

International Law Matters to Climate Change
Dr. Curtis FJ Doebbler¹

To many international law may appear as a lofty idea that has little consequence for the practical action to address climate change. Many delegates and their governments representing almost every person on the planet understand that international law is the foundation upon which international relations rests and the common denominator that has been agreed among States.

In relation to climate change, international law is particularly important. The core document of international climate change law has been agreed to by every country in the international community, developing countries as well as developed countries, rich countries as well as poor, and large countries as well as small. This document is the United Nations Framework Convention on Climate Change (UNFCCC).

The UNFCCC contains the most fundamental principles for combating climate change. They are principles that States considered for decades before putting them down on paper and solemnly agreeing to abide by them. More importantly, perhaps, it is attempts by some States to ignore or violate this international law that is at the foundation of the international community's failure to take adequate action to date to protect all people from the adverse effects of climate change.

The UNFCCC is based on good science. Its ultimate objective is to ensure that dangerous emissions by humans do not interfere with the global climate system. The Nobel-prize winning International Panel on Climate Change (IPCC) has just recently released its fifth report stating with almost absolute certainty that climate change is being caused by human action.

The UNFCCC was drafted and exists to deal with the human action that is causing climate change. While it does not always prescribe exact remedies, it lays down principles that must be respected when any action to deal with climate change in article 3.

One of the most frequently cited of these principles is that action should be taken based on common but differentiated responsibilities and respective capabilities. This means that States who have contributed more to climate change, not merely right now, but since at least 1850, should take more action to cut their emissions. The reason for this principle is that many States—for example, the United States, Australia, and most European States—developed for decades by over-exploiting the Earth's atmosphere. These States became wealthy and developed, while many other States remained poor.

This principle is reiterated in the greater commitments that Annex 1 States have in article 4 and elsewhere in the UNFCCC as well as in the Kyoto Protocol and in any new treaty under the UNFCCC.

Today the situation is changing and many developed States are developing, but the situation is far from changed. It will take decades if not centuries for most developing States to catch up to the level of development enjoyed by Annex I countries. Imposing legal obligations on them without providing them the means to achieve these obligations will ensure they never catch up.

Moreover, the UNFCCC expressly states that it was meant to address climate change in an equitable manner. Equity requires that all States be allowed to develop to the same general level. In today's world

¹ Dr. Doebbler is an international lawyer who has followed the climate negotiations since 2007, providing legal advice to both government and non-governmental actors and a visiting adjunct professor of law at Webster University in Geneva, Switzerland. He also represents the non-governmental organization International-Lawyers.Org.

it is impossible to claim that Americans are people who have some higher value than the people of the Maldives. Under international human rights law all people are of equal value. All people have the right to health, to life, to a healthy environment, and the right to equally enjoy these rights. The principle of non-discrimination is even a pre-emptory principle of international law. This does not mean there are not differences, but only that everyone should be give the same opportunities, the same chances.

The UNFCCC's principles ensure all States the same chance to protect their people. The failure to respect these principles and act on the basis of them, denies States this opportunity. Climate change effects us all, but only when we respect the principles of international law that all States have agreed upon can we successfully address the adverse effects of climate change.