

Technology, Ethics and IPR: The Dilemma in Climate Change Governance

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Abstract

The structure of climate governance, as envisaged in the Convention, is essentially techno-centric in its approach due to its belief that the crisis of climate change can be resolved through development and deployment of new less GHG intensive technologies. The essence of the Convention, however, is ethical. The provisions requiring developed countries to develop and transfer technology to developing countries could be interpreted as measurable, reportable and verifiable indicator, however vague, of fulfillment of the ethical goals inherent in the Convention. Considering that the most advanced and efficient technologies are with the countries which have contributed to the problem of climate change, and are also most capable of developing new technologies, this provision not only ensures that developed countries bear a higher responsibility in addressing climate change but also that they help developing countries fight climate change. Thus removal of any barrier to development and transfer of technology is more urgent from ethical point of view than economic point of view.

Among the barriers to technology transfer, IPR is the most debated issue in climate change negotiations. The IPR protection on technologies, held largely by the developed country firms, causes two kinds of challenges for developing countries: a) for the user firms it makes the technology more expensive; and b) it restricts developing countries from developing their own technologies. This process is further made difficult by the 20 years' duration of IPR protection. This results in a situation wherein, by the time technology is free from IPR protection, it becomes obsolete. Since technology is also key to development, the question can be asked whether it is right to keep underdeveloped and developing countries behind and deny them their right to development, as recognised in the Convention, by holding on to a rigid IPR in order to safeguard business interest. On the other hand, the logic on which the idea of IPR rests is that the inventor must be acknowledged and rewarded for undertaking efforts aimed at uncertain results. Such a reward provides a critical incentive for further innovations, which are of great value in the context of need for ever newer and cleaner technologies, and for the good of humanity. Moreover, it is inventor's right to have a due share in the profits generated out of her invention.

In the context of climate change, thus, we face a critical question which requires us to place a priority over two different ethical positions. That is, if IPR hinders technology transfer, is it right to safeguard inventor's interests at the cost of

global interest? And if we give priority to global interest, would the removal of incentive for further innovation, in the form of IPR, not imply depriving the future generations from the benefits of better technologies which might be needed, more desperately than at present, in case the current generation fails to achieve the short term GHG mitigation targets. The major concerns that developing countries have with regard to IPR relate to the cost implications it has for technology transfer and technological capability building. As long as IPR does not hinder technological change in developing countries, IPR seems to invoke no strong reaction from them. Thus, at a somewhat pragmatic level, the key policy question is, whether a mechanism can be thought of through which (a) a justifiable balance can be achieved between inventor's interest and global interest, and/or (b) an alternative incentive system can be put in place. This paper aims to explore these questions, locating them in the conceptual frames of justice.