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Regulating GHG Emissions from Shipping:

Common but differentiated responsibilities and non-discrimination



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UCL CBDR-RC in Shipping Working Group

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1. Non-Discrimination in the IMO

- Article 1(b) IMO Convention
- Article 5(4) MARPOL (and other contemporary IMO Conventions)
- Article 227 UNCLOS



Article 1(b) IMO Convention

One of the IMO's purposes is '...to encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination'.

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Article 5(4) MARPOL

‘With respect to the ship[s] of non-Parties to the Convention, Parties shall apply the requirements of the present Convention as may be necessary to ensure that no more favourable treatment is given to such ships.’



Article 227 UNCLOS

‘Non-discrimination with respect to foreign vessels

In exercising their rights and performing their duties under this part, States shall not discriminate in form or in fact against vessels of any other state.’

[Part XII, preservation and protection of the marine environment]



2. Differentiation is not necessarily discrimination

Examples from the WTO

EC – Conditions for the Granting of Tariff Preferences to Developing Countries (WT/DS246)

US – Measures Affecting the Sale and Production of Clove Cigarettes (WT/DS406)



‘1.2 Each Authority will maintain an effective system of port State control with a view to ensuring that, without discrimination as to flag, foreign merchant ships calling at a port of its State, or anchored off such a port, comply with the standards laid down in the relevant instruments listed in Section 2.’



3. The *legal* relevance of CBDR-RC in the IMO

Article 3 UNFCCC

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system ...on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.



Parallel Membership UNFCCC and IMO

Article 31 of the Vienna Convention on the Law of Treaties

3. There shall be taken into account [in interpreting a treaty], together with the context:

(c) Any relevant rules of international law applicable in the relations between the parties.



Article 2, Paris Climate Change Agreement

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, *in the light of different national circumstances.*



CBDR-RC in light of different national circs

CBDR-RC	Different National Circumstances	Different National Circumstances	Different National Circumstances
Responsibilities Capabilities	Developed or developing country LDC or SID Developing country particularly vulnerable to impacts of CC or with significant capacity constraints	Concerns of Parties with economies most affected by the impacts of response measures, <i>particularly</i> developing country Parties	Eradication of poverty Food security and ending hunger Respect, promote, consider human rights obligations Conservation and enhancing sinks and reservoirs



CBDR and the Paris Agreement's temp goals

Approach to CBDR in shipping

Flag-based differentiation

Route-based differentiation (CORISA)

Cargo-based differentiation

Vessel-size/operator-size based differentiation

Finance, technical cooperation and capacity building

Hypothecation of revenues from global MBM

Rebate mechanism in context of global MBM

Others?



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THANK YOU
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