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India's Negotiating Position on Climate Change: Legitimate but not Sagacious

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Abstract

In the intergovernmental climate negotiations India has consistently argued against greenhouse gas mitigation commitments for developing countries. This paper argues that while India's position, given the burden sharing architecture of the United Nations Framework Convention on Climate Change and its Kyoto Protocol, is legitimate, it is not a sagacious position to hold. Poorer nations, and the poorest within them, will be the worst hit by climate change. 34.7% of Indians live on less than 1US\$ a day. A vast majority of India's poor are in rural areas and are dependent directly on climate-sensitive natural resources. The poor have the least adaptive capacity. And, climate change is predicted to have severe impacts in India. It is of critical importance that climate change concerns are mainstreamed into development planning, and concrete actions are taken to transition to a low carbon development pathway. It is also important that commitments are undertaken at a global level, if not now at some future point in time, for it is only cumulative global emissions reductions that will eventually impact the trajectory of climate change.

The scientific consensus on climate change is now overwhelming. Climate change is unequivocal and accelerating. The economics favour action over inaction. And popular consciousness – thanks to Al Gore and a family of photogenic penguins - is higher than ever before. Yet the intergovernmental climate negotiations, scheduled for Bali in December, have yet to be instilled with the requisite sense of urgency. At the root of this – whether in the eyes of the industrialized or developing world - lies fear of economic hardship. It is this fear that drives India's position as well.

India has consistently argued that it is inequitable to ask developing countries that have played little part thus far in creating the problem, to take on greenhouse gas reduction commitments. There may well be legitimacy to this position vis-à-vis the

industrialized world, when countries like the United States, which with 4% of the world's population is responsible for 23% of the world's emissions, has rejected reduction commitments under the *Kyoto Protocol*. India, 126th on the Human Development Index, with 16% of the world's population, is responsible for 5.1% of the world's emissions. India's per capita emissions are 1.2 metric tonnes annually – low compared to most industrialized countries. The US, for instance, has a per capita rate of 19.8 metric tonnes, and Canada of 17.5.

Yet India and China (with whom India often finds common cause) are together responsible for a fifth of the world's emissions and their energy use is on the rise. In the last decade China's economy has been growing at an annual rate of 10.2%, its greenhouse gas emissions at 4%, and its energy consumption at 5.6% per year. India's economy, which grew at 9.2% in 2006, is fast catching up with China's. If India's current growth rate continues, energy demand will more than double by 2020. In addition, if India is to meet its targets on poverty, unemployment, and literacy in its 11th five-year plan, some of which are more ambitious than the Millennium Development Goals, and to also provide energy to the estimated 44% of the population without access to electricity, it will require much greater energy use. India will soon be a significant contributor to the problem.

While the rhetoric of equity may serve these countries well in international forums, lack of serious domestic action will fundamentally hamper the ability of the international community to tackle climate change. And, climate change will have significant impacts – economic, social and environmental in India. The *Intergovernmental Panel on Climate Change* (IPCC) and the *Stern Review* underscore this. Even a small change in temperature could result in significantly lower agricultural yield, desertification, loss of arable land, and an escalating refugee crisis. Climate change will critically impair India's economic growth and its ability to meet development goals.

Elements of India's Negotiating Position

India is a party to the *UN Framework Convention on Climate Change* (UNFCCC) and its *Kyoto Protocol*. It participates in the G8+5 Gleneagles dialogue, is a Member of the Asia Pacific Partnership on Clean Development and Climate, and has bilateral relationships with the United Kingdom, the United States, and the European Union on climate research and technology. India's controversial and floundering agreement with the United States on civil nuclear energy is also touted to have significant climatic benefits. The U.S. Senate Committee on Energy and Natural Resources considered testimony that suggested that the annual carbon savings from this agreement could be nearly as large as the entire commitment of the European Union to meet the *Kyoto Protocol*. Indian Prime Minister Manmohan Singh reportedly estimates that India will increase nuclear energy by 40GW by 2015 – which will result in 300 million tons of CO₂ reductions.

India emphasizes the historical responsibility of industrialized countries and its own low per capita emissions. It conceptualizes climate change as a development issue - unless the current generation generates and sustains high levels of economic growth, future generations will inherit an earth that is highly vulnerable to climate change. And, therefore inter-generational equity (usually deployed to argue for greater environmental protection) demands that the current generation prioritise development as a matter of urgency. India going in to Bali rejects GHG mitigation commitments in any way, shape or form. India argues that a 9.7% reduction by 2036 will cost it 2.5 trillion USD. India is willing to commit that its per capita emissions will not rise beyond OECD levels, and to take voluntary practical actions to decarbonize its economy.

Given the congruence in climate policy drivers and imperatives, China and India often join forces to oppose mitigation commitments. Together they opposed a discussion of climate change at the UN Security Council in April 2007, arguing that the Security Council did not have any competence to deal with climate change, and opposed any suggestion that climate change, 'an uncertain long term prospect,' may have security implications. They also stalled talks at the meeting to release the IPCC Working Group III Report on the mitigation of climate change, part of the Fourth Assessment Report to be released in November 2007. China and India insisted on a formal quantification of the historical responsibility of industrialized countries.

India's Position is Legitimate because...

The stance taken by India is arguably legitimate for it is firmly positioned within the burden-sharing architecture of The UNFCCC and its *Kyoto Protocol*. This burden-sharing architecture contains three central elements that would impart India's position with legitimacy: redistribution of the

Ecological space, common but differentiated responsibility, and the linking clause.

Redistribution of the Ecological Space

One of the central goals of the climate regime is the redistribution of the ecological space. Evidence for this exists in the language of the UNFCCC and *Kyoto Protocol*. The UNFCCC preamble contains a recognition that 'the share of global emissions originating in developing countries will grow to meet their social and development needs.' Elsewhere in the preamble the UNFCCC adds that in order for developing countries to progress towards sustainable social and economic development 'their energy consumption will need to grow.' These preambular provisions do not provide developing countries with a *carte blanche* to increase their emissions. The phrase 'share of global emissions' is critical. It implies that the UNFCCC countenances growth of emissions in developing countries *relative* to the emissions of industrial countries, not in itself. Further, the recognition of the need for increased energy consumption in developing countries is buttressed by references to 'greater energy efficiency' and 'application of new technologies.' Despite the boundaries within which growth in developing countries' emissions is countenanced, there is a clear signal that one of the objects of the UNFCCC is the redistribution of the ecological space.

This goal is in keeping with UN General Assembly Resolution 44/228 referred to in the UNFCCC preamble, which mandates that 'the protection and enhancement of the environment must take fully into account the current imbalances in global patterns of production and consumption.' The recognition that the share of developing countries' emissions will grow is to be read in conjunction with the objective in UNFCCC Article 2 to 'stabilize greenhouse gas emissions,' and the emphasis in the common but differentiated responsibility principle and elsewhere that the industrial world is responsible for the largest share of historical and current greenhouse gases and must assume a leadership role in rising to the climate challenge. It follows that industrial countries are required under the climate regime to reduce the ecological space they occupy in favour of developing countries.

Common but Differentiated Responsibility and Industrial Countries' Leadership

In the 1980s, in the process leading up to Rio and at Rio, in particular in the climate negotiations, there was a growing albeit not universal acknowledgment of industrial country contributions to the global environmental crisis. This acknowledgment was articulated as the principle of common but differentiated responsibilities. The principle establishes unequivocally the common responsibility of states for the protection of the global environment. Next, it builds on the acknowledgment by industrial countries

that they bear the primary responsibility for creating the global environmental problem by taking into account the contributions of states to environmental degradation in determining their levels of responsibility under the regime. In doing so it recognizes broad distinctions between states, whether on the basis of economic development or consumption levels. It also, by its clear terms, assigns a leadership role to developing countries.

The principle of common but differentiated responsibilities, contained in Rio Principle 7 and UNFCCC Article 3 is the overarching principle guiding the future development of the climate regime. It is found in two operational paragraphs of the UNFCCC, a binding treaty with near universal participation, and reiterated in the preamble of the *Kyoto Protocol*. It is also frequently referred to in UNFCCC conference of parties' decisions and ministerial declarations. Even though this principle does not assume the character of a legal obligation in itself, it possesses a 'species of normativity' implying a certain legal gravitas. It is still the *context* within which international environmental law functions such that this principle, among others, forms the bedrock of the burden sharing arrangements crafted in different environmental treaties. And, it is a fundamental part of the conceptual apparatus of the climate regime such that it forms the basis for the interpretation of existing obligations and the elaboration of future international legal obligations within the regime in question.

The Linking Clause

UNFCCC Article 4(7) termed here as the 'linking clause' reads:

The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the *effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology* and will take *fully into account that economic and social development and poverty eradication are the first and overriding priorities* of the developing country Parties.

This provision, like similar provisions in the *Montreal Protocol*, the *Convention on Biological Diversity*, and the *Stockholm Convention*, is a significant innovation in that by linking developing countries' participation and implementation to industrial countries' commitments, it underpins and reinforces the compact between developing and industrial countries with respect to international environmental protection.

There are various elements to this provision, but for current purposes, it is worth noting that the recognition that economic and social development and poverty eradication are the first and overriding priorities of the developing countries could be read as a limited exception to the link between industrial and developing countries'

implementation. In other words, even if industrial countries fulfil their assistance commitments, developing countries could claim, provided it did not constitute a breach of customary obligations, that overriding priorities had come in the way of the implementation of their commitments.

But India's Position is Not Sagacious because...

The Indian negotiating stance given the continuing differences in per capita emissions levels between countries, fits squarely within the climate regime's burden sharing architecture, and is therefore legitimate. It is nonetheless not a sagacious position to hold.

Poorer nations, and the poorest within them, will be the worst hit by climate change. This is indeed the fundamental inequity at the heart of the climate change problematic – that those who have contributed the least to causing climate change will bear the real brunt of it. To quote Professor Henry Miller, 'like the sinking of the Titanic, catastrophes are not democratic,' and 'a much higher percentage of passengers from the cheaper decks' will be lost. A vast majority of the occupants of the cheaper decks are Indians. The Human Development Indicators estimate that 34.7% of India's 1.1 billion live on less than US\$1 a day. A vast majority of India's poor are in rural areas and are dependent directly on climate-sensitive natural resources. The poor have the least adaptive capacity. And, climate change is predicted to have severe impacts in India. Climate change will increase the severity of draughts, land degradation, and desertification, the intensity of floods and tropical cyclones, the incidence of malaria and heat-related mortality, and decrease crop yield and food security. In addition, rising sea-levels will displace coastal populations and lead to an escalating refugee crisis. Melting Himalayan glaciers will initially increase flood risk and eventually threaten water shortages for the one-sixth of humanity primarily in the Indian sub-continent.

The *Stern Review* highlights the toll that climate change could take on the Indian economy. Even a small change in temperature could have a significant impact on the Indian monsoon, resulting in up to 25% lower agricultural yield. A 2–3.5-degree centigrade temperature increase could cause as much as 0.67% GNP loss, and a 100-centimetre increase in sea level could cause 0.37% GNP loss. A quarter of the Indian economy is dependent on agriculture, and any impact on this sector will fundamentally impair India's ability to meet its development goals.

It is of critical importance that climate change concerns are mainstreamed into development planning, and concrete actions are taken to transition to a low carbon development pathway. It is also important that commitments are undertaken at a global level, if not now at some future point in time, for it is only cumulative global not regional or national emissions reductions that will eventually impact the trajectory of climate change. In the meantime, there is a case

for national targets if only for energy intensity (China has minus 20% energy intensity target in its 11th five year plan), and for expanding actions that offer both development and climatic benefits. The Delhi metro is an excellent illustration.

The immediate goal of the international community in the Bali negotiations must be to strengthen the existing confidence building architecture in the FCCC and Protocol - to operationalize technology transfer, financial assistance capacity building and adaptation. The Bali negotiations should also create a framework for a post-2012 agreement that does not include emission reduction targets for developing countries, but provides incentives to developing countries to limit their emissions growth and adopt a cleaner development pathway (exploiting co-benefits). It must also strengthen and deepen mitigation commitments for industrialized countries.

One hopes that India will go to the Bali negotiations not as a naysayer, of which there are plenty, but as an environmentally-responsible international actor willing to engage with others in an endeavour to creatively re-imagine the political and negotiating landscape and address a global problem with particular and far reaching impacts on India's poor.

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