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ANNIVERSARY ISSUE ARTICLE

Common But Differentiated Responsibilities Beyond the Nation State: How Is Differential Treatment Addressed in Transnational Climate Governance Initiatives?

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Abstract
Many multilateral environmental agreements have adopted differentiated rules for different countries, based on the recognition of the 'common but differentiated responsibilities' (CBDRs) of states. By establishing two rigid groups of countries with and without emissions reduction obligations, the intergovernmental climate regime represents the most extreme case of such differentiation. The regime has struggled to overcome this rigidity and the resulting political deadlock between developing and developed countries. Transnational climate governance (TCG) initiatives have emerged as an alternative to provide mitigation, adaptation or finance outside the multilateral process. By drawing on synergies between public and private actors, it is hoped that they overcome the paralysis of the intergovernmental process. Yet, they take place in the same world of unequal peers, with different levels of capacity and responsibility for climate change. This article investigates the extent to which such TCG initiatives reflect the CBDR principle. Do different types of initiative – involving different types of actor or with different climate-related goals – address differentiation in distinct ways? Does taking account of CBDRs affect the membership of transnational initiatives? This article explores these questions empirically by analyzing a sample of TCG initiatives in terms of how they include differential treatment of states and non-state members. It concludes that TCG initiatives address differentiation in a pragmatic way. Most frequently, they either offer participants flexibility in how to implement their commitments, or provide support to members from developing countries. Such support is, so far, still insufficient to address the limited involvement of developing country actors.

Keywords Climate change, Differential treatment, Common but differentiated responsibilities (CBDRs), Transnational climate governance

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1. INTRODUCTION

Many multilateral environmental agreements (MEAs) include differentiated rules and obligations for different groups of countries. The basis of this differentiation in responsibility is the recognition, already found in Principles 6 and 7 of the 1992 Rio Declaration,[1] of countries' differing circumstances and levels of contribution to environmental degradation – the so-called principle of common but differentiated responsibilities (CBDR principle or CBDRs) of states. The resulting differential treatment may consist of less stringent obligations, different timing in the application of those obligations (such as grace periods, or priority implementation in specially affected countries), and/or international assistance in terms of financing, capacity building or technology transfer.[2] In addition, differential treatment provisions may appear explicitly in treaty texts, but they may also be implicit, in the sense that the provision establishes identical treatment for all parties, but its application allows consideration of characteristics that vary from country to country (such as a state's technical and regulatory ability, its resource availability or, more generally, its national circumstances).[3]

Given the high costs associated with addressing climate change and the extremely unequal distribution of the costs and benefits of doing so, it is not surprising that the intergovernmental climate change regime – established under the 1992 United Nations Framework Convention on Climate Change (UNFCCC)[4] and its 1997 Kyoto Protocol[5] – represents the most extreme example of differential treatment between developing and developed countries.[6] A defining centrepiece of the regime – both in procedural and in political terms[7] – is the categorization of its parties into three groups of countries – those listed in Annex I to the Convention (the so-called 'Annex I countries'), those listed in Annex II (which is a subset of Annex I), and those not listed in either (the 'non-Annex I countries'). These groups were differentiated in terms of their central emissions reduction and reporting obligations, implementation rules, and provision of support.[8]

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1 Rio Declaration on Environment and Development, adopted by the United Nations (UN) Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992, available at: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

2 L. Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press, 2006), pp. 93–114.

3 D.B. Magraw, 'Legal Treatment of Developing Countries: Differential, Contextual, and Absolute Norms' (1990) 1(1) *Colorado Journal of International Environmental Law & Policy*, pp. 69–99.

4 New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: http://unfccc.int.

5 Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: http://unfccc.int/kyoto_protocol/items/2830.php.

6 L. Rajamani, 'The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law' (2012) 88(3) *International Affairs*, pp. 605–23, at 611.

7 J. Depledge, 'The Road Less Travelled: Difficulties in Moving between Annexes in the Climate Change Regime' (2009) 9(3) *Climate Policy*, pp. 273–87, at 273.

8 Annex I UNFCCC lists all countries that were members of the Organisation for Economic Co-operation and Development (OECD) in 1992 and several economies in transition, including the Russian Federation, the Baltic states, and several Central and Eastern European states. Annex II lists only the OECD countries. Art. 4 UNFCCC sets out 3 separate sets of obligations, applicable to these 3 groups of parties. A more detailed description of these country categories, their members and respective obligations can be found in Depledge, n. 7 above.

It was clear from the outset that both the UNFCCC and the Kyoto Protocol would not be sufficient to effectively address climate change, but were rather the starting points of a 'dynamic instrument for long-term climate policy' that would be adapted to accommodate stronger Annex I party commitments and new actions by non-Annex I parties.[9] In practice, however, differentiation between industrialized and developing countries was designed in a way that is very difficult to change, particularly under the Kyoto Protocol. As a result, while several European countries uncontroversially acquired Annex I party status under the Convention, two other countries experienced significant political hurdles when seeking to access (or leave) an Annex to the UNFCCC, so that decisions took several years to materialize.[10] Under the Kyoto Protocol, the attempts by Belarus and Kazakhstan to be added to the list of parties with reduction targets in the first commitment period (2008–12) were accompanied by long negotiations and were never ratified by a sufficient number of parties to enter into force before the end of 2012. While one of the reasons for these hurdles consisted of environmental concerns regarding the stringency of the proposed targets, the cumbersome amendment procedure required to modify the Protocol's Annex B was a critical stumbling block.[11] Many negotiators and scholars have acknowledged that this lack of flexibility is problematic, with Depledge arguing, for example, that the 'division between Annex I and non-Annex I Parties has thus become rigid, and increasingly fails to reflect the diversity of national circumstances'.[12]

The annex-based structure is the main expression of the CBDR principle in the climate change regime, but it is by no means the only one. The regime grants special recognition and differential treatment not just to developing countries in general, but also to further subgroups of countries in particular circumstances: economies in transition, which were exempted from the financial obligations imposed on the other industrialized countries, and which were granted some flexibility in implementing their emissions reduction obligations;[13] developing countries vulnerable to climate change; and developing countries 'whose economies are particularly dependent on fossil fuel production, use and exportation'.[14] Certain countries won special recognition, such as Turkey based on its low development level despite its membership of the Organisation for Economic Co-operation and Development (OECD). In addition, both the UNFCCC and the Kyoto Protocol are filled with contextual provisions that qualify parties' obligations, relating them to their

[9] J. Depledge, 'Continuing Kyoto: Extending Absolute Emission Caps to Developing Countries', in K. Baumert (ed.), *Building on the Kyoto Protocol: Options for Protecting the Climate* (World Resources Institute, 2002), pp. 31–60, at 41.

[10] For more detailed accounts of all these cases, see Depledge, n. 7 above, p. 279; and P. Castro, 'How and Why Are Institutionalized Country Groups with Differential Treatment Created in Multilateral Environmental Agreements: A Comparative Analysis', conference paper presented at the Annual Convention of the Swiss Political Science Association, Basel (Switzerland), 21–22 Jan. 2016, pp. 21–4.

[11] Kyoto Protocol, n. 5 above, Arts 20 and 21.

[12] Depledge, n. 9 above, p. 33: see also Depledge, n. 7 above.

[13] UNFCCC, Art. 4(6).

[14] Ibid., Preamble.

'development priorities, objectives and circumstances', their 'common but differentiated responsibilities', or specifying that they are to be fulfilled 'to the extent feasible', 'to the extent its capacities permit', or 'as appropriate'.[15]

Differential treatment is not only applied to mitigation commitments. Differentiation and, thus, CBDRs are also enshrined in the financial, technical, and capacity-building support provisions of the UNFCCC, in the provisions about supporting adaptation in developing countries, and even in the compliance regime under the Kyoto Protocol. The introduction of measures to facilitate the uptake of the Clean Development Mechanism (CDM) in least developed countries (LDCs), and later also in countries with fewer than ten registered projects, seeks to improve geographical balance and thus to address the equity concerns of those countries that have benefited less from this market mechanism.

Even though in the UNFCCC and its Kyoto Protocol, the CBDR principle already went beyond the Annex I/non-Annex I differentiation, and despite increasing recognition of changing global emissions profiles and capacities, the climate change regime in recent years has struggled to overcome this dichotomous differentiation. It experienced a political deadlock between developing countries which demanded leadership from their industrialized counterparts, and the latter asking for meaningful participation by the former.[16] The annex-based differentiation started to erode in 2009, when the non-binding Copenhagen Accord asked for mitigation actions by non-Annex I countries,[17] an idea that was taken further in the 2010 Cancun Agreements.[18] One year later, in Durban (South Africa), a negotiation process was launched towards a post-2020 'protocol, another legal instrument or an agreed outcome with legal force under the Convention *applicable to all Parties*'.[19]

The Paris Agreement,[20] adopted in December 2015, represents the culmination of this process, as arguably it has ended the long-standing Annex I/non-Annex I dichotomy. Under the new Agreement, differentiation is applied in different ways across thematic areas, and in a pragmatic rather than an ideological or politicized way.[21] While all parties are obliged to contribute to mitigation ('all Parties are to

15 E.g., ibid., Arts 4(1), 4(5) and 12(1); and Kyoto Protocol, Arts 2(1) and 10. See also Rajamani, n. 2 above, pp. 199–201.

16 J. Pauwelyn, 'The End of Differential Treatment for Developing Countries? Lessons from the Trade and Climate Change Regimes' (2013) 22(1) *Review of European Community & International Environmental Law*, pp. 29–41; M. Prys-Hansen & B. Franz, 'Change and Stasis: The Institutionalisation of Developing Country Mitigation in the International Climate Regime' (2015) 26(4) *Diplomacy & Statecraft*, pp. 696–718. See also Rajamani, n. 6 above, pp. 615–6.

17 Decision 2/CP.15, 'Copenhagen Accord', UN Doc. FCCC/CP/2009/11/Add.1, 30 Mar. 2010, p. 4.

18 Decision 1/CP. 16, 'The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention', UN Doc. FCCC/CP/2010/7/Add.1, 15 Mar. 2011, p. 2.

19 Decision 1/CP.17, 'Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action', UN Doc. FCCC/CP/2011/9/Add.1, 15 Mar. 2012, p. 2 (emphasis added).

20 Paris (France), 13 Dec. 2015, not yet in force (in UNFCCC Secretariat, Report of the Conference of the Parties on its Twenty-First Session, Addendum, UN Doc. FCCC/CP/2015/10/Add.1, 29 Jan. 2016).

21 L. Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65(2) *International and Comparative Law Quarterly*, pp. 493–514, at 509.

undertake and communicate ambitious (mitigation) efforts'),[22] differentiation is achieved as each party determines the type, scope and stringency of its own mitigation contribution in a bottom-up pledge and review system. Such self-differentiation introduces a more nuanced and flexible way of addressing CBDRs than the old annex-based system and, at the same time, promotes broader participation. In terms of the transparency framework, differentiation is equally subtly introduced by having a uniform system applicable to all parties, but which provides for flexibility and support in relation to parties' capacities.[23] Finally, the Paris Agreement clearly continues to assign the core responsibility for the provision of finance to the developed countries and recognizes that developing countries require support to effectively implement the Agreement.[24] However, it departs from the UNFCCC in that it explicitly opens possibilities for 'other countries' to provide climate finance, thereby also softening the developed/developing country divide.[25]

In parallel with these developments in the intergovernmental climate change regime, transnational climate governance (TCG) initiatives have emerged as an alternative to take action in relation to mitigation, adaptation and finance outside the multilateral process.[26] On the one hand, they are a means of supporting and diffusing the implementation of climate-related policies and practices at various governance levels and by non-state actors, but they are also a response to the apparent incapacity of the multilateral climate change regime to address the growing urgency of climate change and to adapt to the changing circumstances of the world. Thus, there is a clear trend away from purely intergovernmental policy making and towards a governance system that incorporates public and private actors at all levels into norm setting, policy making and norm implementation.[27]

By drawing on synergies between public and private actors, it was hoped that these initiatives would overcome the paralysis of the intergovernmental process and be more effective in delivering the necessary responses to the climate challenge.

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22 Decision 1/CP.21, 'Adoption of the Paris Agreement', UN Doc. FCCC/CP/2015/10/Add.1, 29 Jan. 2016, p. 22.

23 Rajamani, n. 21 above, p. 511.

24 Paris Agreement, Art. 3.

25 Ibid., Art. 9(2).

26 K. Bäckstrand, 'Multi-Stakeholder Partnerships for Sustainable Development: Rethinking Legitimacy, Accountability and Effectiveness' (2006) 16(5) *European Environment*, pp. 290–306; H. Bulkeley et al., 'Governing Climate Change Transnationally: Assessing the Evidence from a Database of Sixty Initiatives' (2012) 30(4) *Environment and Planning C: Government and Policy*, pp. 591–612, at 603; J.F. Green, *Rethinking Private Authority: Agents and Entrepreneurs in Global Environmental Governance* (Princeton University Press, 2013); J.F. Green, 'Order Out of Chaos: Public and Private Rules for Managing Carbon' (2013) 13(2) *Global Environmental Politics*, pp. 1–25, at 17; T. Hale & C. Roger, 'Orchestration and Transnational Climate Governance' (2014) 9(1) *The Review of International Organizations*, pp. 59–82. For a more general argument, see also S.D. Krasner & T. Risse, 'External Actors, State-Building, and Service Provision in Areas of Limited Statehood: Introduction' (2014) 27(4) *Governance*, pp. 545–67.

27 P. Pattberg, 'The Institutionalization of Private Governance: How Business and Nonprofit Organizations Agree on Transnational Rules' (2005) 18(4) *Governance*, pp. 589–610; C. Okereke, H. Bulkeley & H. Schroeder, 'Conceptualizing Climate Governance Beyond the International Regime' (2009) 9(1) *Global Environmental Politics*, pp. 58–78, at 58; F. Biermann, 'Beyond the Intergovernmental Regime: Recent Trends in Global Carbon Governance' (2010) 2(4) *Current Opinion in Environmental Sustainability*, pp. 284–8, at 285.

However, the environmental effectiveness of these initiatives remains debated both academically and politically, particularly because of the difficulty of assessing the large variety of instruments represented.[28] Still, it is thought that beyond direct emissions reduction impacts, these initiatives may help in shaping the climate policy discourse and in raising awareness at new societal levels and in countries that otherwise have weak climate policies.[29]

Recent research has noted that, so far, TCG initiatives have been biased towards northern countries in terms of leadership, participation, and implementation.[30] Such bias may affect the legitimacy of these initiatives and affect countries' positions in the international climate negotiations. Some developing countries, for example, have expressed the fear that the involvement of private initiatives in mitigation seeks to shift responsibility away from developed countries and is rather imposing additional burdens on developing countries. Furthermore, involving actors from developing countries in TCG initiatives might improve their legitimacy and shield them from such criticism.[31] It would also help in realizing the above-mentioned goal of improving and expanding awareness of the climate challenge.

TCG initiatives take place in the same world of unequal peers, with varying levels of capacity and responsibility for climate change. While these peers are no longer states but public and private actors at all levels of governance, it may be reasonable to expect that such governance initiatives also try to incorporate provisions that level the playing field between their various members. In addition, TCG initiatives build upon the multilateral regime, its norms and rules.[32] On a normative level, at least some of these initiatives may seek to conform to the fairness principles embodied in the UNFCCC – among them the CBDR principle.

Several questions thus arise. To what extent and how do TCG initiatives reflect the CBDR principle? Does reflection of the CBDR principle arise rather from pragmatic considerations about improving the inclusiveness of TCG initiatives, or for normative reasons? Do different types of initiative – involving different types of actor or with different climate-related goals – address differentiation in distinct ways? Does reflecting the CBDR principle affect the membership of TCG initiatives?

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28 Biermann, ibid., p. 286. See also O. Widerberg & P. Pattberg, *Harnessing Company Climate Action Beyond Paris* (FORES Study 2015:6, FORES, 2015), p. 47; K. Michaelowa & A. Michaelowa, 'Transnational Climate Initiatives: An Alternative Way to Climate Change Mitigation?', conference paper presented at the 9th Annual Conference on the Political Economy of International Organizations, Salt Lake City, UT (US), 7–9 Jan. 2016, available at: http://wp.peio.me/the-9th-annual-conference/program-and-papers-2016.

29 Biermann, n. 27 above, p. 286.

30 Bulkeley et al., n. 26 above, p. 601; Widerberg & Pattberg, n. 28 above, p. 22. See also H. Bulkeley et al., *Transnational Climate Change Governance* (Cambridge University Press, 2014); and S. Chan & H. Van Asselt, 'Transnational Climate Change Governance and the Global South', conference paper presented at the Conference 'Transformative Global Climate Governance Après Paris', Berlin (Germany), 23–24 May 2016; but see T. Lee, 'Global Cities and Transnational Climate Change Networks' (2013) 13(1) *Global Environmental Politics*, pp. 108–27, at 122–4, which did not find any significant effect from being located in an Annex I country or from having a high income level. City participation in networks seemed to be related more to how well the city is connected with the globalized world than whether it is located in a developing or a developed country.

31 Widerberg & Pattberg, n. 28 above, pp. 22–3.

32 Green, *Rethinking Private Authority*, n. 26 above, pp. 13–4.

In this article, I explore these questions empirically by analyzing a sample of TCG initiatives. I first classify the initiatives in terms of: (i) whether and how they allow for differentiated treatment of their members or of entities within industrialized and developing countries; and (ii) whether and how they align themselves with the CBDR principle at a normative level. I then explore possible explanations for the extent and the way in which these initiatives institutionalize differential treatment. I finally use two more detailed case studies to take a closer look at the activities that developing and developed country members perform within such TCG initiatives.

In the next section, I elaborate on how we might expect CBDRs to be reflected in TCG initiatives. Section 3 then presents first empirical evidence of whether and how CBDRs have actually been addressed in a sample of existing TCG initiatives. Section 4 analyzes the more detailed case studies of the Compact of States and Regions and the Compact of Mayors. Concluding remarks are presented in Section 5.

2. CBDRs BEYOND THE NATION STATE

TCG initiatives can be understood as formal and informal processes and institutions, with their own rules and compliance procedures, which are agreed upon by sub- and non-state actors from at least two countries with the aim of providing climate-related goods.[33] Their rise in recent years is a response to the perceived long-term inability of the multilateral regime to provide a meaningful answer to the need for strong climate change mitigation and widespread adaptation.

TCG initiatives come in many flavours. Their main purpose might be to create a network of similar actors which enables them to interact regularly and exchange best practices in a certain issue area (such as the C40 Cities Climate Leadership Group).[34] They may also involve some kind of emissions reduction target for local governments (such as the Covenant of Mayors for Climate & Energy,[35] which has pledged to implement the European Union (EU) climate and energy objectives in their territories) or firms (such as the Climate Savers Computing Initiative[36]); the creation of a fund for sustainable energy projects (such as the Strategic Climate Fund[37]), or the establishment of a price for carbon (the Partnership for Market Readiness (PMR),[38] the Chicago Climate Exchange[39]). Their functions can include 'agenda setting;

33 T. Hale & D. Held, *Handbook of Transnational Governance* (Polity Press, 2011), p. 12; C. Roger, T. Hale & L. Andonova, *How Do Domestic Politics Shape Participation in Transnational Climate Governance?*, BSG Working Paper 2015/001, Blavatnik School of Government, University of Oxford, United Kingdom (UK), June 2015, p. 2, available at: https://www.bsg.ox.ac.uk/sites/www.bsg.ox.ac.uk/files/documents/BSG-WP-2015-001.pdf.

34 Available at: http://www.c40.org. See also T. Lee & S.V. de Meene, 'Who Teaches and Who Learns? Policy Learning through the C40 Cities Climate Network' (2012) 45(3) *Policy Sciences*, pp. 199–220.

35 Available at: http://www.covenantofmayors.eu.

36 Own website discontinued, information available at: https://www.energystar.gov/index.cfm?fuseaction=join_change_the_world.showPledgeDriverDetails&cpd_id=16165.

37 Available at: http://www.climateinvestmentfunds.org/cif/node/3.

38 Available at: https://www.thepmr.org.

39 Available at: https://www.theice.com/ccx.

information sharing; capacity building; soft and hard forms of regulation; and integration across different global environmental governance arenas'.[40] Even though they are agreed upon voluntarily and some of these functions entail a rather soft form of shaping the behaviour of their members, TCG initiatives are regarded as instances of actual non-state regulation,[41] which may help to diffuse new norms and goals, bind their members to certain commitments or even establish financial obligations. This wide variety of objectives implies that different TCG initiatives will impose varying levels of costs or provide different levels of benefits to their members. This has implications for whether and how they address CBDRs: if a TCG initiative is focused on networking and agenda-setting activities as opposed to actual regulation or financing, there might be no need to differentiate among members because no significant costs or benefits are distributed.

Membership of a TCG initiative may range from just a handful to hundreds of actors. Membership may consist of private or public actors or both, and include local and regional governments, non-governmental organizations (NGOs) and other civil society organizations, firms ranging from local service providers to large multinational corporations and business associations, and various intergovernmental organizations (IGOs) including multilateral banks such as the World Bank.[42] National governments or various central government agencies may be among the initiators of a TCG initiative, and also form part of its membership.[43] These various types of participant arguably have different levels of financial and technical capability and responsibility towards climate change. As in the multilateral regime, we would expect TCG initiatives involving various types of actor to seek to address these disparities by introducing some form of differentiation in financial or technical support, capacity building, and different levels of obligation.

Many TCG initiatives consist of networks of similar actors that seek to learn from each other or to join forces and raise the profile of their own climate-related activities. This is the case, for example, with several city networks such as the C40 network[44] and the Asian Cities Climate Change Resilience Network,[45] as well as the World Bank-led Networked Carbon Markets Initiative.[46] Other TCG initiatives are created in order to provide third parties (actors that are themselves not members of the initiative) with certain climate-related goods and services, including financial support or capacity building.

Examples in the latter category include the Renewable Energy and Energy Efficiency Partnership (REEEP),[47] which invests in clean energy in developing countries and seeks to provide useful lessons from these investments, and the various

40 Bulkeley et al., n. 26 above, p. 595.
41 Ibid., p. 596.
42 Roger, Hale & Andonova, n. 33 above.
43 Hale & Roger, n. 26 above.
44 N. 34 above.
45 Available at: http://acccrn.net.
46 Available at: http://www.worldbank.org/en/topic/climatechange/brief/globally-networked-carbon-markets.
47 Available at: http://www.reeep.org.

standards and schemes that have been developed for measuring and reporting greenhouse gas (GHG) emissions, such as the Carbon Disclosure Project,[48] the Carbon Trust Standard,[49] the Global GHG Register,[50] the Global Reporting Initiative (GRI),[51] the Greenhouse Gas Protocol,[52] and the ISO 14064/14065 standards of the International Organization for Standardization (ISO),[53] or for offsetting carbon emissions, such as the CarbonFix Standard[54] for forestry projects, the Climate Action Reserve,[55] or the Green-e Climate Standards[56] for projects based in the United States (US). In such cases, when membership of a TCG initiative is more homogeneous, the need to address CBDRs through differentiation would be reduced.

In sum, given the wide variety of goals and activities introduced by TCG initiatives, and the high diversity of potential participants (with both different roles in society and different levels of capacity and responsibility towards climate change), it is likely that the costs and benefits of participating in such an initiative are unequally distributed across members. Under these circumstances, it is reasonable to expect an attempt to level the playing field for their members by providing differentiated treatment. Given the higher stakes at play, we may expect that such differentiated treatment is more likely in those TCG initiatives that involve higher costs for their members or beneficiaries. While a network created with the aim of exchanging lessons learned does not impose high costs on its members, an initiative that requires its members to establish, monitor and comply with an emissions reduction target does. An initiative seeking high membership fees from its partners (such as the Sustainable Energy Finance Alliance[57] or the United Nations Environment Programme (UNEP) Finance Initiative[58]), which are then reinvested in climate-related projects, might be another costly governance initiative. In such cases, we might expect that fees are reduced, or technical or financial support is offered to members with less capacity to afford these costs, such as those located in developing countries.

At the other extreme, TCG initiatives that offer large benefits to their participants may have to consider a form of differential treatment for the distribution of those benefits. This might be the case not only for REEEP[59] but also for the

48 Available at: https://www.cdp.net.

49 Available at: https://www.carbontrust.com/client-services/footprinting/footprint-certification.

50 Available at: http://web.worldbank.org/archive/website00818/WEB/OTHER/GLOBAL-5.HTM.

51 Available at: https://www.globalreporting.org.

52 Available at: http://www.ghgprotocol.org.

53 Available at: http://www.iso.org/iso/catalogue_detail?csnumber=38381.

54 Own website discontinued, information available at: https://tellitsgreen.com/organic-logos/1088/carbonfix-standard.

55 Available at: http://www.climateactionreserve.org.

56 Available at: http://www.green-e.org.

57 Own website discontinued, information available at: http://energy-base.org/project/previous-projects/#SEF.

58 Available at: http://www.unepfi.org.

59 N. 47 above.

Table 1 Empirical Expectations regarding Differential Treatment in TCG Initiatives

TCG initiative entails high costs for members	Higher likelihood of differential treatment
TCG initiative offers large benefits to its members	Higher likelihood of differential treatment
TCG initiative started by actors from developing countries	Higher likelihood of CBDRs being mentioned in initiative's website, mission statement or vision
TCG initiative seeks to promote mitigation or adaptation in developing countries	Higher likelihood of differential treatment, particularly in terms of support

BioCarbon Fund[60] (which provides finance for projects that sequester or conserve carbon in the forests and agriculture of developing countries) and the Strategic Climate Fund[61] (which supports adaptation, reduced deforestation and renewable energy projects in developing countries).

Finally, TCG initiatives have not emerged in a normative vacuum. They exist as a complement to the multilateral climate change regime and, in some cases, were created as a way to facilitate compliance with some of the regime's provisions or participation in some of its policy instruments, such as the international carbon market.[62] For this reason, they may be expected to adhere to the main principles and ideas governing the multilateral climate change regime, including the notion that developed countries should lead the efforts in combating climate change based on their stronger financial capabilities and their higher level of historical responsibility towards climate change. In this regard, we may observe two implications. Firstly, TCG initiatives that seek to emphasize this normative dimension will do so explicitly on their websites in their mission statement. Given that many developed countries have long sought to overcome the Annex I/non-Annex I dichotomy institutionalized in the old climate change regime, it is unlikely that TCG initiatives launched by these countries would explicitly seek to emphasize the CBDR principle. In contrast, initiatives started by actors from developing countries will be more likely to emphasize CBDRs on their website.

Secondly, certain TCG initiatives may, in practice, seek to support the mitigation and adaptation activities of developing countries in line with UNFCCC norms. In this case, even if we do not find an explicit reference to CBDRs or related norms, the TCG initiative will offer some form of financial, technical or capacity-building support geared specifically towards members from developing countries. Table 1 presents an overview of these empirical expectations.

In the next section, we look for empirical evidence in support of these expectations in a sample of existing TCG initiatives.

60 Available at: https://wbcarbonfinance.org/Router.cfm?Page=BioCF&ItemID=9708&FID=9708.

61 N. 37 above.

62 E.g., the goal of the World Bank's BioCarbon Fund and Prototype Carbon Fund is to pioneer emissions reduction projects in developing countries that can be used within the Kyoto Protocol CDM; for the case of the Prototype Carbon Fund see L.B. Andonova, 'Public-Private Partnerships for the Earth: Politics and Patterns of Hybrid Authority in the Multilateral System' (2010) 10(2) *Global Environmental Politics*, pp. 25–53, at 39.

3. EMPIRICAL EVIDENCE OF CBDRS IN EXISTING TRANSNATIONAL CLIMATE GOVERNANCE INITIATIVES

Roger and his co-authors have created a dataset of 75 TCG initiatives that were started between 1990 and 2012, and which have jointly engaged participants from 191 countries.[63] Michaelowa and Michaelowa subsequently expanded the dataset so that it now covers 109 TCG initiatives.[64] These datasets provide information on the main objectives and activities, membership and country of origin of the initiatives.

For a random subset of 40 of these TCG initiatives, information was collected on whether and how they include provisions or activities that grant differential treatment to their members or target users. This information was obtained mostly from the initiatives' own websites, but also from websites belonging to individual members or founders, or from third-party reports published online. Table 2 shows the type of data collected, while Table 3 lists the TCG initiatives analyzed.

3.1. *Differentiation through Membership*

Of the 40 TCG initiatives analyzed, 14 divide their members into various categories, which tend simply to reflect the type of organization represented, such as local government, central government agencies, NGOs and firms. While such categorization by itself does not imply differential treatment, it may allow for differentiating activities or obligations across the membership spectrum. However, even if different types of member engage in different activities, this does not necessarily reflect the CBDR concept in the way in which it is used in the multilateral climate regime. Since cities and firms, for example, simply have different societal functions, the types of climate-related activity they can perform will be different. Differentiation is then based on the nature of the actor involved rather than its level of responsibility or capability to act on climate change.

In three of the cases analyzed, the types of member reflect different levels of financial commitment within the TCG initiative. For example, the Carbon Disclosure Project[65] – an initiative aimed at encouraging companies and investors to measure and disclose their GHG emissions and other climate-related risks – allows for 'signatory investors' and 'member investors', whereby the former pay no fees and the latter pay between US$7,000 and US$9,000 depending on their economic size. By paying this fee, member investors have access to more detailed and easy-to-analyze emissions data of firms. In this case, the higher cost of participation yields a higher expected benefit – again, differential treatment is not related to CBDRs but to expected gains from membership. In the case of the PMR,[66] in contrast, the type of membership is clearly related to the CBDR principle: while 'contributing participants'

[63] Roger, Hale & Andonova, n. 33 above. See also Hale & Roger, n. 26 above; Bulkeley et al., n. 30 above; M.J. Hoffmann, *Climate Governance at the Crossroads: Experimenting with a Global Response after Kyoto* (Oxford University Press, 2011) for earlier versions of the dataset.

[64] Michaelowa & Michaelowa, n. 28 above.

[65] N. 48 above.

[66] N. 38 above.

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Table 2 Information Collected on Differential Treatment in TCG Initiatives

Type of Differentiation	Variable	Description
Differentiation through membership	Different member types	The TCG initiative allows for different types of membership
	Member types description	Lists the types of membership allowed, with a short explanation of the differences
	CBDR indicators used for differentiating members	Criteria relating to CBDRs – capacity to pay, responsibility for GHG emissions, etc. – are used to differentiate across members of the initiative
	Different roles for developing and developed country members	Members from developing and developed countries assume different roles within the TCG initiative
Differentiation through support	Funding and/or support available	The TCG initiative offers or coordinates provision of funding or capacity-building support to its members
	Funding and/or support offered specifically for developing countries	The initiative offers or coordinates provision of funding, technology or capacity-building support explicitly for actors in developing countries
Differentiation through commitments and implementation	Differentiation in implementation	The implementation of commitments adopted within the initiative varies across members (e.g., longer deadlines)
	Differentiation in commitments	The type of commitment adopted and stringency within the initiative varies across members
	Different activities by members	Different members, even if they are of the same type, can choose different activities to pursue within the initiative
Norms of differentiation	CBDRs mentioned in website, mission statement, vision, charter	The concept of CBDRs is mentioned in the main website, mission statement, vision or charter of the TCG initiative
	Equality of members mentioned in website, mission statement, vision, charter	The idea of equality of members is mentioned in the main website, mission statement, vision or charter of the TCG initiative
	Justice, equity, similar wording mentioned	Terms potentially alluding to CBDRs – justice, equity, etc. – are mentioned in the main website, mission statement, vision or charter of the TCG initiative
	Reference to UNFCCC principles	The TCG initiative's main website, mission statement, vision or charter refers to the UNFCCC principles, even if those principles are not further explained or described
Summary	Description of differential treatment	How this TCG initiative applies differential treatment
	Typical activity of organization	Description of the typical activities of the TCG initiative

are those (Annex I) countries that provide funding to the Partnership and share their experiences with carbon pricing, 'implementing country participants' are all middle income (non-Annex I) countries that receive technical and financial support with the aim of implementing a carbon pricing policy.

Table 3 List of TCG Initiatives Analyzed

Name of Initiative
Asia-Pacific Partnership on Clean Development and Climate (n. 87 below)
Asian Cities Climate Change Resilience Network (n. 45 above)
BioCarbon Fund (n. 60 above)
C40 Cities Climate Leadership Group (n. 34 above)
Carbon Disclosure Project (CDP) (n. 48 above)
Carbon Rationing Action Groups, available at: https://grassrootsinnovations.files.wordpress.com/2013/02/crag-ih.pdf
Carbon Sequestration Leadership Forum, available at: http://www.cslforum.org
Carbon Trust Standard (n. 49 above)
Carbon War Room, available at: http://carbonwarroom.com
CarbonFix Standard (n. 54 above)
Chicago Climate Exchange Offset Program (CCX) (n. 39 above)
Clean Air Initiative (n. 88 below)
Climate Action Reserve (n. 55 above)
Climate Alliance of European Cities with Indigenous Peoples (n. 81 below)
Climate Disclosure Standards Board, available at: http://www.cdsb.net
Climate Neutral Network, own website discontinued, information available at: https://business.un.org/en/documents/8952
Climate Savers Computing Initiative (n. 36 above)
Climate Technology Initiative PFAN (n. 74 below)
Compact of Mayors (n. 79 below)
Compact of States and Regions (n. 90 below)
Covenant of Mayors for Climate and Energy (n. 35 above)
Divest-Invest Global Movement, available at: http://divestinvest.org
EUROCITIES Declaration on Climate Change, available at: http://ec.europa.eu/clima/consultations/docs/0009/others/eurocities_en.pdf
Global GHG Register (n. 50 above)
Global Reporting Initiative (n. 51 above)
Green-e (Climate Standards) (n. 56 above)
Greenhouse Gas Protocol (n. 52 above)
ICLEI – Local Governments for Sustainability, available at: http://www.iclei.org
ISO 14064/14065 (n. 53 above)
Midwestern Greenhouse Gas Reduction Accord (n. 82 below)
Networked Carbon Markets Initiative (n. 46 above)
Partnership for Market Readiness (n. 38 above)
Pilot Auction Facility (n. 72 below)
Prototype Carbon Fund (n. 73 below)
Renewable Energy and Energy Efficiency Partnership (REEEP) (n. 47 above)
Strategic Climate Fund (n. 37 above)
Sustainable Energy Finance Alliance (n. 57 above)
Under2 Memorandum of Understanding (Under2MOU) (n. 80 below)
UNEP Finance Initiative (UNEP FI) (n. 58 above)
World Mayors' Council on Climate Change, available at: http://www.worldmayorscouncil.org

In summary, only in one of the cases analysed – the PMR[67] – do we see that the type of membership has a clear relationship with the CBDR principle, and particularly with its implementation based on the Annex I/non-Annex I dichotomy. If its goals are achieved, this initiative will entail high costs for its developing country members as they will implement carbon pricing policies. Such policies generate implementation costs for the governments (particularly in terms of monitoring and enforcing compliance), and also for the sectors, firms and consumers affected by the

[67] Ibid.

carbon price. While, depending on the design of the policy, the government can implement a system to redistribute the carbon price to the population, firms with higher emissions levels will face higher costs of either emitting or reducing carbon, and all firms will face some kind of transaction cost. The PMR is clearly also an initiative that explicitly seeks to promote mitigation in developing countries. That it offers support to these countries is therefore within our stated expectations.

3.2. *Differentiation through Support*

Nine of the TCG initiatives analyzed offer some kind of financial, technical, or capacity-building support (beyond simple networking and exchange of own experiences), and this support is always targeted towards members or participants located in developing countries. It can thus be inferred that these initiatives provide for a form of differentiated treatment for developing country actors. Of the nine initiatives, two aim to facilitate resilience or adaptation in developing countries (the Asian Cities Climate Change Resilience Network[68] and the Strategic Climate Fund[69]); four aim to promote carbon markets in developing countries (the BioCarbon Fund,[70] the PMR,[71] the Pilot Auction Facility[72] and the Prototype Carbon Fund[73]); two offer support for the development or deployment of mitigation or clean energy technologies (the Climate Technology Initiative PFAN[74] and REEEP[75]); and one is a network of cities (the C40 Cities Climate Leadership Group,[76] which has recently started to partner with other organizations to offer funding for climate-related actions in developing country cities). Interestingly, at least two of these initiatives (the Prototype Carbon Fund[77] and the BioCarbon Fund,[78] both aimed at supporting CDM projects in developing countries) do not have any developing country members. Hence, they channel resources to developing countries even if these are not represented in their membership.

In contrast, the initiatives that offer no meaningful support are mostly oriented towards networking activities (nine); promoting or setting standards for carbon reporting (seven); identification or promotion of particular mitigation technologies (four); setting standards for carbon offsetting (three); or promoting carbon markets within industrialized countries (two). These initiatives thus either do not entail high costs or benefits for their members, or they do not address developing country actors at all. Two further initiatives that do not directly offer support (the Compact

68 N. 45 above.
69 N. 37 above.
70 N. 60 above.
71 N. 38 above.
72 Available at: http://www.pilotauctionfacility.org.
73 Available at: https://wbcarbonfinance.org/Router.cfm?Page=PCF&FID=9707&ItemID=9707&ft=About.
74 Available at: http://www.cti-pfan.net.
75 N. 47 above.
76 N. 34 above.
77 N. 73 above.
78 N. 60 above.

of Mayors[79] and the Under2 Memorandum of Understanding[80]) are aimed at establishing emissions reduction targets in subnational governments around the world. Even though the realization of their missions will involve significant efforts and costs for the members, these initiatives do not offer substantial support.

3.3. *Differentiation through Commitments and Implementation*

Ten out of 40 initiatives differentiate in terms of the main commitments adopted by their members. This differentiation frequently consists of a variation in financial membership contributions depending on the willingness of the members (five), their (economic) size (two), and/or whether they are in OECD countries (one). In three cases, the participating subnational governments commit to climate-related targets which are either self-differentiated (each participant chooses the target that it deems appropriate), or determined with reference to national-level targets (which can themselves be differentiated). Of these cases, the five that differentiate with respect to economic size, OECD membership or types of climate-related target could be considered to be driven by CBDR considerations. Meeting such emissions targets can be considered to incur significant costs for their members.

However, none of the five initiatives aim to promote mitigation or adaptation specifically in developing countries. Three are networks of subnational governments at either the European or global level, and the other two are networks of financial institutions that support sustainable energy investments worldwide. In sum, differentiation in terms of main commitments does not seem to be a common tool for addressing CBDRs in transnational climate initiatives.

In contrast, at least 17 TCG initiatives allow their members considerable leeway in terms of the activities they may pursue within the initiative, or the means by which to implement the adopted commitments. This seems a rather common way towards differentiation between members, although it is relatively opaque in terms of whether the differentiation is related to the responsibility or the capability of members to act on climate change. This form of differentiation will be analyzed in detail in two specific case studies in Section 4 below.

Setting some form of emissions reduction target is the type of commitment that most closely corresponds with the objectives of the old Kyoto-based climate regime. It could therefore be expected that the TCG initiatives that promote such targets are likely to foster differentiation. Eleven of the 40 initiatives analyzed establish some kind of emissions target for their participants. Three of these allow members to self-differentiate with respect to their targets; six allow members to use different means for reaching their targets. None provide meaningful financial or technical support, beyond specific accounting tools for setting and monitoring the targets. For these 11 TCG initiatives that set emissions targets, Figure 1 shows the share of participants located in Annex I and non-Annex I countries. At the top of the graph are TCG initiatives involving subnational governments; at the bottom are those involving a

79 Available at: http://www.compactofmayors.org.

80 Available at: http://under2mou.org.

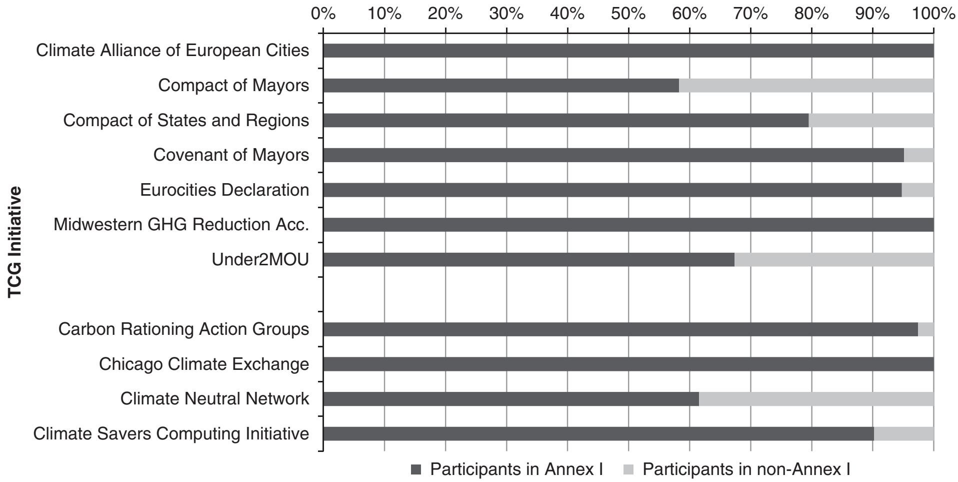

Figure 1 TCG Initiatives Setting Emissions Reduction Targets: Share of Participants Located in Annex I and Non-Annex I countries

wider variety of actors, which may include businesses or even individuals. Three of the initiatives (the Climate Alliance of European Cities with Indigenous Peoples,[81] the Midwestern Greenhouse Gas Reduction Accord,[82] and the Chicago Climate Exchange[83]) are specifically oriented towards actors in Annex I countries, although all the others also display a majority of members being located in Annex I countries, a finding that is in line with other studies of TCG initiatives.[84] It might be that the lack of support – despite the opportunity to differentiate commitments or their implementation – is related to the relatively low participation within developing countries.

3.4. *Differential Norms*

At the normative level, very little evidence is found that TCG initiatives seek to explicitly align themselves with the UNFCCC principles of fairness, equity, and CBDR. Only two of the 40 initiatives analyzed refer to CBDRs or to (even part of) a UNFCCC principle on their websites. The UNEP Finance Initiative[85] – a partnership between UNEP and the financial sector, which seeks to incorporate environmental considerations in its financial assessments – explains that its Climate Change Working Group explicitly prioritizes developing and emerging countries 'given the overarching principle of' CBDR in the UNFCCC, the historical responsibility of industrialized countries, and the increasing need for climate change action in

81 Available at: http://www.climatealliance.org/about-us.html.

82 Own website discontinued, information available at: http://www.c2es.org/us-states-regions/regional-climate-initiatives/mggra.

83 N. 39 above.

84 Bulkeley et al., n. 26 above; Widerberg & Pattberg, n. 28 above; Chan & Van Asselt, n. 30 above.

85 N. 58 above.

emerging and developing countries.[86] The Asia-Pacific Partnership on Clean Development and Climate states that its partners will choose the nature of its participation in its activities 'in accordance [with] national circumstances'.[87] While this is not a direct reference to CBDRs, it is a form of wording used frequently in the UNFCCC negotiations to reflect the different capabilities of countries.

Beyond these two examples, none of the initiatives analyzed mentions CBDRs or related normative language (equity, fairness, capabilities, national circumstances) in the main sections of their websites. On a normative level, TCG initiatives probably attempt to keep their distance from the politically sensitive CBDR discussions, although several of them have implemented differential treatment provisions in practice. This seems to be in line with the TCG initiatives' goal of overcoming the 'UNFCCC paralysis' and starting action on the ground.

As expected, TCG initiatives that entail high costs for their members are more likely to incorporate differential treatment provisions. This points towards a pragmatic application of CBDRs in the sense that the principle does not seem to be applied by all (or a majority of) TCG initiatives, but only by those with important distributional effects that can be improved by applying a differentiated treatment. Levelling the playing field for participants in a TCG initiative is arguably more important in those initiatives that involve higher costs, and what we observe empirically supports this idea. In addition, TCG initiatives that seek to promote mitigation or adaptation in developing countries are more likely to incorporate differential treatment provisions. In this case, given that the very aim of the initiative focuses on improving climate policy implementation in developing countries, it is not surprising that differential treatment is introduced as a way of supporting this aim.

The other two expectations – that TCG initiatives offering large benefits to its members are more likely to incorporate differential treatment provisions, and that TCG initiatives started by actors from developing countries are more likely to refer to CBDRs on their websites or in their mission statements (see Table 1) – do not seem to be supported by the findings so far. As only one of the initiatives was set up by a developing country (the Clean Air Initiative[88]), we cannot draw meaningful conclusions. We do have considerable evidence for the opposite proposition: from the 40 initiatives analyzed, 23 were started by industrialized countries. Of those, only one refers to 'national circumstances' on its website, but even this initiative refrains from mentioning CBDRs explicitly. It is not surprising that initiatives launched by Annex I countries – those seeking to overcome the annex-based differentiation in the intergovernmental regime – refrain from emphasizing CBDRs.

86 UNEP FI, 'Outreach to Developing Countries and Emerging Economies', available at: http://www.unepfi.org/work-streams/climate-change/outreach.

87 Available at: http://2001-2009.state.gov/g/oes/rls/or/2006/59162.htm.

88 Available at: http://cleanairasia.org.

4. CBDRs IN THE COMPACT OF STATES AND REGIONS AND IN THE COMPACT OF MAYORS

Subnational governance initiatives are some of the most prominent examples of TCG initiatives. In September 2014, at the UN Climate Summit,[89] two new such initiatives were launched by groups of international organizations, NGOs and existing networks: the Compact of States and Regions[90] and the Compact of Mayors.[91] Both seek to establish emissions reduction targets at the regional, state or city level, respectively. Under both schemes, each member freely chooses the level of the target and the activities to reach the target. This is similar to the type of differentiation introduced in the Paris Agreement:[92] each participant self-differentiates according to its own assessment of its capabilities and responsibilities. Both initiatives require participants to take several steps to establish, monitor, and report their targets, including announcing the target and its base year, as well as setting up a GHG emissions inventory and reporting regularly on climate-related data. The Compact of Mayors, in addition, asks participants to prepare plans showing how they intend to achieve the proposed targets, and also provides the opportunity to establish adaptation-related goals and plans.

While both initiatives were started simultaneously and have a similar structure, their uptake by developing country participants has been quite different so far. The following sections seek to explain the differences by looking more closely into how the CBDR principle has been operationalized in both initiatives.

4.1. *The Compact of States and Regions*

Under the Compact of States and Regions, of the current 37 fully participating subnational governments, 34 are located in Annex I countries, and only three are in a non-Annex I country (all of them in Brazil). In addition, there are seven observer members, which have committed to publish an emissions inventory and adopt a target in a period of two years. Of these seven observers, five are located in non-Annex I countries (India, Kenya, Mexico, Nigeria, and South Africa).

All 37 fully participating subnational governments have adopted an economy-wide GHG emissions reduction target by the year(s) 2020, 2030 and/or 2050. Given that the base years vary, and that past progress towards the targets also varies, it is not possible to make a clear assessment of which targets are the most stringent. However, the type of target may provide an indication of how regional governments self-differentiate in their implementation of the Compact. Of the 34 regions located in Annex I countries, 32 adopt an absolute target below a given base year – the type of target adopted by Annex I countries under the Kyoto Protocol and also most frequently under the Paris Agreement. The two other Annex I regions adopt a target

89 Available at: http://www.un.org/climatechange/summit.

90 Available at: https://www.theclimategroup.org/project/compact-states-and-regions.

91 N. 79 above.

92 N. 20 above.

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with reference to per capita emissions (Bavaria (Germany)) and a target with reference to business-as-usual emissions (Alberta (Canada)) – that is, with reference to what would happen without climate-related efforts in the year of the target. Of the three non-Annex I (Brazilian) regions with emissions reduction targets, only Sao Paulo has adopted an absolute target below a given base year. The other two have adopted targets with reference to emissions per unit of gross domestic product (GDP), and with reference to business-as-usual emissions. These relative targets or targets with respect to future emissions provide developing countries with more flexibility to deal with the difficulty of establishing future baselines in their fast-growing economies. In this sense, they represent a way of dealing with the varying circumstances and capabilities of developing countries.

We see that the Compact of States and Regions, a relatively new transnational climate governance initiative, follows the developments that have been witnessed recently in the multilateral negotiations: developing country governments start to participate in establishing country-wide targets, but the targets are frequently expressed in a way that allows them flexibility to continue to grow. In addition, by allowing the participation of observers, which have the intention but not yet the capability (such as in terms of recent GHG inventory data) to adopt an emissions reduction target, the Compact allows more subnational governments, particularly from developing countries, to signal a serious commitment to adopt such a target in the near future. Again, this time flexibility is in line with the idea of CBDRs but, given that the flexibility is provided for all potential members of the initiative and not particularly for developing country regions, this operationalization of CBDRs is more in line with the differentiation style under the Paris Agreement instead of the annex-based differentiation under the UNFCCC and Kyoto Protocol regime. The approach towards CBDRs in the Compact of States and Regions thus overcomes the Annex I/non-Annex I divide, allowing differentiation among all countries and also among regions within countries.

At the normative level, the Compact of States and Regions referred to the different circumstances of the participating governments in its first disclosure report: 'We all have different local circumstances and challenges to address, but through the Compact we demonstrate our collective commitment to climate action', and '[t]hrough an annual assessment, state and regional governments are able to measure their emissions and set ambitious reduction goals, while acknowledging their different capabilities and circumstances'.[93] However, the reference to capabilities and circumstances is balanced by mentioning also the participants' collective commitment and ambitious goals.

4.2. *The Compact of Mayors*

The Compact of Mayors now groups 504 cities which have pledged to establish, monitor and report on an emissions reduction target. Of those participating cities,

93 Compact of States and Regions, 'Disclosure Report 2015', pp. 2 and 5, available at: https://www.theclimategroup.org/sites/default/files/compact-of-states-and-regions-disclosure-report-2015.pdf.

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210 (42%) are located in 59 non-Annex I countries across all continents, which is a substantially larger share and broader geographical representation than that in the Compact of States and Regions. As in the latter Compact, participating cities are free to choose the level of their targets and the means by which to achieve them. Self-differentiation is thus also the rule in this initiative.

The Compact of Mayors assigns 'badges' to cities as soon as they complete one of the steps involved in the target-setting cycle. According to these badges, to date 49 participating cities have completed and published their emissions inventory, 15 of them (31%) from non-Annex I countries. Preparing such an emissions inventory requires relatively good capacity and technical resources. Emissions reduction targets have been announced by 67 cities, of which 22 (33%) are in non-Annex I countries. While the share of developing country participants completing this step is similar to those that are completing the inventory, in absolute terms more cities seem to be able to establish a target than to complete the inventory. Of the 56 cities that have completed a climate plan, 18 (32%) are from developing countries.

In sum, despite very similar designs, developing country cities appear to be participating more and performing better under the Compact of Mayors than developing country states or regions under the Compact of States and Regions. While the design, in terms of incorporating differentiation or operationalizing CBDRs in the two initiatives, does not account for these differences, two further factors may provide an explanation. Firstly, based on the content of their websites, the Compact of Mayors seems to be somewhat better organized in providing access to a variety of tools and standards that help to prepare each of the steps envisaged in setting up and monitoring a target – from registering the commitment, through preparing the inventory, creating targets and metrics, to establishing an action plan. Secondly, the support available from other global city networks, as well as the experience that cities have gained within them, may already have improved the capacity of world cities to establish climate targets and plans. More research is needed to ascertain to what extent the cities involved in the Compact of Mayors were already participating in pre-existing city initiatives. In any case, these differences suggest that the provision of support is important to ensure participation and implementation of TCG initiatives in developing countries.

At the normative level, the Compact of Mayors does not seem to refer to CBDRs or differentiation either on its website or in its first progress report. Instead, it emphasizes that any 'city or town in the world may commit to the Compact of Mayors – regardless of size or location', and that its goal is to establish a 'common platform' for consistent and standardized reporting.[94]

The case studies show that TCG initiatives seek to incorporate the concerns of members that may not yet have the capability to participate fully, thereby providing for a practical and flexible application of the CBDR principle through self-differentiation. The Compact of Mayors seems to be better organized in terms of providing support for the participating cities, which may account for the differences in the level of participation and implementation by developing country members. While the Compact of States and

[94] Available at: http://www.compactofmayors.org.

Regions explicitly acknowledges differences in capabilities and circumstances, the Compact of Mayors seems to try to emphasize commonalities. Yet, neither initiative seems to attempt to enter into the discussion about CBDRs on a more political level.

5. CONCLUSIONS

The CBDRs of states with respect to climate change is one of the basic principles upon which the UNFCCC institutionalized a strongly differentiated regime for sharing the burden of fighting climate change. In the past few years, however, this institutionalized differentiation between the Annex I and non-Annex I countries has started to erode, giving rise to a broader and more diverse set of commitments by country parties, the institutionalization of which culminated in the Paris Agreement. In parallel with these developments, transnational climate governance initiatives have emerged not only as a way of supporting implementation of the regime at levels beyond the national government, but also as a means of finding solutions to the long-term political deadlock that pervaded the multilateral climate negotiations.

However, TCG initiatives are faced with similar challenges to those that have plagued the UNFCCC process: they need to cater for the different levels of capacity and responsibility of their members. This article is a first attempt to explore empirically whether and how these initiatives address CBDRs.

While it is clear that several TCG initiatives establish various categories of membership, there is little evidence that these categories are meant to address the CBDR principle. Rather, the categories reflect the different nature of the participants in those initiatives – from multinational firms, to NGOs or subnational governments, with different sizes and functions. Only one initiative, the PMR,[95] which seeks to promote carbon pricing and markets in developing countries, displays member types that reflect the CBDR principle in terms of the Annex I/non-Annex I dichotomy.

Further evidence indicates that TCG initiatives frequently attempt to level the playing field for their members through the provision of financial, technical, and capacity-building support. Interestingly, the support is always targeted towards developing and emerging countries. However, provision of support is observed in only nine of the 40 TCG initiatives analyzed. This might still be insufficient to address the more limited capabilities of (potential) participants in developing countries, particularly in poorer ones. It is thus likely that the limited attempt by existing TCG initiatives to address the different capacities of (potential) participants contributes to the bias towards the North that has been observed in previous studies of participation in these initiatives. Maybe stronger efforts to provide financial, technical, or capacity-building support to participants from the South, as a more thoughtful consideration of CBDRs would help to improve participation and implementation in developing countries. The case studies on the Compact of Mayors and the Compact of States and Regions reinforce this idea.

95 N. 38 above.

Little evidence is found for the idea that TCG initiatives differentiate the central commitments to be adopted by their members as a means to address CBDRs. There is, however, more evidence that differentiation in implementation is more widespread in TCG initiatives – for example, by providing the participants with flexibility to decide how to comply with their commitments. There is almost no evidence to support the idea that TCG initiatives seek to engage in the CBDR discussion at a normative or political level. While TCG initiatives address differentiation in practice, they mostly abstain from relating it to the existing CBDR discussion in the multilateral arena. With regard to the drivers for including differential treatment in TCG initiatives, there is evidence largely for the expectation that high costs and the goal of promoting mitigation or adaptation in developing countries increase the likelihood of including differential treatment in an initiative.

In sum, TCG initiatives address differentiation in a pragmatic and goal-oriented way, while mostly abstaining from reflecting CBDRs in a normative or political manner. What does this mean both for the CBDR principle and for the TCG initiatives? For the CBDR principle, what we observe in TCG initiatives very closely mirrors – and maybe even precedes – what has been observed in the multilateral regime: instead of the operationalization across North–South lines, more nuanced forms of differentiation, and particularly self-differentiation, are the new norm. For the TCG initiatives, this pragmatic view of differentiation is an opportunity, in the sense that it avoids the strong politicization that hindered the multilateral regime. TCG initiatives are, after all, voluntary undertakings: an actor that does not agree with their goals or provisions can simply abstain from participating, or choose another initiative that better caters for its needs. This also points towards the main risk for TCG initiatives: so far, their uptake by developing country participants (by those participants arguably most in need of support in implementing climate-related goals) has been limited. CBDRs and differentiation – particularly through more targeted offers of support – may improve this uptake and, hence, in the long term may enhance the global relevance and effectiveness of TCG initiatives.