

# OCP blog

To initiate debates on international climate policy

## Avoiding Firewall Fundamentalism

*by Benito Müller*

- orig. *U.S.* A wall or partition designed to inhibit or prevent the spread of fire.
- More generally: any structure, device, or procedure designed to protect the security or integrity of a system, process, etc.;

This is how the Oxford English Dictionary defines “firewall”. In the context of the international climate change negotiations, the term has gained notoriety as a reference to country classifications deemed to be immutable. As a matter of fact, the most common usage of this term is in reference to the classification of countries given by the first Annex (Annex I) to the 1992 [UN Framework Convention on Climate Change](#) (UNFCCC).

Annex I was created to operationalise different types of commitments and obligations for developed/industrialised countries on the one hand, and developing countries on the other. It included the then members of the [Organisation for Economic Co-operation and Development](#) (OECD) – which made up Annex II – and the “Economies in Transition” after the collapse of the Soviet Union. While there is a provision for countries to be added to or removed from Annexes, it is not based on any material parameters, and is subject to legal conditions that left them practically unchanged for the last twenty years.

The most important use of this classification was undoubtedly in the 1995 [Berlin Mandate](#) that eventually led to the [Kyoto Protocol](#). The Mandate stipulated that the aim of the negotiations would be “for developed country/other Parties included in Annex I, both to elaborate policies and measures, as well as to set quantified limitation and reduction objectives within specified time-frames ... for their anthropogenic emissions [and] not introduce any new commitments for Parties not included in Annex I”.

Is the Annex I/ non-Annex I distinction still valid for the 2015 Paris Agreement? To be sure, no one suggests that the Agreement should not have some form of differentiation. In a [recent speech](#) on *The Shape of a New International Climate Agreement*, Todd Stern, the US Special Envoy for Climate Change, pointed out that “it is difficult to construct an effective agreement unless countries of very different capabilities – for example, emerging or wealthy non-Annex I economies compared to Least Developed Countries – can be expected to act in different ways.” But how are these expectations to be

operationalised?

Stern, for one, leaves no doubt that an operational use of the current Annex I/non-Annex I categorization would be unacceptable for the US. He does concede the possibility of operational annexes, provided they develop “with evolving material circumstances, so that countries rising above designated thresholds would graduate into Annex 1”. Indeed, he suggests that “some would doubtless find themselves in Annex 1 as soon as the new agreement took effect.” This is interesting, because it could be taken to suggest that the re-classification of “emerging or wealthy non-Annex I economies” – that is to say, countries like China, Singapore or Qatar – is seen as a pre-condition for the acceptance of operational annexes. If that were the case, then it would have significant consequences.

For one, it would de-facto exclude the option of addressing the need for more differentiated obligation through introducing additional categories within non-Annex I as currently constituted. Moreover, if taken to an extreme, this view could fatally undermine even the sort of “single operational system differentiated across the spectrum of countries” envisaged by Stern. Why?

To explain, assume the differentiation across this spectrum of countries is to be achieved by an operational annex, say “Annex P” (for “Paris”), which includes the US. However membership in this annex may be defined, there is little doubt that it will largely have to respect the OECD configuration. While there may be a sub-categorisation of Annex P allowing for a differentiated treatment between these countries, they are seen to be paradigmatic representatives of “developed countries” which as such warrant some form of equal treatment. Similarly, members of the Group of 77 and China (G77+China) are typically regarded as “developing countries”, which – while also liable to further differentiation – are also regarded as warranting some form of equal treatment. In short, Annex P would inevitably be seen as an operationalising the concept of “developed” country and non-Annex P that of a “developing” one. Accordingly, it also stands to reason that G77+ China would see itself as the legitimate representative for non-Annex P countries.

Insisting China, Singapore or Qatar must be in Annex P would therefore be tantamount to insisting that, for UNFCCC purposes, they leave the G77+ China. This would clearly not be an option for these countries, given the political nature of this grouping, in the same way in which it would be counterproductive to insist that Turkey should leave the OECD because it has left Annex II. These political groupings have significance much beyond the climate change sphere, and will not be up for negotiation in the UNFCCC. In other words, there would be no consensus on how to define Annex P.

What to do? It might be possible avoid this problem by using the notions of “developing” and “developed” countries to differentiate the spectrum of expectations without involving operational annexes, but with the addition of a proviso referring to “other Parties with appropriate national circumstances”. This would allow Parties with the appropriate national circumstances to behave in the expected manner without threatening their existing political alliances, provided they are given the tools to do so.

Take the case of climate finance and, to be more precise, the highly politicized issue of who should contribute to the Green Climate Fund (GCF). A recent proposal to establish a Southern Solidarity Fund

operated by the GCF was put forward precisely to allow G77+ China countries with appropriate national circumstances to support climate change measures in developing countries through the GCF, without threat to their developing country (G77+ China) status. With this tool, they should feel comfortable with the expectation that *developed country and other Parties with appropriate national circumstances should contribute to the funds operated by the Green Climate Fund.*

In short, the proposal here is to introduce two categories – not lists of countries, but of expectations on “developed country Parties” on the one hand, and on “developing country Parties” on the other – and make sure that if they wish to do so, Parties feel able to do more than what is required of them under the category they associate with. However, this will only be possible if one avoids “firewall fundamentalist” preconditions, either with regards to what developing countries should and should not be permitted to do, or about their conversion to developed country status.

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## One thought on “Avoiding Firewall Fundamentalism”

Joanna Depledge

7 May 2014 at 21:00

As usual, Benito tackles one of the key issues at stake in the current negotiations with some thought-provoking analysis and proposals. The Annex I/non-Annex I structure of the UNFCCC has been much maligned, and is often misunderstood. As Benito implicitly points out, it is a structure that actually makes quite a lot of sense; it does reflect, to a large extent, the world’s broad geopolitical and economic faultlines. The issue isn’t really the Annex I/non-Annex I divide, but rather the fact that non-Annex I includes such a very broad variety of countries.

Commentators often make the mistake of assuming that the categorization of countries in the UNFCCC regime is more rigid than it actually is.

- For a start, Annex I has been amended three times – in 1997, 2009 and 2011 – mostly to add new EU member states to the list, and other rather uncontroversial additions (eg Liechtenstein and Monaco in 1997). Admittedly, attempts by Kazakhstan to join Annex I were thwarted, although, demonstrating that the Convention is more flexible than it appears, Kazakhstan has been able to take on the commitments of Annex I parties through a simple declaration under Article 4.2(g).

- Then, Annex I itself is differentiated, and not just through the existence of Annex II, which introduces financial and other commitments only for the Annex II OECD nations, but not for the EITs. The EITs are also allowed greater flexibility in meeting their commitments (eg baselines other than 1990). A third

category has, in effect, been created, as Turkey left Annex II (following a longstanding dispute over its status), through a decision that recognised the “special circumstances ... which place Turkey... in a situation different from that of other Parties included in Annex I”. Appealing to this decision, Turkey was able to draw on GEF funding to prepare its national communication. Turkey, together with the new Annex I members who were not added to Annex II, these make up a third category of “non-EIT, non-Annex II” parties.

- The non-Annex I parties are also differentiated. The small island developing states (SIDS), and the least developed countries (LDCs) – accounting for well over half the non-Annex I countries – enjoy special treatment in both the CDM, and also in other provisions of the Convention, notably for the reporting regime, where they are allowed to submit their national communications at their own discretion.
- It is worth noting that non-Annex I is not entirely synonymous with G-77. At least 20 non-Annex I countries are not G-77 members.

The point is that the climate change regime has already managed, to some extent, to address the differing national circumstances of countries within the existing framework. Personally, I find it difficult to see how whole new categories could be created and what value this would add; certainly, lists of names should be avoided, as these inevitably introduce rigidity.

Readers might be interested to look at: Depledge, J. The road less travelled: difficulties in moving between annexes in the climate change regime (2009). *Climate Policy*. Vol. 9, No. 3, pp. 273–287. The paper is a bit dated now (pre-Copenhagen), but it does explain some more about the Annex structure, and also has a still mostly-accurate figure that shows the complex categorizations in the climate change regime



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