



University of St Andrews
Law Journal
Institute of Legal and Constitutional Research



Title: Top-Down to Bottom-Up: A Critical Analysis of the Approach to the Principle of Common but Differentiated Responsibilities and Respective Capabilities under the Paris Agreement

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Source: *University of St Andrews Law Journal* 5, no. 1 (October 2025): 17-30.

Published by: Institute of Legal and Constitutional Research, University of St Andrews

Stable URL: <https://doi.org/10.15664/stalj.v5i1.3005>

DOI: 10.15664/stalj.v5i1.3005

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ISSN 2634-5102

Top-Down to Bottom-Up: A Critical Analysis of the Approach to the Principle of Common but Differentiated Responsibilities and Respective Capabilities under the Paris Agreement

By Aileen Brechin

Introduction

Considered to pose the “biggest threat modern humans have ever faced”,³⁴ climate change is endangering the livelihoods of humans and global ecosystems on an unprecedented scale.³⁵ The systemically unjust nature of the climate crisis is widely acknowledged, as developing countries often face the most threatening consequences of climate change, while, owing to the deep-rooted effects of the colonial period, they have often contributed the least to greenhouse gas (GHG) emissions, both historically and in the present day.³⁶

International climate law seeks to address this structural inequality through incorporating differential treatment into its provisions, primarily through the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). Formally introduced through the 1992 United Nations Framework Convention on Climate Change (UNFCCC),³⁷ which continues to shape the foundations of international climate law, CBDR-RC is considered to be “the most significant guiding principle in the international climate change regime”,³⁸ and has undergone significant evolution in its application since the enactment of the Paris Agreement in 2016.³⁹ As such, the principle has shifted in approach from strict top-down differentiation to a flexible bottom-up process of self-differentiation, guided by the publication of individual Nationally Determined Contributions (NDC) documents by each Party.⁴⁰

The purpose of this article is to provide a critical analysis of the bottom-up approach to CBDR-RC under the Paris Agreement, determining the extent to which such an approach weakens the normative status of the principle under international law. To this end, it will begin by exploring the role of differentiation and the evolution of CBDR-RC in international climate law, discussing its application under both the UNFCCC and the Kyoto Protocol to the UNFCCC, which was adopted in 1997.⁴¹ The article will then present CBDR-RC under the Paris Agreement, analysing select NDC publications to determine the efficacy of its application, before critically

³⁴ United Nations Security Council, “Climate Change ‘Biggest Threat Modern Humans Have Ever Faced’, World-Renowned Naturalist Tells Security Council,” *United Nations Security Council*, 2021, accessed April 22, 2025, <https://press.un.org/en/2021/sc14445.doc.htm>.

³⁵ United Nations Framework Convention on Climate Change, “UN Agencies Present Latest Climate Science,” *United Nations Framework Convention on Climate Change*, undated, accessed April 22, 2025, <https://unfccc.int/news/un-agencies-present-latest-climate-science>.

³⁶ Intergovernmental Panel on Climate Change, *IPCC Sixth Assessment Report*. Intergovernmental Panel on Climate Change: Geneva, Switzerland, 3.

³⁷ *United Nations Framework Convention on Climate Change* (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

³⁸ Wang Tian and Xiang Gao, “Reflection and Operationalisation of the Common but Differentiated Responsibilities and Respective Capabilities Principle on the Transparency Framework under the International Climate Change Regime,” *Advances in Climate Change Research* 9, no. 1 (2018): 253.

³⁹ *Paris Agreement* (adopted 12 December 2015, entered into force 4 November 2016) 16 UNTS 1104.

⁴⁰ *Ibid.*, art. 3.

⁴¹ *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

analysing this evidence. In doing so, it argues that the bottom-up approach to CBDR-RC under the Paris Agreement has diluted the normative force of the principle, creating a fragmented system that relies heavily on political peer pressure rather than legal accountability. The article further argues that this undermines the status of CBDR-RC as a foundational principle of international climate law, presenting serious challenges for equity, transparency, and ambition under the regime. In light of such analysis, the article will then present recommendations for reform to strengthen CBDR-RC under the Agreement, through enforcing a clearer common structure for NDCs and enhanced oversight mechanisms, before making concluding remarks.

1. Differentiation in International Climate Law: Common but Differentiated Responsibilities and Respective Capabilities

As countries which have often contributed the least to GHG emissions both historically and in the present day,⁴² the world's ninety-one most climate-vulnerable nations suffer disproportionately from the effects of climate change.⁴³ Home to an estimated 3.6 billion people,⁴⁴ the majority of these nations are classed as developing countries, lacking in the required financial and technological resources for adaptation, leaving them in an increasingly vulnerable position to the impacts of climate change.

In response to such inequalities, differentiation is considered “an essential element” of all international environmental agreements,⁴⁵ aiming to acknowledge and address the differing economic, social, and political circumstances of States and entities to further equity and promote development through distributive justice.⁴⁶ The principle was first brought to the forefront of negotiations at the 1972 UN Stockholm Conference on the Human Environment where strong enthusiasm from developed countries was met by reservations from many developing countries, arguing that participating in efforts to protect the environment from the consequences of emissions overwhelmingly attributable to the industrialisation of developed countries would come at the expense of their own development.⁴⁷

The UNFCCC codified differentiation into international climate law through its Preamble and Articles 3(1) and 4(1), which state that the Parties to the Convention shall act “in accordance with their common but differentiated responsibilities and respective capabilities”. As such, the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is based on the notion that all States have a common responsibility to address climate change, while recognising differing levels of responsibility for GHG emissions, both historically and in the present day, and differing capacities to mitigate and adapt to the impacts of climate change.

Article 4(2) of the UNFCCC further incorporated CBDR-RC into its central obligations, allocating GHG

⁴² Intergovernmental Panel on Climate Change, *IPCC Sixth Assessment Report*, 1.

⁴³ United Nations, “On the Frontline of Climate Crisis, Worlds Most Vulnerable Nations Suffer Disproportionately,” 2021, accessed April 13, 2025, <https://www.un.org/ohrrls/news/frontline-climate-crisis-worlds-most-vulnerable-nations-suffer-disproportionately>.

⁴⁴ Intergovernmental Panel on Climate Change, *IPCC Sixth Assessment Report*, 1.

⁴⁵ Phillipe Cullet, “Differential Treatment in Environmental Law: Addressing Critiques and Conceptualising Next Steps,” *Transnational Environmental Law* 5, no. 1 (2016): 305.

⁴⁶ *Ibid.*, 309.

⁴⁷ Edith Weiss, “The Evolution of International Environmental Law,” *Japanese Yearbook of International Law* 54, no. 1 (2011): 3.

emissions reduction commitments to a specific list of developed parties, set out in Annex I to the Convention,⁴⁸ consisting of members of the Organisation for Economic Cooperation Development (OECD) and countries considered to be economies in transition (EIT).⁴⁹ These commitments were later developed into the first international legally binding GHG emissions reduction targets through the Kyoto Protocol, which was adopted in 1997 and entered into force in 2005, through which Annex I countries were individually assigned a set percentage reduction to contribute to an overall target of reducing emissions by at least 5% below 1990 levels.⁵⁰

Under both the UNFCCC and the Kyoto Protocol, no obligations were set on Non-Annex I countries, who were simply encouraged to take action with the financial and technological support of Annex II countries, OECD member states who were obligated to provide such support through Articles 4(4) and 4(5) of the UNFCCC.⁵¹

Annex I and Annex II Countries Under the Kyoto Protocol				
Australia	Estonia	Ireland	Netherlands	Slovenia
Austria	European Community	Italy	New Zealand	Spain
Belgium	Finland	Japan	Norway	Sweden
Bulgaria	France	Latvia	Poland	Switzerland
Canada	Germany	Liechtenstein	Portugal	Ukraine
Croatia	Greece	Lithuania	Romania	United Kingdom
Czech Republic	Hungary	Luxembourg	Russian Federation	United States
Denmark	Iceland	Monaco	Slovakia	

Figure 1: List of Countries in Annex I of the Kyoto Protocol.⁵² Those countries highlighted in bold were also listed as Annex II countries under the Protocol.

2.1 CBDR-RC and the Kyoto Protocol: Troubled Waters

While the top-down approach to CBDR-RC under the UNFCCC and the Kyoto Protocol saw initial success, through the turn of the Century critics began to label the “rigid distinction” between Annex I countries and Non-Annex I countries “dysfunctional” and the climate regime’s “greatest weakness”.⁵³ Major challenges stemmed from the rise of Rapidly Developing Countries (RDCs), with arguments that the Annex I categorisation failed to recognise the changing nature of economic development and the distribution of global GHG emissions levels, a result of the globalisation of trade and the rise in Global Value Chains.⁵⁴ This issue was highlighted in 2006 when the People’s Republic of China overtook the United States of America as the world’s greatest annual emitter of GHGs, despite still being categorised as a Non-Annex I country.⁵⁵

⁴⁸ UNFCCC, Annex I.

⁴⁹ *Ibid.*

⁵⁰ Kyoto Protocol, Annex A-B.

⁵¹ UNFCCC, art. 4(4), 4(5), and Annex II.

⁵² Kyoto Protocol, Annex B.

⁵³ Joanna Depledge and Farhana Yamin, “The Global Climate-Change Regime: A Defence,” in *The Economics and Politics of Climate Change*, ed. Dieter Helm and Cameron Hepburn (Oxford University Press, 2009), 443-499.

⁵⁴ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press, 2006), 184.

⁵⁵ Hongqiao Lui, Simon Evans, Zizhu Zhang, Wanyuan Song, and Xiaoying You, “The Carbon Brief Profile: China,” *CarbonBrief*, November 30, 2023, accessed April 26, 2025, <https://interactive.carbonbrief.org/the-carbon-brief-profile-china/>.

This failure of the Annex I classification system in recognising shifting GHG emissions patterns resulted in many developed countries gradually distancing themselves from the Kyoto Protocol, with the United States withdrawing completely from the Protocol in 2001 over such concerns.⁵⁶ As a result, the Kyoto Protocol was failing to impose obligations on two of the major global emitters (the United States and China), undermining its capacity to deliver substantial emissions reductions and global cooperation on climate change. The Kyoto Protocol faced further problems moving into its second implementation period, which was due to run from 2013 to 2020, as Canada, Japan, New Zealand, and Russia refused to comply, with Canada withdrawing in 2011.⁵⁷ While many Parties, notably the group of Like Minded Developing Countries (LMDC), continued to support CBDR-RC under the Kyoto Protocol:⁵⁸ it became clear that in order to achieve long term and sustainable emissions reductions, the regime would have to adapt to incorporate obligations on Non-Annex I countries to reflect their growing share of GHG emissions.

2.2 CBDR-RC Under the Paris Agreement: A New Era

With 195 current parties,⁵⁹ the Paris Agreement has been hailed as the “world’s greatest diplomatic success”,⁶⁰ adopted after years of divisive negotiations. The Agreement created a fundamental shift in both the articulation and the operationalisation of CBDR-RC, aiming to strike a careful balance between the necessity of ambitious climate obligations and the need for equitable and differential burden-sharing by placing common obligations on all parties.⁶¹

One of the ways in which the Paris Agreement changed the approach to differentiation in international climate change law is through the articulation of CBDR-RC in its text, adding a further qualification to the principle by stating that the objectives of the Agreement are guided by “common but differentiated responsibilities and respective capabilities, in the light of national circumstances”.⁶² First conceived by the Lima Call for Action and the US-China Joint Announcement on Climate Change,⁶³ the phrase “in light of national circumstances” introduced a more dynamic approach to differentiation, highlighting that each country’s responsibilities and capabilities with respect to the Agreement’s obligations are able to adapt and change “in tandem” with their economic and developmental realities,⁶⁴ encouraging a gradual increase in efforts.

⁵⁶ Martin Phillipson, “The United States Withdrawal from the Kyoto Protocol,” *International Journal* 36, no. 1 (2001): 288.

⁵⁷ Benoit Mayer, “The Curious Fate of the Doha Amendment,” *European Journal of International Law Talk!*, 2023, accessed April 25, 2022, <https://www.ejiltalk.org/the-curious-fate-of-the-doha-amendment/>.

⁵⁸ Lavanya Rajamani, “The Palpal encyclical and the Role of Common but Differentiated Responsibilities and Respective Capabilities in the International Climate Change Negotiations,” *American Journal of International Law Unbound* 109, no. 1 (2015): 144.

⁵⁹ 194 States, 195 including the European Union; United Nations Climate Change, “Paris Agreement: Status of Ratification,” *United Nations Climate Change*, undated, accessed April 16, 2025, <https://unfccc.int/process/the-paris-agreement/status-of-ratification>.

⁶⁰ Fiona Harvey, “Paris Climate Change Agreement: The World’s Greatest Diplomatic Success,” *The Guardian*, December 14, 2015, accessed April 27, 2025, <https://www.theguardian.com/environment/2015/dec/13/paris-climate-deal-cop-diplomacy-developing-united-nations>.

⁶¹ Christina Voigt and Felipe Ferreira, “‘Dynamic Differentiation’: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement,” *Transnational Environmental Law*, 5, no. 1 (2016): 285.

⁶² *Paris Agreement*, Preamble.

⁶³ United Nations Framework Convention on Climate Change, “Report of the Conference of the Parties on its Twentieth Session, Held in Lima from 1 to 14 December 2015: Part Two,” *United Nations Framework Convention on Climate Change*, 2015, art.2.

⁶⁴ Rajamani, “The Palpal encyclical,” 144.

The Paris Agreement coupled this change in articulation with further, more significant changes to the approach to differentiation through its operationalisation, removing the Annex I categorisation. Focusing instead on sovereign autonomy through a bottom-up approach, the Agreement introduced the process of self-differentiation, requiring all Parties to publish NDC documents to articulate their self-determined climate commitments. As universal climate action plans formulated by each individual State, NDCs represent “politically backed commitments”,⁶⁵ detailing proposed contributions to climate change adaptation and mitigation. There are no strict requirements for the contents of each NDC beyond detailing necessary “ambitious efforts” regarding mitigation provisions, but they may also contain pledges regarding adaptation, technology, finance, capacity building, and transparency.⁶⁶ Taking into account the differing needs of developing countries, the contributions pledged by each country may be unconditional, but they may also be conditional, for example pledges made on the condition of being provided with sufficient financial or technical support.⁶⁷

Acting as the primary instrument for ensuring a sustainable achievement of the long-term goals of the Paris Agreement, each country is required to “prepare, communicate and maintain” successive NDCs every five years,⁶⁸ creating stepping stones by requiring each successive NDC to “represent progression” and “reflect [the State’s] highest possible ambition” in light of CBDR-RC.⁶⁹ Aiming to reflect the changing circumstances of individual countries, this “catalytic framework” encourages growing ambition in the face of the climate crisis, and is argued to alleviate the issues with the “static” Annex categorisation through inspiring cooperative and collective efforts to advance emissions reductions.⁷⁰

3. Analysis of Select Nationally Determined Contributions

The following analysis investigates aspects of the CBDR-RC and NDCs, to determine whether the decentralised architecture of CBDR-RC under the Paris Agreement is effective through its current approach. Along with utilising data from the *2023 Global NDC Stocktake*,⁷¹ this analysis was made by selecting specific countries with differing levels of development for effective comparison: two OECDs;⁷² one EIT;⁷³ two RDCs;⁷⁴ and two Least Developed Countries (LDCs).⁷⁵ The data is based on second cycle NDC submissions, as the majority of countries are yet to

⁶⁵ United Nations Development Programme, “What Are NDCs and How Do They Drive Climate Action?” United Nations Development Programme, undated, accessed April 11, 2025, <https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know>.

⁶⁶ *Paris Agreement*, art. 3.

⁶⁷ *Ibid.*, art. 3.

⁶⁸ *Ibid.*, art. 4(2); art. 4(9).

⁶⁹ *Ibid.*, art. 4(3).

⁷⁰ Rajamani, *Differential Treatment*, 41.

⁷¹ United Nations Climate Change, *2023 NDC Synthesis Report*, United Nations Climate Change: Bonn, Germany, 2023.

⁷² Secretary of State for Business, Energy, and Industrial Strategy, *United Kingdom of Great Britain and Northern Ireland’s Nationally Determined Contribution*, United Kingdom Government, London, United Kingdom, 2022; United States of America, *The United States of America Nationally Determined Contributions*, United States Government Publishing Office: Washington DC, United States of America, 2021.

⁷³ Russian Federation, *Nationally Determined Contributions of the Russian Federation*, Federal Government of Russia, Moscow, Russia, 2020.

⁷⁴ People’s Republic of China, *China’s Achievements, New Goals, and New Measures for Nationally Determined Contributions*, Government of the Republic of China: Beijing, China, 2021; Government of India, *India’s Updated First Nationally Determined Contribution under Paris Agreement*, Government of India: New Delhi, India, 2022.

⁷⁵ The Republic of Uganda Ministry of Water and Environment, *Updated Nationally Determined Contributions*. The Republic of Uganda Ministry of Water and Environment: Kampala, Uganda, 2022; Republique d’Haiti Ministere de l’Environnement, *Contribution*

submit NDCs ahead of the extended 2025 deadline in September.⁷⁶

Country	Emissions Reduction	Sector	Target Year	Baseline
UK	68%	Economy-Wide	2030	1990
USA	50-52%	Economy-Wide	2030	2005
Russia	70%	Economy-Wide	2030	1990
China	65%	GDP	2030	2005
India	45%	GDP	2030	2005
Uganda	24.7%	Economy-Wide	2030	Business as Usual
Haiti	6.3% Unconditional; 25.5% Conditional	Selected Sectors (Energy; AFOLU; Waste; Coal Production)	2023	Business as Usual

Figure 2: Emissions Reductions Targets recorded in the second cycle NDCs of Select Countries.

The data displayed in Figure 2 highlights several key challenges when evaluating the ambition of NDCs. One challenge is the use of inconsistent and varying baseline years, as this reduces the transparency and comparability of NDC targets. Relative baselines, such as the “Business as Usual” baseline which 41.15% of all submitted NDCs utilised,⁷⁷ are inherently subjective as they rely on speculative future trajectories rather than concrete historical data,⁷⁸ while absolute emissions reduction targets, based on historical data, are the “gold standard” as they leave little room for interpretation and therefore create stronger targets.⁷⁹ Contrasting to the approach under the Kyoto Protocol, through which all countries were required to use data from 1990 as an absolute baseline, unless otherwise appealed to the Conference of the Parties (COP),⁸⁰ the use of relative baselines clearly fragments the implementation of CBDR-RC, challenging its implementation.

Another challenge is presented by the inconsistent scope and sectoral coverage of NDC pledges, which reveals both limited transparency and uneven ambition. Across all submitted NDCs, the only consistency in scope was that 100% of NDCs covered the energy sector and carbon dioxide emissions,⁸¹ with all remaining sectors and GHGs are covered inconsistently by the majority of countries. While 80% of second cycle NDCs presented absolute economy-wide targets,⁸² some were only based on selected sectors, and others on a percentage of GDP. In such cases, providing a relative target focuses solely on reducing the emissions of economic output, which could obscure data and results in targets are heavily reliant on unpredictable economic factors,⁸³ failing to guarantee absolute

Déterminée au Niveau National de la République d'Haïti, Government of Haiti: Port-au-Prince, Haiti, 2022.

⁷⁶ Opportunity Green, “Paris Climate Plans’ Deadline Extension,” *Opportunity Green*, undated, accessed April 26, 2025, <https://www.opportunitygreen.org/press-release-ndc-deadline-extended>.

⁷⁷ United Nations Climate Change, *2023 NDC Synthesis Report*.

⁷⁸ Dan Welsby, “How Do Countries Set Greenhouse Gas Emissions Limits?” *Transition Zero*, 2025, accessed April 26, 2025, <https://www.transitionzero.org/insights/how-countries-set-greenhouse-gas-emissions-limits>.

⁷⁹ *Ibid.*

⁸⁰ *Kyoto Protocol*, art. 3(5).

⁸¹ United Nations Climate Change, *2023 NDC Synthesis Report*.

⁸² *Ibid.*

⁸³ *Ibid.*

emissions reductions and further weakening the force of CBDR-RC under international law.

4. Critical Analysis: The Effectiveness of CBDR-RC in the International Climate Regime

In light of the above analysis, it is clear why the Paris Agreement's removal of the Annex I categorisation is criticised by some to have "watered down" the application of CBDR-RC,⁸⁴ implementing a degree of "destructive ambiguity" in its provisions which leads to the possibility of parties complying with the provisions in a manner that represents their best interests, rather than the interests of the international community.⁸⁵

Further, while the Paris Agreement has been praised for its ambitious goals, the Agreement often faces criticism for the aspirational nature of many of its obligations,⁸⁶ representing obligations of conduct rather than result. While Parties are legally bound to publish NDCs every five years,⁸⁷ and to show "progression" through such documents,⁸⁸ there is no legal obligation tied to NDCs past the point of publication. As such, there are no hard legal obligation for any Party to actually meet any of the targets or contributions articulated in the documents, and there is no method of regulating what constitutes the relevant levels of progression or ambition.⁸⁹ Due to the lack of quantitative obligations, and the lack of an effective method of oversight, as there is no requirement to provide substantive proof of meeting contributions, the success of the Agreement as a whole relies on a justificatory approach to compliance,⁹⁰ through a fear of political peer pressure and the desire to maintain a strong reputation within the international community.⁹¹

The lack of enforceable obligations is particularly damaging to the aid of developing countries as, among other issues, it may discourage financial contributions as Parties do not wish to commit their financial resources towards the implementation of NDCs for which the other Party will not be held responsible for failing to implement.⁹² Further, self-differentiated developed countries who pledged support to developing nations are not held responsible to ensure that they meet these contributions, which would, again, impact upon the prospects of mitigation and adaptation of such vulnerable developing countries, undermining the success of the Agreement.⁹³

5. A Desire for Reform?

The creation of hard law obligations of result was faced with strong opposition from developed countries who did

⁸⁴ Daria Shapovalova, "In Defence of the Principle of Common but Differentiated Responsibilities and Respective Capabilities," in *Debating Climate Law*, ed. Benoit Mayer and Alexander Zahar (Cambridge University Press, 2021), 68.

⁸⁵ Gerrit Hansen, "Destructive Ambiguity Hampers Progress in UN Climate Processes," *Stiftung Wissenschaft und Politik* 39, no. 4 (2023): 1-2; Volker Roeben and Mark Amakoromo, "Responsibility, Solidarity and Their Connections in International Law: Towards a Coherent Framework," in *Netherlands Yearbook of International Law*, ed. Maarten den Heijer and Harmen van der Wilt (TMC Asser Press, 2020), 46.

⁸⁶ Lavanya Rajamani, "Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics," *International and Comparative Law Quarterly* 65, no. 1 (2016): 513.

⁸⁷ *Paris Agreement*, art. 4(9).

⁸⁸ *Ibid.*, art. 4(3).

⁸⁹ Rajamani, "Ambition and Differentiation in the 2015 Paris Agreement", 510.

⁹⁰ Sébastien Duyck, "MRV in the 2015 Climate Agreement: Promoting Compliance through Transparency and the Participation of NGOs," *Carbon and Climate Law Review* 3, no. 1 (2014): 176.

⁹¹ Rebecca Byrnes and Peter Lawrence, "Can 'Soft Law' Solve 'Hard Problems'?" *University of Tasmania Student Law Review* 34, no. 1 (2015): 62.

⁹² Roeben and Amakoromo, "Responsibility, Solidarity and Their Connections in International Law," 47.

⁹³ *Ibid.*, 37.

not wish to repeat the Kyoto Protocol through binding obligations,⁹⁴ meaning that the Paris Agreement is arguably “the most ambitious outcome possible” within the current political climate, representing the “remarkable” political and diplomatic will of the international community as a whole.⁹⁵

However, in light of the criticisms raised, and the pressing nature of the climate crisis, it is still argued that the Paris Agreement would benefit from a stronger and clearer legal basis. As the success of the Agreement as a whole relies on each individual country’s political will in implementing strong and ambitious contributions,⁹⁶ the importance of a proficient method of oversight on ambition levels and compliance cannot be overemphasised.⁹⁷ There are two main methods of enhancing compliance under international law, the first of which is known as the “facilitative” method, focusing on facilitating stronger compliance through the provision of required resources to Parties who are unable to comply due to a lack of capacity.⁹⁸ The second method for enhancing compliance is the “enforcement” method, which imposes sanctions for lack of compliance.⁹⁹

Granting greater powers of oversight to COP, the “supreme” decision-making power of the UNFCCC,¹⁰⁰ would be a strong option. To enhance international responsibility, a provision could be added to the Agreement to articulate that Parties bear the “responsibility to implement their commitments or plans”,¹⁰¹ and this responsibility could be regulated by COP, making each Party answerable in cases of non-compliance or lack of progression.

While the success of the implementation of international agreements such as the Montreal Protocol in utilising enforcement methods through threats of trade sanctions in response to consistent non-compliance has been highlighted by academics,¹⁰² in the context of CBDR-RC and the Paris Agreement, the facilitative method would likely be the most successful. Such methods have proven to be successful in enhancing compliance in previous international environmental treaties,¹⁰³ for example offering valuable assistance through further financial and technological transfers.¹⁰⁴ While these provisions are already provided to an extent through NDCs, the oversight of COP could be utilised to streamline and enhance the efficacy of these provisions, ensuring that the needs of developing countries are met.¹⁰⁵ The resultant increased monitoring and evaluation would further encourage a stronger sense of responsibility to implementing the contributions articulated in NDCs, increasing solidarity and the effectiveness of the Agreement as a result.¹⁰⁶

Another suggestion to increase the efficacy of CBDR-RC in the Paris Agreement is by increasing

⁹⁴ *Ibid.*, 47.

⁹⁵ Rajamani, “Ambition and Differentiation in the 2015 Paris Agreement”, 51.

⁹⁶ David G. Victor, Marcel Lumkowsky, Astrid Dannenberg, and Emily Carlton, “Success of the Paris Agreement Hinges on the Credibility of National Climate Goals,” *Brookings*, 2022, accessed April 16, 2022, https://www.brookings.edu/articles/success-of-the-paris-agreement-hinges-on-the-credibility-of-national-climate-goals/?utm_source=chatgpt.com.

⁹⁷ Elizabeth Barratt-Brown, “Building a Monitoring and Compliance Regime of the Montreal Protocol,” *Yale Journal of International Law* 16, no. 1 (1991): 570.

⁹⁸ Byrnes and Lawrence, “Can ‘Soft Law’ Solve ‘Hard Problems’?”, 63.

⁹⁹ *Ibid.*

¹⁰⁰ United Nations Framework Convention on Climate Change, “Organisational Bodies,” United Nations Framework Convention on Climate Change, undated, accessed April 17, 2025, <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop>.

¹⁰¹ Roeben and Amakoromo, “Responsibility, Solidarity and Their Connections in International Law,” 45.

¹⁰² Vesselin Popovski, *The Implementation of the Paris Agreement on Climate Change* (Routledge, 2020), 6.

¹⁰³ *Ibid.*, 801.

¹⁰⁴ Byrnes and Lawrence, “Can ‘Soft Law’ Solve ‘Hard Problems’?”, 63.

¹⁰⁵ *Ibid.*

¹⁰⁶ Roeben and Amakoromo, “Responsibility, Solidarity and Their Connections in International Law,” 47.

transparency through streamlining the structure of NDCs and implementing clearer common requirements.¹⁰⁷ As highlighted in the previous section, the increased flexibility and dynamic nature of CBDR-RC under the Agreement has resulted in a near-complete lack of regulation in the contents of NDCs and the resultant pledges. As over 150 nations have little experience in carbon accounting or the articulation of climate contributions as they were previously Non-Annex I Parties, and the current lack of cohesivity between the contents and structure of NDCs has been described as a “nightmare” for transparency.¹⁰⁸ If a common structure was followed by the majority of Parties, along with common and absolute baselines, scope, and target years for emissions reductions, it would likely lead to increased progression in global ambition, and would allow for greater analysis of progression.¹⁰⁹ For example, the inclusion of explicit categories articulating details of emissions targets and transparent quantifiable and non-quantifiable overall data for commitments regarding the provision of or requirements for international finance and capacity building initiatives would be greatly beneficial, along with explicit detailing and justifications of self-determined differentiation statuses.¹¹⁰

Conclusion

With consideration of the criticisms presented, it is clear that CBDR-RC remains an essential tool in international climate law. Due to the deep-rooted inequalities present across the world, differentiation of responsibilities with regards to mitigation of and adaptation to climate change will remain necessary for generations to come.

The analysis of select NDCs highlighted the challenges presented by the bottom-up approach to CBDR-RC under the Paris Agreement, as the lack of cohesivity has led to ambiguity in both self-differentiation and the contributions provided for, leading to weak transparency and comparative difficulties. Further, the lack of hard enforceable legal obligations tied to any contributions pledged in NDCs has created a system which is heavily reliant on international peer pressure for the Agreement to see any degree of success, which is highly problematic from a legal perspective and challenges the status of CBDR-RC as a foundational legal norm in climate governance.

Given the current political climate, reverting to enforceable legal obligations requiring specific emissions reduction targets to be met is an unlikely prospect. Yet, it is still possible to enhance the approach to CBDR-RC to ensure greater success. As suggested, enforcing a common structure and required numeric consistency in targets to be followed in each NDC would encourage transparency and would likely lead to increased ambition through facilitating easy comparison. Further, improving accountability by granting powers of facilitative oversight to COP would benefit the climate regime as a whole, ensuring that each Party can be held formally accountable to meeting their contributions to the best of their ability.

By enforcing a stricter system with regards to NDCs, the Paris Agreement could create a stronger approach to CBDR-RC, ensuring that the equity and justice are upheld in advocacy for the climate. While it is clear that CBDR-RC under the Agreement will not resolve the growing threats of climate change alone, by strengthening its

¹⁰⁷ Will Ulrike, “The Specification of Rules of Differentiation in the NDCs to the Paris Agreement,” *RECAP15* 31, no. 1 (2020): 4.

¹⁰⁸ Catherine Martini, “Transparency: The Backbone of the Paris Agreement,” *Yale Center for Environmental Law & Policy*, undated, accessed April 17, 2025, <https://envirocenter.yale.edu/transparency-the-backbone-of-the-Paris-Agreement>.

¹⁰⁹ Ulrike, “The Specification of Rules of Differentiation in the NDCs to the Paris Agreement,” 4.

¹¹⁰ *Ibid.*, 26.

normative force to encourage greater action by individual Parties, and in turn enhancing collective international ambitions, there may still be hope for preserving the climate.

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