

# Article

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By Robert N. Stavins



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## AN UNAMBIGUOUS CONSEQUENCE OF THE DURBAN CLIMATE TALKS

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By **Robert N. Stavins** \*

*One of the major outcomes of the Durban Climate Conference in 2011 was the “Durban Platform for Enhanced Action” - a non-binding agreement to forge a new treaty by 2015 that will bring all countries under the same legal regime by 2020. This article will explain why the “Durban Platform for Enhanced Action” has opened an important window in climate talks.*

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*See other useful [links](#)*

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In a previous essay – following the [17th Conference of the Parties \(COP-17\)](#) of the [United Nations Framework Convention on Climate Change \(UNFCCC\)](#), which adjourned on December 11, 2011 – I offered [my assessment of the Durban climate negotiations](#), addressing the frequently-posed question of whether the talks had “succeeded.” I took note of three major outcomes from the negotiations: (1) elaboration on several components of the [Cancun Agreements](#); (2) a second five-year commitment period for the [Kyoto Protocol](#); and (3) a non-binding agreement to reach an agreement by 2015 that will bring all countries under the same legal regime by 2020. My conclusion was that this package – in total – represented something of a “half-full glass of water,” that is, an outcome that could be judged successful or not, depending upon one’s perspective.

However, something I did not discuss in that previous essay is that this third provision-

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the “Durban Platform for Enhanced Action”- has opened an important window. To explain what I mean requires a brief review of some key points from twenty years of history of international climate negotiations.

### **The Rio Earth Summit (1992)**

The [U.N. Framework Convention on Climate Change](#), adopted at the [U.N. Conference on Environment and Development](#) (the first “Earth Summit”) in Rio de Janeiro, Brazil, in 1992, contains what was to become a crucial passage. The first “principle” in Article 3 of the Convention reads as follows: “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their *common but differentiated responsibilities and respective capabilities*. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” [emphasis added] The countries considered to be “developed country Parties” were listed in an appendix to the 1992 Convention- Annex I.

The phrase – common but differentiated responsibilities – has been repeated countless numbers of times since 1992, but what does it really mean? The official answer was provided three years after the Earth Summit by the *first decision* adopted by the *first Conference of the Parties* (COP-1) of the U.N. Framework Convention, in Berlin, Germany, April 7, 1995 – the Berlin Mandate.

### **[The Berlin Mandate \(1995\)](#)**

The Berlin Mandate interpreted the principle of “common but differentiated responsibilities” as:

1. launching a process to commit (by 1997) *the Annex I countries to quantified greenhouse gas emissions reductions within specified time periods* (targets and timetables); and

2. stating unambiguously that the process should “not introduce any new commitments for Parties not included in Annex I.”

Thus, the Berlin Mandate established the dichotomous distinction whereby the Annex I countries are to take on emissions-reductions responsibilities, and the non-Annex I countries are to have no such responsibilities whatsoever.

### **The Kyoto Protocol (1997)**

It was in direct response to this Mandate that the U.S. Senate subsequently passed unanimously (95-0) the [Byrd-Hagel Resolution](#) in August of 1997 (Senate Resolution 98, 105th Congress, 1st Session) stating that:

“It is the sense of the Senate that the United States *should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period.*”

So, in a very real sense, the Berlin Mandate brought about sustained bi-partisan opposition in the United States to the international climate regime and the Kyoto Protocol. This sealed the Protocol’s fate in terms of ever being ratified by the U.S. Senate. [President Clinton](#) did not submit the Protocol to the Senate for ratification, nor would [Al Gore](#) have done so had he been elected to succeed Clinton. Likewise, [Senator John Kerry](#) was explicit about his opposition to Kyoto when he ran for President against [George W. Bush](#), and [President Bush](#) was subsequently more than explicit about his lack of support for the Protocol and, for that matter, the UNFCCC process. When [Barack Obama](#) ran against [John McCain](#) for President in 2008, one thing on which they

agreed was their opposition to the Kyoto Protocol.

Beyond those decisive impacts on U.S. climate politics, the Berlin Mandate had wide-ranging and worldwide normative consequences, because it became the anchor that prevented and has – until very recently – continued to prevent real progress in international climate negotiations. With 50 non-Annex I countries having greater per capita income than the poorest of the Annex I countries, the distinction is clearly out of whack. But, more important than that, this dichotomous distinction means that:

1. half of global emissions soon will be from nations without constraints;
2. the world’s largest emitter – China – is unconstrained;
3. aggregate compliance costs are driven up to be four times their cost-effective level, because many opportunities for low-cost emissions abatement in emerging economies are taken off the table; and
4. an institutional structure is perpetuated that makes change and progress virtually impossible.

### **Fast Forward to Copenhagen (2009) and Cancun (2010)**

The dichotomous Annex I/non-Annex I distinction remained a central – indeed, the central – feature of international climate negotiations ever since COP-1 in Berlin in 1995. Then, at COP-15 in 2009, there were hints of possible change.

The [Copenhagen Accord](#) (2009) and the [Cancun Agreements](#) (2010) began a process of blurring the Annex I/non-Annex I distinction. However, this blurring was only in the context of the interim pledge-and-review system established at COP-15 in Copenhagen and certified at COP-16 in Cancun, not in the context of an eventual successor to the Kyoto Protocol. Thus, the Berlin Mandate retained its centrality.

## Finally, We Arrive in Durban (2011)

The third of the three outcomes of the December 2011 talks in Durban, South Africa, which I mentioned at the beginning of this essay – the Durban Platform for Enhanced Action – completely eliminates the Annex I/non-Annex I (or industrialized/developing country) distinction. In the Durban Platform, [the delegates reached a non-binding agreement to reach an agreement by 2015 that will bring all countries under the same legal regime by 2020.](#) That’s a strange and confusing sentence, but it’s what happened, and it’s potentially important.

Rather than adopting the Annex I/non-Annex I (or industrialized/developing country) distinction, the Durban Platform focuses instead on the (admittedly non-binding) pledge to create a system of greenhouse gas reductions including *all Parties* (that is, all key countries) by 2015 that will come into force (after ratification) by 2020. Nowhere in the text of the decision will one find phrases such as “Annex I,” “common but differentiated responsibilities,” “distributional equity,” “historical responsibility,” all of which had long since become code words for targets for the richest countries and blank checks for all others.

## A Dramatic Departure

Thus, in a dramatic departure from some seventeen years of U.N. hosted international negotiations on climate change, the 17th Conference of the Parties in Durban turned away from the Annex I/non-Annex I distinction, which had been the centerpiece of international climate policy and negotiations since it was adopted at the 1st Conference of the Parties in Berlin in 1995.

Because of this, the international law scholar, [Daniel Bodansky](#), has labeled “[the Durban Platform a complete departure from the Berlin Mandate.](#)” Likewise, Indian professor of international law, [Lavanya Rajamani](#) says that Durban delivered a “[new process and with it, a clean slate on](#)

[differentiation.](#)” And [Elliot Diringer](#) of the [Center for Climate and Energy Solutions](#), finds the overall Durban deal to be “[delicately poised between two eras – the fading age of Kyoto, and a new phase ... with developed and developing countries presumably on a more equal footing.](#)”

This is of vast potential importance, but – of course – only “potential” importance, because just as it was the Kyoto Protocol’s numerical targets and timetables that fulfilled the Berlin Mandate’s promise, it remains for the delegates to the UNFCCC to meet this Durban mandate with a new post-Kyoto agreement by 2015 (to come into force by 2020). Only time will tell whether the Durban Platform delivers on its promise, or turns out to be another “Bali Roadmap,” leading nowhere.

So, with such uncertainty, what’s the “unambiguous consequence” of Durban that I refer to in the title of this essay?

## An Unambiguous Outcome: The Platform Opens a Window

The Durban Platform – by replacing the Berlin Mandate – has opened an important window. It is this. The national delegations from around the world now have a challenging task before them: to identify a new international climate policy architecture that is consistent with the process, pathway, and principles laid out in the Durban Platform, namely to find a way to include all key countries (such as the 20 largest national and regional economies that together account for upwards of 80% of global carbon dioxide emissions) in a structure that brings about meaningful emissions reductions on an appropriate timetable at acceptable cost.

Having broken the old mold, a new one must be forged. There is a mandate for change. Governments around the world now need fresh, outside-of-the-box ideas from the best thinkers, and they need those ideas over the next few years. This is a time for new proposals for [future international climate policy architecture](#), not for

incremental adjustments to the old pathway. I trust that this call will be heard by a diverse set of universities, think tanks, and – for that matter – advocacy and interest groups around the world. With research initiatives worldwide, the [Harvard Project on Climate Agreements](#) and the [FEEM Research Programme on Climate Change and Sustainable Development](#) are prepared to contribute to this effort.

### **Links**

[The Platform Opens a Window: An Unambiguous Consequence of the Durban Climate Talks](#)