.

The alternative pathway is the legislative drafting approach of law.

The meaning given to a level playing field for climate change is its scientific or technical meaning – not its plain meaning.

The concept is defined in terms of its underlying obligations under the Paris Agreement.

The Paris Agreement: NDCs & Key Obligations for a Level Playing Field

A key outcome of the Paris Agreement were obligations to commit all countries to prepare, communicate and review emission reduction targets in their NDCs: Non-binding targets, set by themselves, that represent their best efforts they intend to take.

- ☑ All countries now have obligations to undertake measures for managing the risks and impacts of global temperature rise. Does this mean that the “*Developed Country-Developing Country Divide*” that existed under the Kyoto Protocol has now been replaced by a level playing field? In one regard, it does – but this may simply represent the first step as uncertainty still prevails!

*Application of Article 3³ of the Paris Agreement may lead to conflict if there are perceived concerns over **equity** and competitive advantage for setting emission reduction targets in NDCs.*

The obligation under Article 3 is a key element for creating a level playing field to achieve the central aim of the Paris Agreement.

- ☑ All countries now have an obligation imposed to adopt a standardized methodology for the regular review of each country's progress reports in their NDCs? The Paris Agreement incorporates a five-year review cycle mechanism to evaluate collective progress on global efforts to manage risks and impacts of climate change: In turn, this information must be disclosed and communicated.

*While this obligation ensures **transparency** through disclosure of all relevant and reliable information available, information conflicts may still arise and be a source of concern.*

Clarity - *whether the information communicated is in a form that is easily understood – is the key element.*

Equity is also a key element in this regard: *To ensure the information communicated in the relative contributions or efforts in the NDCs resonates with achieving the central aim of the Paris Agreement.*

This reporting obligations imposed by the Paris Agreement should be recognized as a key element for an effective level playing field.

- ☑ The principle of CBDR – an obligation under all three climate change Treaties - has been open to different interpretations. It is “one of the most **contentious aspects of the regime** since its inception”.

Application of the CBDR principle to emission reductions under Kyoto, and more recently the Paris Agreement, has led to information conflicts over inequality and competitive advantage.

The second element of CBDR - Differentiated responsibility - is the primary source of information conflict. It requires each country to consider the different circumstances for its contribution to global temperature rise; and its ability to prevent, reduce and control the risks and impacts.

The Paris Agreement imposes a ‘qualification’ under it. One that only applies to “*developing countries*”, when setting emission reduction targets in their NDCs: By “*depending on respective capabilities*”; and, following COP22, which extended its meaning, “*in the light of different national circumstances*”.

Confounding this issue is that the Paris Agreement refers to “*developed*” and “*developing*” countries in the obligations imposed following ratification. But, unlike Kyoto, there is no reference to Annex I Parties (*those Parties listed in Annex I to the UNFCCC*) or non-Annex Parties: From the time of the UNFCCC there has been no **agreed meaning or listing**⁴ of “*developed*” and “*developing*” countries.

The strict division between developed and developing countries under Kyoto for emission reductions has ended. But, under the Paris Agreement, uncertainty arises in defining countries who should take the lead in undertaking economy-wide emission reduction targets?

Also, application of the CBDR qualification creates concern whether NDCs will strengthen the response to global temperature rise in the context of sustainable development; equity is also a further concern.

The environmental objective of sustainable development - as well as equity and CBDR - are key elements in preparing NDCs that must comply with all three obligations imposed by the Paris Agreement.

- ☑ How should each country’s NDC comply with Article 4.3 of the Paris Agreement: To “*reflect its highest ambition*”⁵? Should it be based on a country’s “***historic share of global emissions***”, or its “***current share of global emissions***” or its “***cumulative sum of historical emissions***” (“***cumulative global emissions***”)?

For most developed countries, the ***historic share of global emissions*** is higher than its current share – in many cases, much greater.

The converse applies for **many developing countries**; the historic share for many developing countries is markedly lower than their ***current share of global emissions***.

The other alternative is ***cumulative global emissions***: The cumulative sum of atmospheric GHGs over time, not emissions in any particular year.

One analysis of the Paris Agreement reveals a source of concern: That “*developed countries will not adopt any mechanism to fight the adverse effects of climate change that is based on a proportion of past emissions*”.

Equity adds a further dimension to this concern.

The cumulative build-up of atmospheric GHGs, and their potential adverse environmental impacts, is a classic sustainable development problem. Uncertainty relates to how this environmental objective – a key element for achieving the central aim of the Paris Agreement – is to be achieved in NDCs.

**PART 2 reviews the multiple obligations
arising under the Paris Agreement
for creating a level playing field and a fair framework
for climate change.**

**PART 3 adopts a problem-solving approach.
The obligations of
sustainable development, equity and the CBDR principle
are applied as cornerstones for achieving the goal
of a level playing field and a fair framework.**

END NOTES:

¹ *Article 4.4 Paris Agreement:* Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.

² *Article 1(a) Paris Agreement:* Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

³ *Article 3 Paris Agreement:* As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement (*Emphasis added*).

⁴ See this web link for a clear analysis by [Susan Biniaz](#) (Senior Fellow, UN Foundation and Adjunct Faculty, Columbia Law School, USA) of “Constructive Ambiguity” as well as the interpretation of the CBDR principle.

⁵ *Article 4.3 Paris Agreement:* Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.