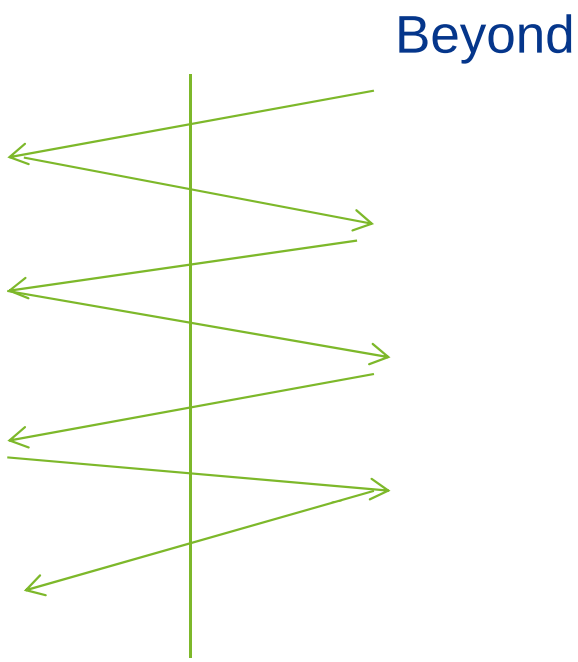
VU University Amsterdam



Climate Negotiations: The symbiotic relationship between the FCCC and the outside world

Prof. Dr. Joyeeta Gupta, Amsterdam Global Change Institute

IVM Institute for Environmental Studies

1. The problem: The FCCC is dead

- Regular work by some scholars proclaiming that the UNFCCC process will not work
  - The 1992 Convention would not come
  - The 1997 Protocol would be still born
  - The 1997 Protocol would never enter into effect
  - The US will not participate in the KP process
  - A domino effect has started, Canada, USSR and Japan ….
  - Rio+20
- Regulatory regimes are ineffective
- The regime is fragmenting.
- Thesis: The FCCC is alive and well but it must focus on key tasks. It has a symbiotic relationship with actions outside the regime.

UN Rio+20

- Focus on a green economy
- Climate change:
  - “climate change is one of the greatest challenges of our time”
  - “calls for the widest possible cooperation”
  - “siginificant gap” between pledges and what is needed!
  - “urge parties […] to fully implement their commitments”

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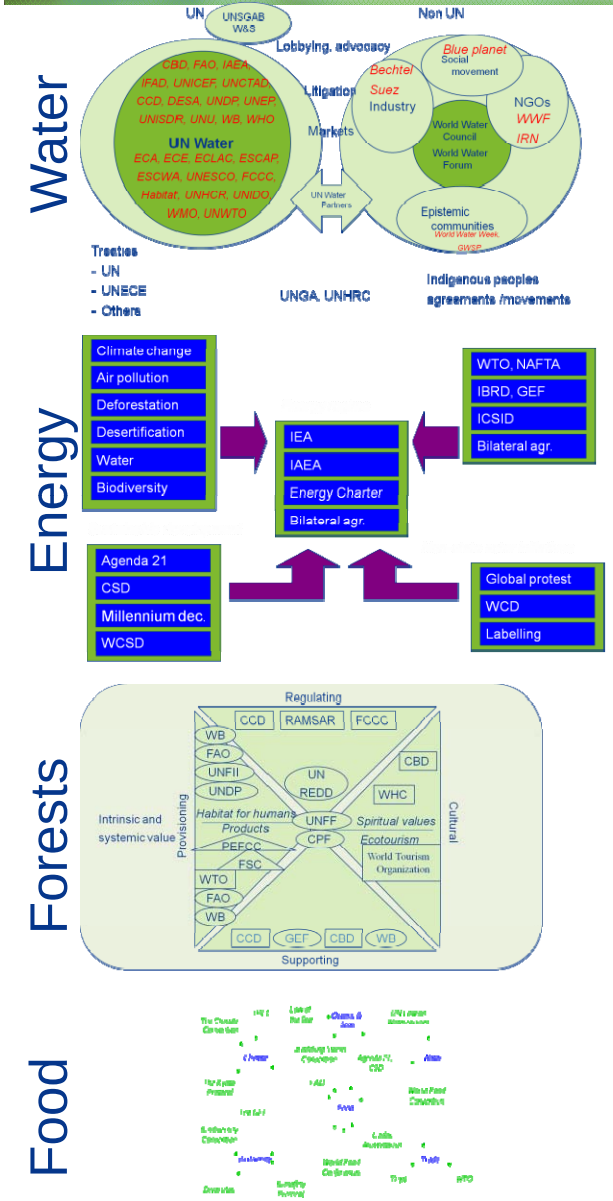
2. Structure

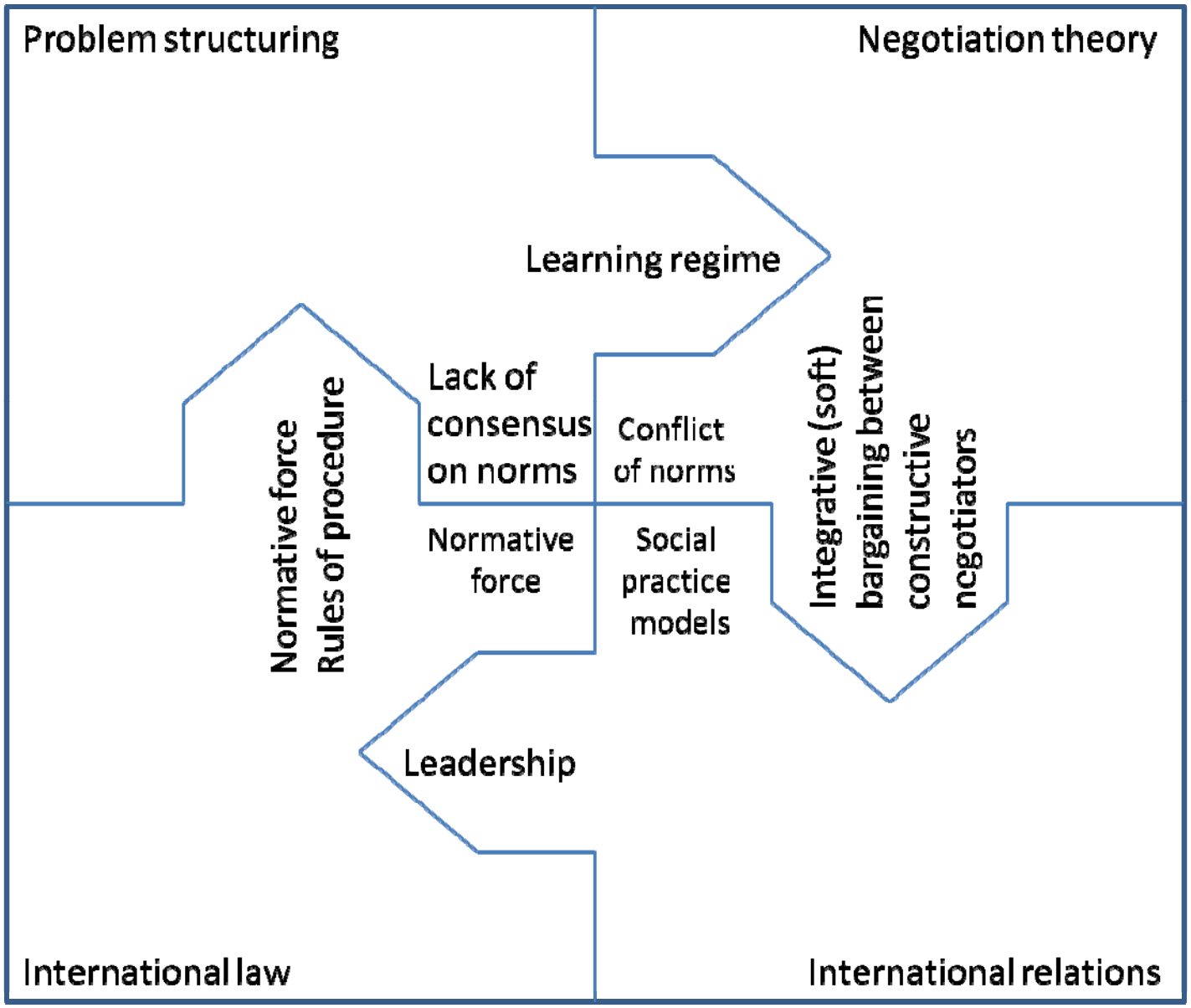
- Within the UNFCCC
- Outside the UNFCCC
- Conclusion

3. Within the FCCC

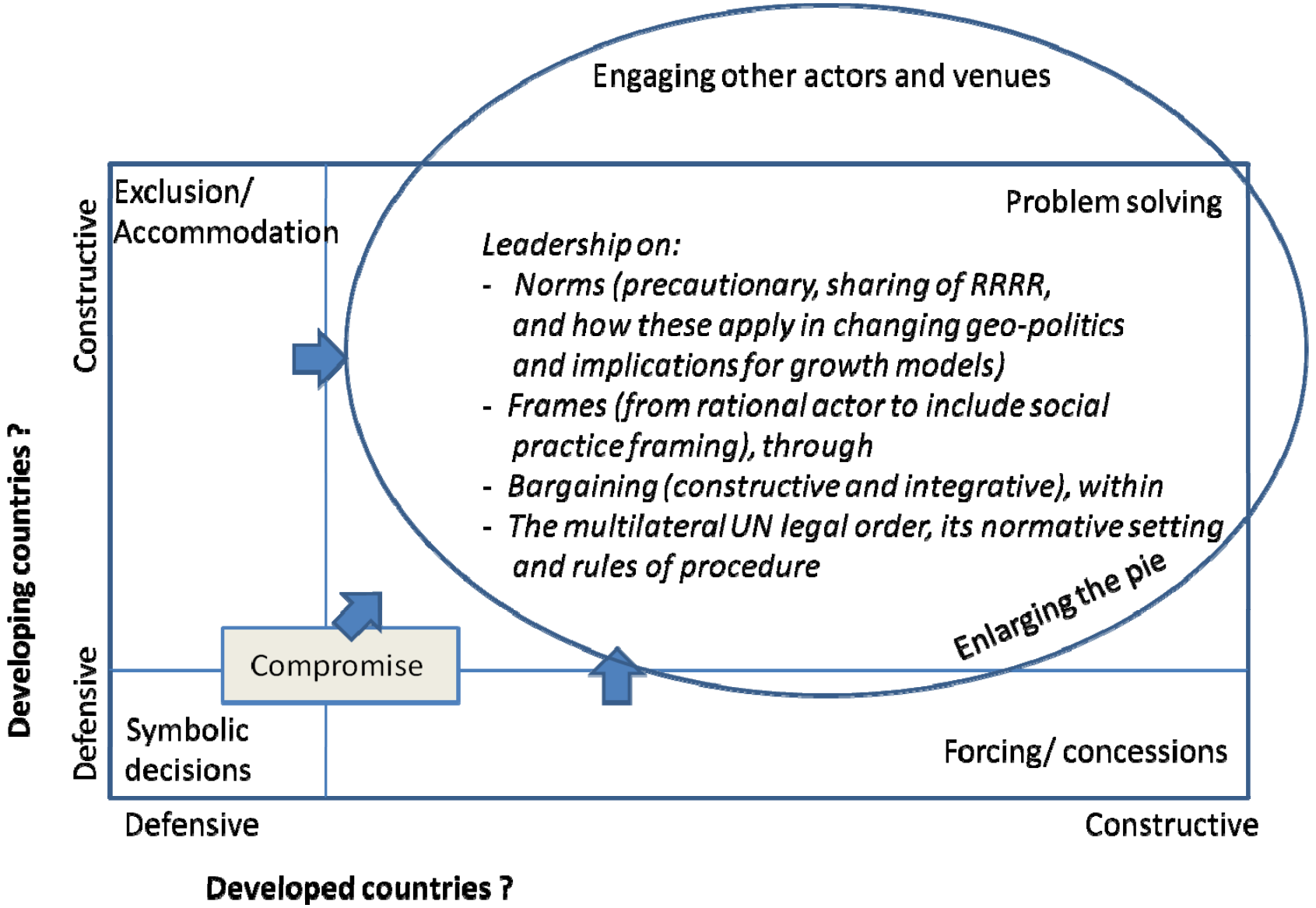


- Strengths:
  - The control tower on climate (cf. water, energy, forests, food)
  - Only body world-wide to negotiate and uphold the principles and targets in the regime.
- Current challenges:
  - Principles/norms, targets, leadership, design
- Opportunities:
  - Developing administrative law
  - Expanding the negotiating pie
  - Expanding the routes
- Weakness:
  - It cannot engage everyone itself – so it needs the outside world for its legitimacy and effectiveness

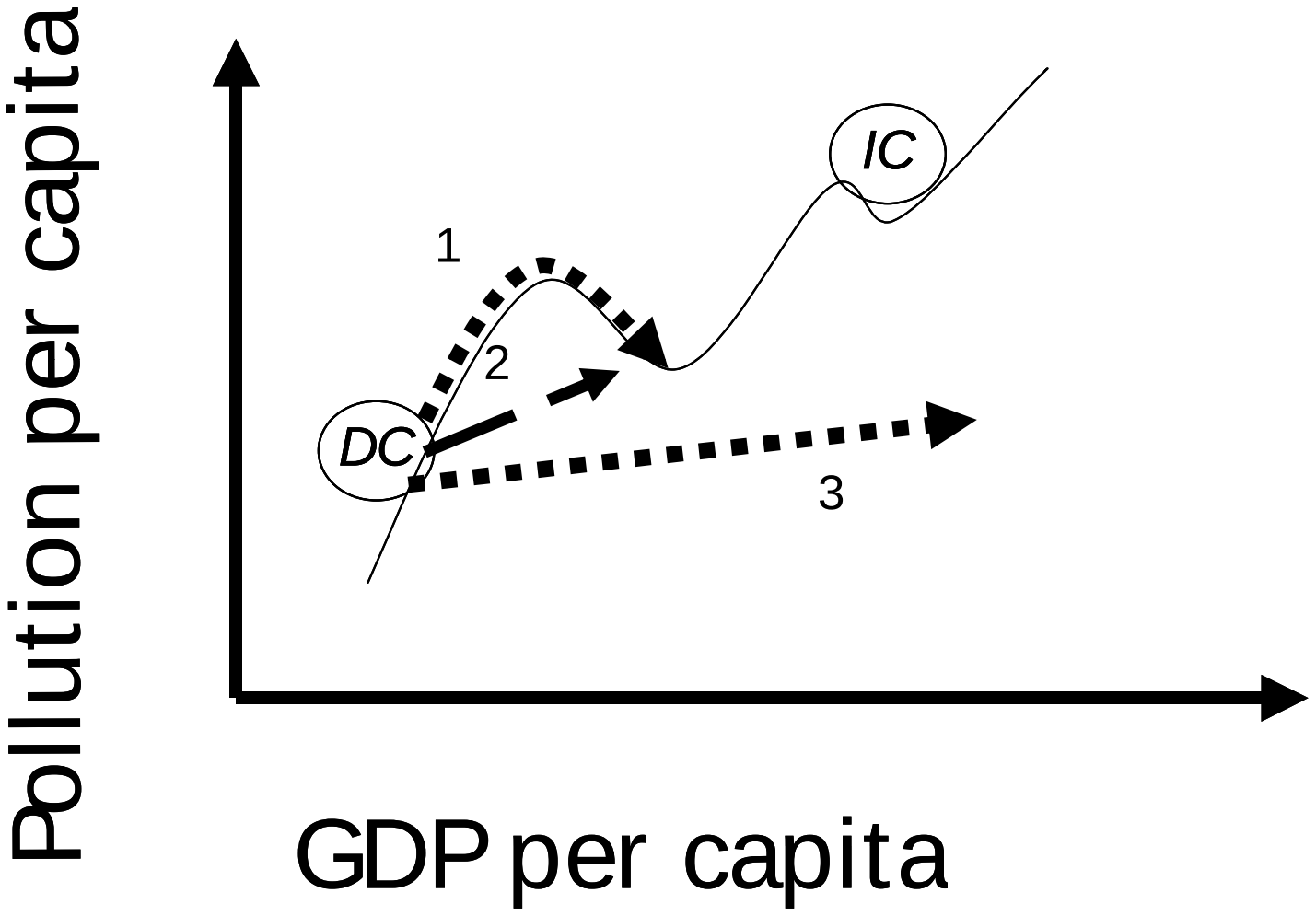
Current challenges: Norms!



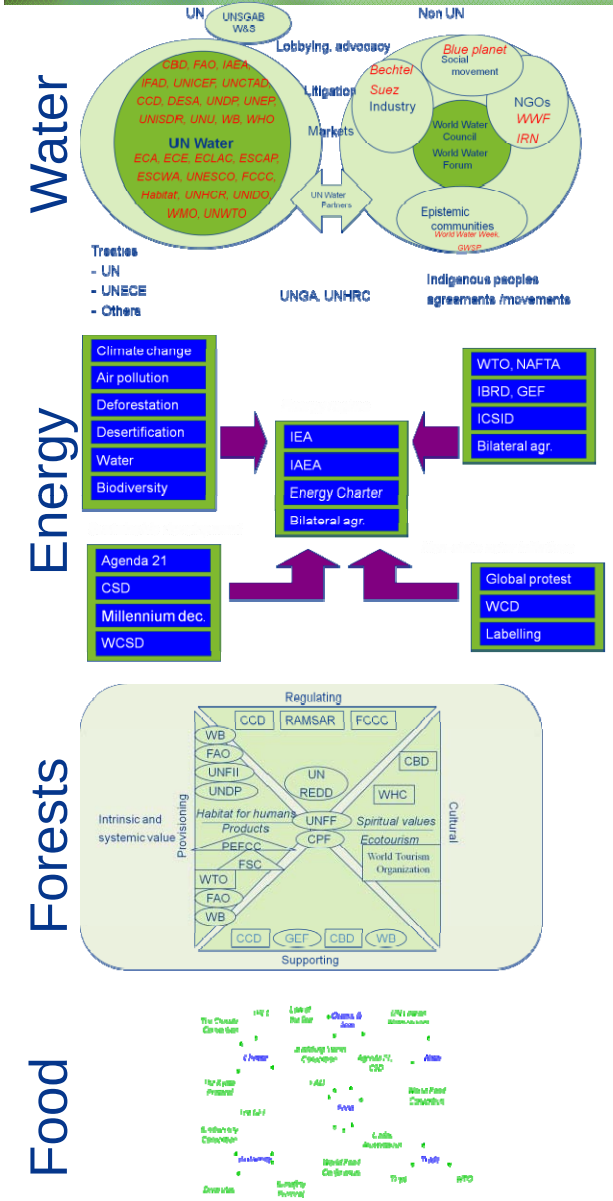
Negotiating strategies need to focus on leadership on norms



Design issues:



3. Within the FCCC



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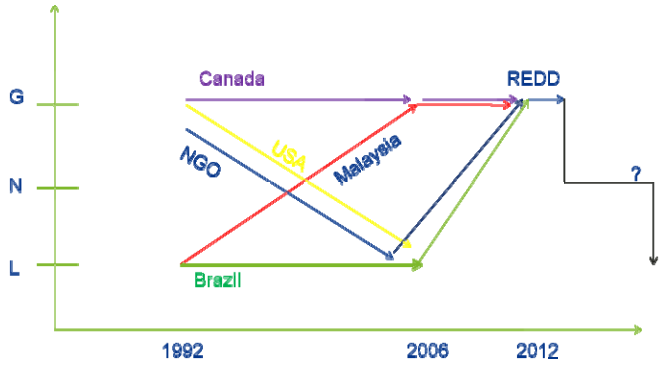
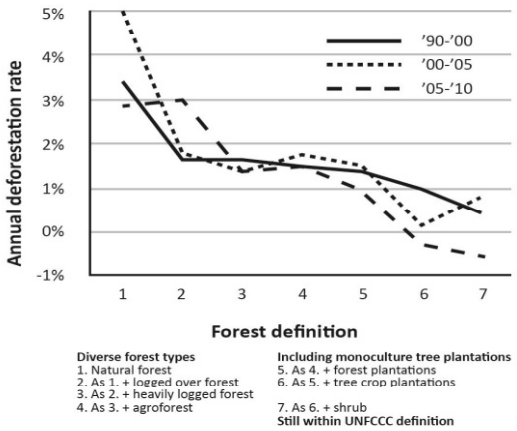
Expanding the pie: The question of forests





Why

- Link cc and forests
- Forests buy time (17% of emissions?)
- Forests are easier than industrial mitigation
- Forests are more cost-effective
- Forests transfer resources to South!

However

- Forests as share in cc is declining
- If Brazil takes action….
- Forests are far more difficult than industrial mitigation
- Forests may not be cost-effective
- Resources?

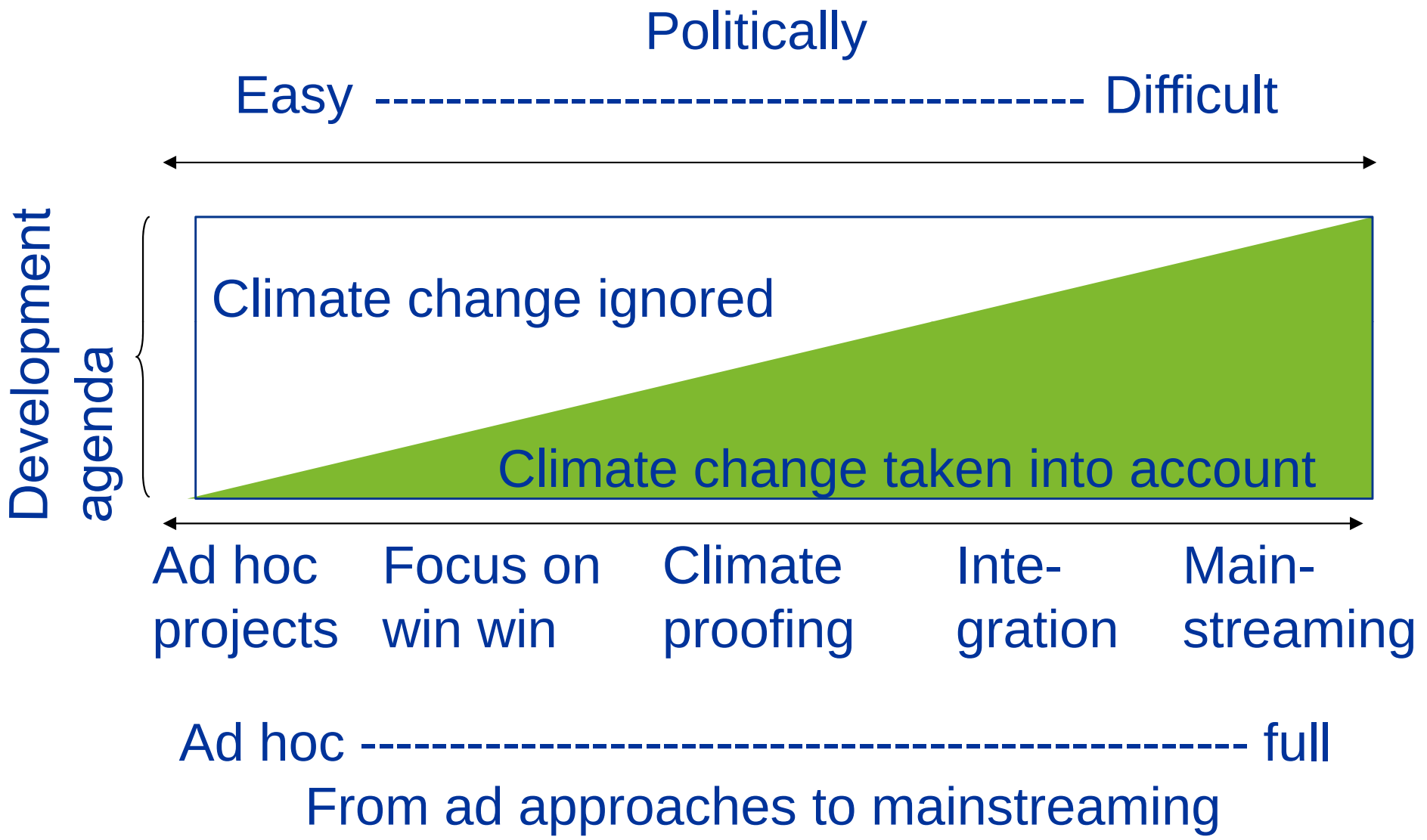
Expanding the routes: Inefficient or robust

- UNFCCC route (AWG-LCA) Ad Hoc Working Group on Long-term Cooperative Action
  - To keep US on board
  - Copenhagen pledges part of COP decisions
  - Funding, TT, REDD
- KP route (Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol)
  - To keep the T&T approach alive and build on a second phase.
  - Canada, Japan, USSR not agreeing
- Durban route (AWG-DP) Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)
  - A new protocol (or document with legal effect?) from 2020 involving all major emitters
  - 2 degrees and 1.5; new process; no later than 2015; legal in 2015 (COP 21).

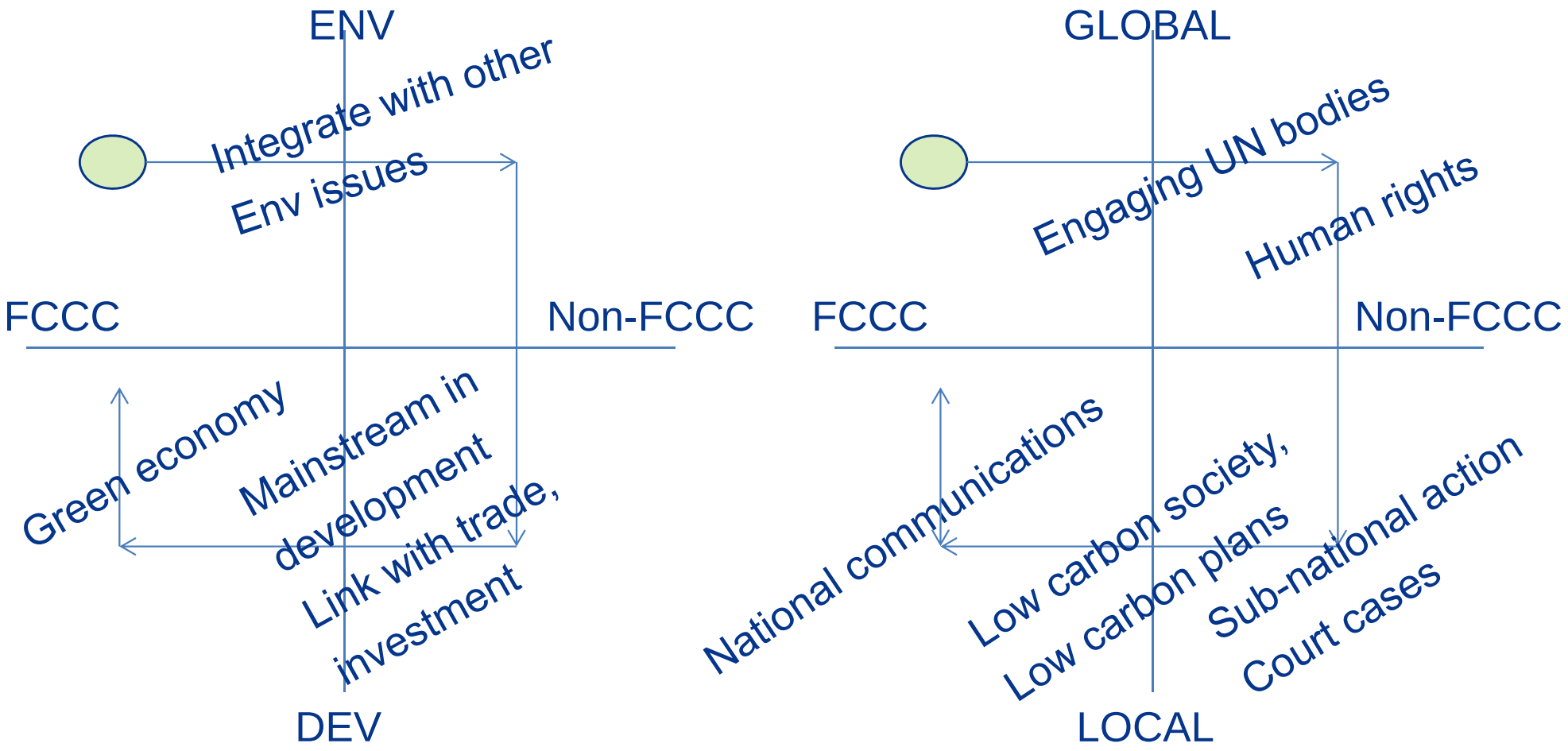
4. Outside the FCCC

- The struggle between science and politics
  - “we are destroying the earth”, “could you kindly rephrase that …”
- The development of changing paradigms for addressing climate change
  - Green economy – UN Rio+20
  - Green society – G8 and you
  - Human right – UNHCR, UNGA
- Mainstreaming in different fields
  - UN agencies, different ministries
  - Links with different treaties and issues
- Carrots: Raising resources
- Sticks: The need for enforcement
  - Court cases to develop precedents

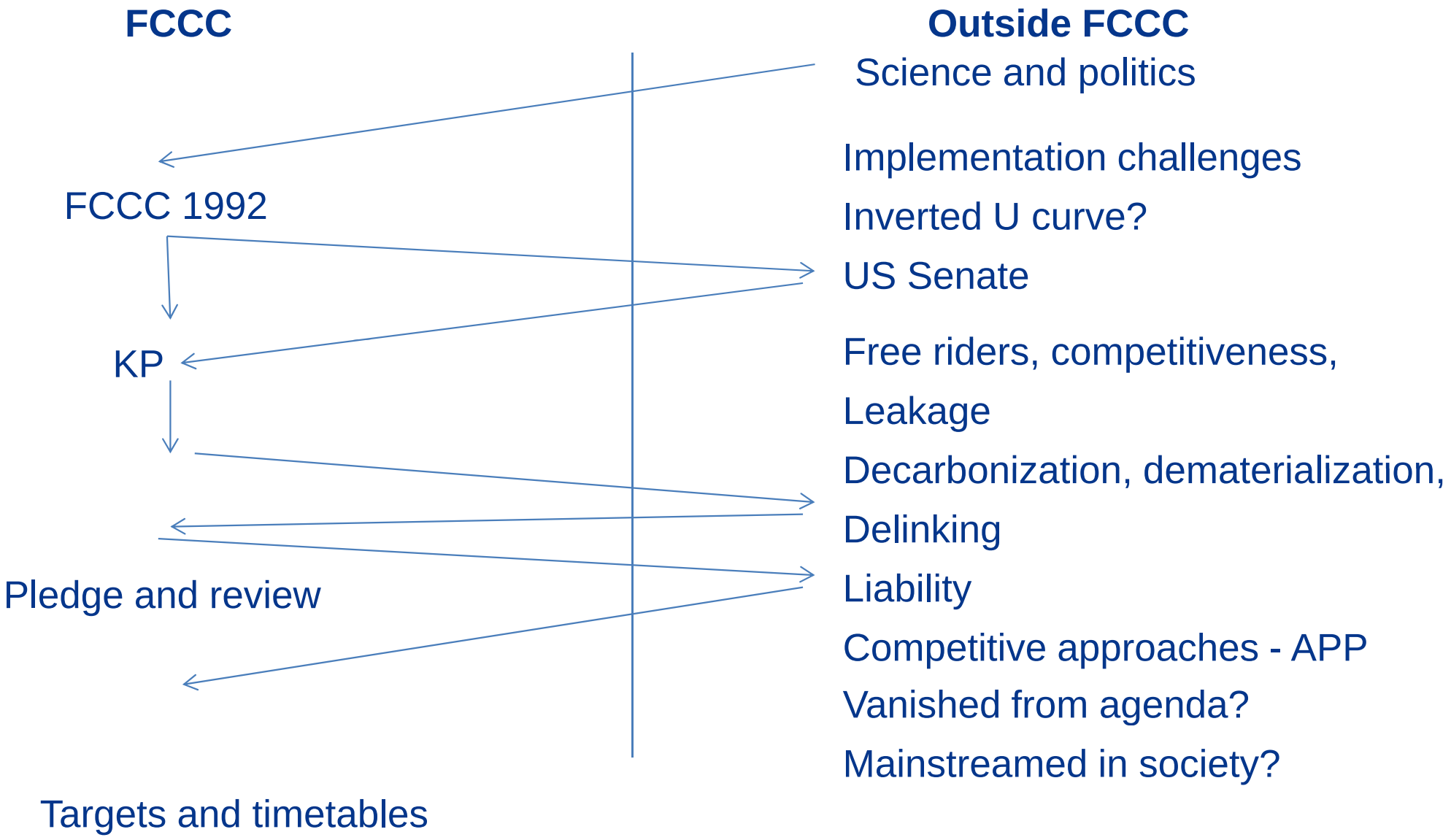
From Ad hoc approaches to mainstreaming



5. The relationship – and division of tasks



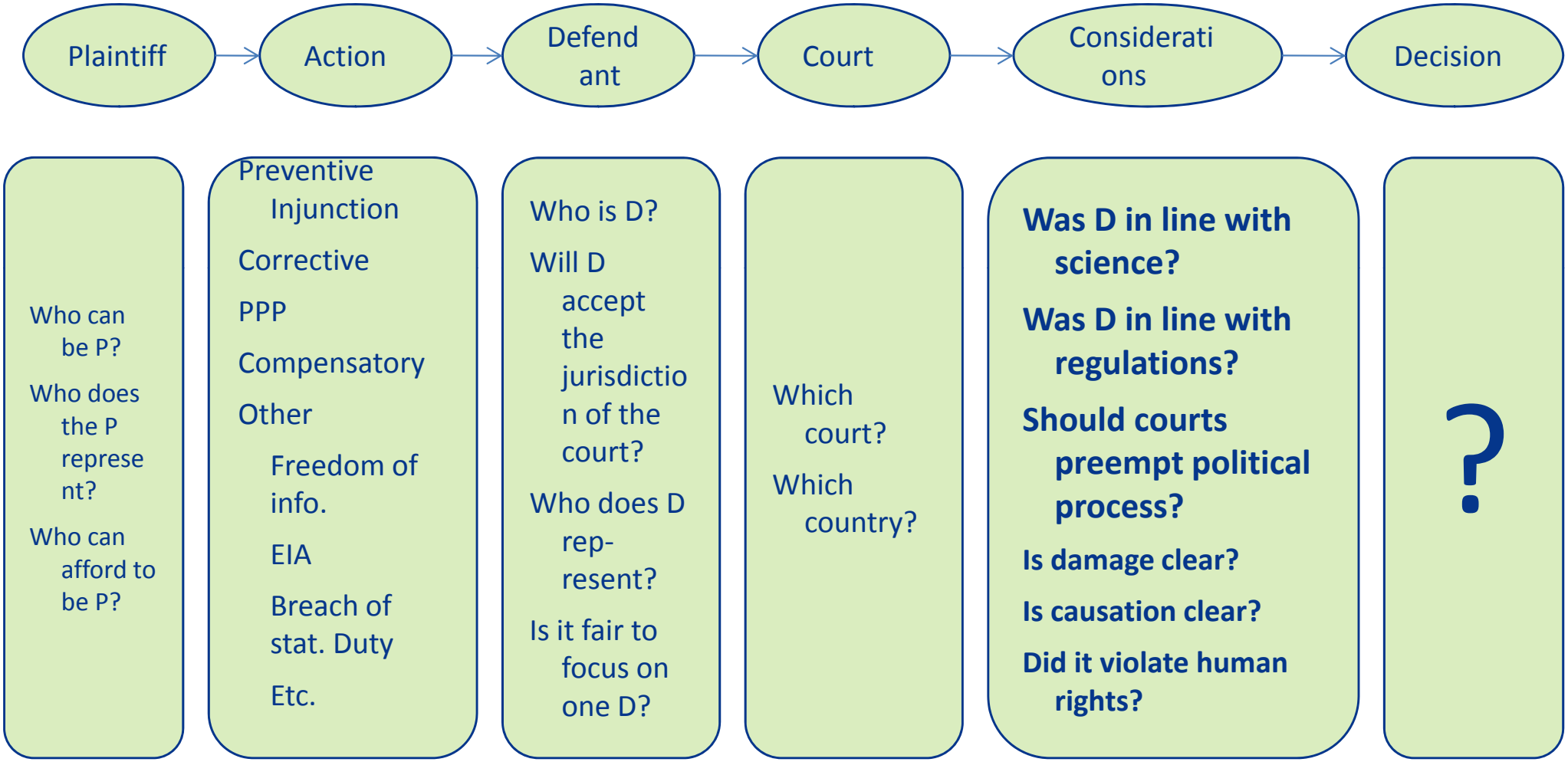
The symbiotic relationship



6. The FCCC is the control tower! Principles, targets and compliance

- The FCCC is dead. Long Live the FCCC!!
- FCCC should focus on principles, targets, national communications and compliance
- Other issues can be developed and exported:
  - UN REDD

The Liability Process



Science & liability: Uncertainty & law (Weiss 2006)

Bayesian prob.	IPCC scale	Informal scientific	Legal stds of proof	For legal situation
100%	Not on scale	Firmly estd.	Virtually certain	
99%	Virtually certain	Rigorously proven	Beyond reasonable doubt	Criminal conviction
90-99%	Very likely	Scientifically proven	Clean & convincing evidence	Quasi penal civil action
80-90%	Likely	Very probable	Clear showing	Temporary injunction
67-80%	Med. Likelihood	Probable	Substantial & credible evidence	Impeachment
50-67%		More probable than not	Preponderance of evidence	Civil judgments
33-50%		Strong evidence	Clear indication	Field arrest/ search warrant
20-33%		Increasing evidence	Probable cause	Initiate inquiry
10-22%	Unlikely	Plausible	Reasonable indication	Stop and frisk
1-10%		Suggestive	Grounds for suspicion	
<1%	Very unlikely	Unlikely	No grounds for suspicion	
0%	Not on scale	Violates well estd. laws	No ground for conjecture	

Modest precautionary principle

Proactive PP

Risk minimization

Legal options: No harm