

**OPERATIONALIZING THE
CONCEPT OF POLICY SPACE
IN THE UNCTAD XI MID-TERM REVIEW
CONTEXT**

SYNOPSIS

This South Centre Analytical Note provides a brief historical overview of the development of the concept of “policy space” for development in international forums and tries to suggest ways on how, in the context of the UNCTAD XI Mid-Term Review process, UNCTAD can make such concept operational through its policy analysis and recommendations to developing countries.

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Operationalizing the Concept of Policy Space in the UNCTAD XI Mid-Term Review Context

I. Introduction – Understanding the Concept of Policy Space

1. One of the major policy statements of UNCTAD XI is its recognition of “policy space”, especially for developing countries, and the need for a better balance between such policy space and international disciplines and commitments.¹
2. Policy space is about asserting the freedom of choice in terms of the development policies that countries can adopt and implement. For developing countries, it is about their freedom to choose the best mix of policies possible for achieving sustainable and equitable economic development given their unique and individual social, political, economic, and environmental conditions, taking into account considerations such as the existence of international commitments and disciplines that they may have voluntarily agreed to assume.
3. “Policy space”, for UNCTAD XI, refers to “the scope for domestic policies, especially in the areas for trade, investment and industrial development.”² Essentially, it reflects the idea that governments should have the leeway to “evaluate the trade-off between the benefits of accepting international rules and the constraints posed by the loss of policy space.”³ This has been said to be the first such multilaterally-agreed and explicit recognition of the concept in a multilateral forum.
4. The concept of policy space in UNCTAD XI is essentially a fusion of three key principles in international law and policy relevant to the formulation and acceptance of international disciplines and rules by States especially in the area of trade and economic relations:
 - (i) the principle of the sovereign equality of States⁴ – i.e. the binding nature and application of international rules and disciplines are dependent on the equal exercise of national sovereignty by participating States;
 - (ii) the right to development;⁵ and
 - (iii) the principle of special treatment for developing countries⁶ – i.e. the provision of special and differential treatment so as to be responsive and accommodating to developing countries’ specific development needs and circumstances rather than be based on a “one-size-fits-all” approach that,

¹ UNCTAD, *Sao Paulo Consensus*, TD/410, 25 June 2004, para. 8.

² *Id.*

³ *Id.*

⁴ See e.g. UN, *Charter of the United Nations*, art. 2(1).

⁵ See e.g. UN, *General Assembly: Declaration on the Right to Development*, UNGA Res. 41/128, 4 December 1986; UN, *Conference on Environment and Development: Rio Declaration on Environment and Development*, A/CONF.151/6 (Vol. I), 14 June 1992, principle 3.

⁶ UN Declaration on the Right to Development, *supra* note 6, art. 4(2). See also WTO, *Agreement Establishing the World Trade Organization*, 2nd preambular clause and art. XI:2.

all too often, has characterized international rule-making for international economic relations in the past two decades.

5. It, however, recognizes that such space may be framed, constrained or expanded by the international commitments, agreements and disciplines that States may choose to enter into and which countries should implement consistent with the international law principle of “pacta sunt servanda.”⁷
6. Essentially, therefore, the concept of policy space relates to the exercise of national sovereignty (a legal and political principle that serves as the foundation of today’s international system of States and which is at the core of the United Nations Charter and all other international treaty instruments) for the purpose of promoting development. It refers to the exercise of such national sovereignty with respect to determining the appropriate balance between domestic development policy choices freely made without reference to external commitments and those development policy choices that may be made within the framework of agreed-upon sets of international commitments, rules or obligations.
7. “Policy space” synthesizes the ideas that:
 - (i) States are primarily responsible for their own development;
 - (ii) the role of nationally-owned, designed, and implemented development policies and strategies are of key importance to achieving sustainable development that is consistent with the State’s unique circumstances and development objectives;
 - (iii) in order to promote development and increase the quality of life of their people, States would be the ones best equipped to identify what kind of policies they should adopt, when such policies should be adopted and implemented, the sequencing of such policies, and how such policies should be implemented;
 - (iv) international commitments, rules, disciplines, agreements and obligations may play a role in framing, constraining or expanding such policy choices, so that such commitments, rules, disciplines, agreements or obligations can help promote rather than hinder the development process; and
 - (v) under the principle of “pacta sunt servanda”, States are expected to fulfill their voluntarily-assumed international commitments, including through the maximal use of any flexibilities or options that may exist in the context of such international commitments for the exercise of various development policy choices. A State’s agreement to any future commitments should be done in a strategic way to ensure that any future

⁷ The principle of “pacta sunt servanda” as embodied in international law states that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” This principle is provided for in terms of treaty law in the 1969 Vienna Convention on the Law of Treaties (Art. 26), and is a principle to which all States have subscribed both as a matter of treaty law and as a matter of customary international law. The applicability of this principle to the concept of policy space is implicit in the text of Paragraph 8 of the Sao Paulo Consensus, when it speaks of the need for “appropriate balance between national policy space and international commitments.”

constraints to their policy choices or flexibilities are either avoided or mitigated to the maximum extent possible consistent with the objectives of such future commitments and the country's own development objectives.

II. History of the Concept of Policy Space

A. UNCTAD I

8. One should note that the international principles above which are embedded in UNCTAD XI's concept of policy space are principles that have long underlain UNCTAD's work since UNCTAD I. For example, among the general principles to govern international trade relations and trade policies conducive to development adopted by UNCTAD I in June 1964 as part of its Final Act are the following:⁸

General Principle One

Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries.

x x x

General Principle Three

Every country has the sovereign right freely to trade with other countries, and freely to dispose of its natural resources in the interest of the economic development and well-being of its own people.

x x x

General Principle Fifteen

The adoption of international policies and measures for the economic development of the developing countries shall take into account the individual characteristics and different stages of development of the developing countries, special attention being paid to the less developed among them, as an effective means of ensuring sustained growth with equitable opportunity for each developing country.

B. The UN Conference on Financing for Development

9. Policy space and flexibility, and the need for continued existence of development policy options, have been consistently reflected, in one way or another, in the various major multilateral soft law instruments within the UN system. These include the 2002 World Summit on Sustainable Development

⁸ UNCTAD I, *Final Act*, para. 54, in South Centre, RECALLING UNCTAD I AT UNCTAD XI (2004), at pp. 10-11, available at <http://www.southcentre.org/publications/pubindex.htm#books>.

(WSSD), the 2002 UN Conference on Financing for Development (UNFfD), and recent UN General Assembly resolutions.

10. For example, the Monterrey Consensus that came out from the UNFfD process has the following paragraphs:⁹

6. Each country has primary responsibility for its own economic and social development, and the role of national policies and development strategies cannot be overemphasized. At the same time, domestic economies are now interwoven with the global economic system and, inter alia, the effective use of trade and investment opportunities can help countries to fight poverty. National development efforts need to be supported by an enabling international economic environment. We encourage and support development frameworks initiated at the regional level, such as the New Partnership for Africa's Development and similar efforts in other regions.

X X X

12. We will pursue appropriate policy and regulatory frameworks at our respective national levels and in a manner consistent with national laws to encourage public and private initiatives, including at the local level, and foster a dynamic and well functioning business sector, while improving income growth and distribution, raising productivity, empowering women and protecting labour rights and the environment. We recognize that the appropriate role of government in market-oriented economies will vary from country to country.

11. Both paragraphs above from the Monterrey Consensus clearly indicate and recognize the need for countries to have flexibility, choices, and options in terms of defining and designing its own policies for development. In this regard, an “enabling environment” – i.e. an international policy environment that recognizes and maximizes such options and flexibility – must be provided.

C. The World Summit on Sustainable Development

12. A few months later, the WSSD process resulted in agreed text that basically echoed the UNFfD text in stating that “[e]ach country has the primary responsibility for its own sustainable development, and the role of national policies and development strategies cannot be overemphasized. All countries should promote sustainable development at the national level by, inter alia, enacting and enforcing clear and effective laws that support sustainable development. All countries should strengthen governmental institutions, including by providing necessary infrastructure and by promoting transparency, accountability and fair administrative and judicial institutions.”¹⁰ The implicit statement behind this text is that each country’s policy choices

⁹ UN, Monterrey Consensus, A/CONF.198/11, June 2002, paras. 6 and 12.

¹⁰ UN, *World Summit on Sustainable Development: Plan of Implementation*, A/CONF.199/20, September 2002, para. 163

should be based on its own development needs and objectives as it tries to pursue sustainable development.

D. UN General Assembly

13. The UNCTAD XI language on policy space has also been reiterated in more recent international instruments. For example, during its 60th session, the UN General Assembly adopted two (2) resolutions in which it basically reiterated the text of UNCTAD XI on policy space.

14. In Paragraph 22(d) of the UN General Assembly resolution on the 2005 World Summit Outcome, the UN General Assembly resolved as follows:

(d) That the increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e., the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments;¹¹

15. Subsequently, in Paragraph 12 of the UN General Assembly resolution on the role of the United Nations in promoting development in the context of globalization and interdependence, the UN General Assembly adopted the following text on policy space:

12. *Underlines* the fact that the increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e., the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations, that it is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space and that it is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments;¹²

¹¹ UN, *General Assembly 60th Session: Resolution on the 2005 World Summit Outcome*, A/RES/60/1, 24 October 2005, para. 22(d). The resolution was adopted on 16 September 2005.

¹² UN, *General Assembly 60th Session: Resolution on the Role of the United Nations in promoting development in the context of globalization and interdependence*, A/RES/60/204, 13 March 2006, para. 12. The resolution was adopted on 22 December 2005.

E. Policy Space and its Place in Current International Development Policy Discourse

16. The concept of policy space is therefore not new. It was enjoyed by today's developed countries while they themselves were still developing, and it has long been recognized as an integral part of national economic sovereignty.
17. Hence, while today's realities are different from those of one or two hundred years ago, the basic idea that a country should have the flexibility, the freedom, to select those policies that it believes will work best for it to be able to develop, eradicate poverty, and increase the standard of living of its people continues to retain its fundamental philosophical, legal and political validity and legitimacy.
18. The first adopted articulation by UNCTAD XI of the concept of policy space, as can be seen in the discussion above, has historical roots in commonly accepted international law and policy. Also, since UNCTAD XI, the concept of policy space has been reiterated by none less than the UN General Assembly as a concept that needs to be taken into account and reflected whenever issues relating to globalization and development are discussed.
19. There is therefore clearly no basis for saying that the concept of policy space should not be discussed, clarified, and made operational in terms of, for example, specific work that international organizations such as UNCTAD could do in this regard. The concept as such has been recognized, accepted, and has woven itself firmly into the firmament of the current international development debate and discourse.¹³

III. Policy Space in UNCTAD XI

20. To give a better understanding of how this concept evolved in the UNCTAD XI context itself, it would also be important to look at the negotiating history of the text relating to the concept as reflected in the Sao Paulo Consensus.
21. Hence, in the UNCTAD XI context, "policy space" or its conceptual underpinning was first introduced in the UNCTAD Secretary General's

¹³ It was only when the concept was placed in a negotiating context in Geneva where issues relating to trade protectionism and the extent of trade liberalization to be undertaken by both developed and developing countries became highlighted as a result of the launch of the WTO's Doha negotiations that the concept of policy space became a contentious issue. Where one side (developing countries) would view the concept as being the conceptual foundation for national development and economic policy flexibility in the context of existing and future international commitments, the other side (developed countries) were implicitly concerned that the concept could be used as the basis for developing countries to "wriggle" out of their existing commitments and to resist pressure to further liberalize their trade and economic policy regimes and provide increased market access to developed countries. These concerns of developed countries are, of course, without basis as developing countries remain fully committed to the multilateral system and to the complementarity of roles between national and international policy-making in support of their development objectives.

Overview¹⁴ as part of the preparations for UNCTAD XI. In his Overview, the Secretary-General referred to the “return to a sort of economic nationalism” as a reaction to the rapid spread of globalization.¹⁵ He pointed out that the challenge for UNCTAD, inter alia, “is to make sure that this rediscovered economic nationalism is an ‘open nationalism’, that is remains firmly within the limits of the legitimate defence of national interests in the context of an increasingly interdependent world society ...”¹⁶

22. In that vein, the initial UNCTAD XI pre-conference text¹⁷ submitted by the Secretary-General stated that the diversity among developing countries in terms of economic structure and levels of development meant that “a one-size-fits-all approach [is] irrelevant.”¹⁸ It stressed that “policy options and responses must change in an evolutionary way as an economy develops. Policies also need to be tailed to different initial conditions in terms of size, resource endowment and location.”¹⁹ Hence, the Secretary-General suggested that UNCTAD’s contributions in this area could, inter alia, lie in undertaking work that would “identify policies at the international and national levels that are conducive to development. Specifically, it should explore how national development strategies can be shaped in an increasingly globalized world, and how the management of the world economy can be improved in support of development ... The work should also support greater understanding of ... the implications of diversity in development experiences.”²⁰

23. As the UNCTAD XI preparatory process got underway, the concept of policy space was among the main points raised by many developing country delegations which pointed out that development gains can only be assured by “strengthening national trade policies and policy space, bearing in mind [the] encroaching nature of the multilateral trade agreements.”²¹

¹⁴ UNCTAD, *Preparations for UNCTAD XI: Submission by the Secretary-General of UNCTAD*, TD(XI)/PC/1, 6 August 2003.

¹⁵ *Id.*, Part One: Overview, para. 39.

¹⁶ *Id.*, para. 41. In this regard, see also UNCTAD, *Notes on the concept of economic policy space*, 4 March 2004, para. 1, in which the UNCTAD Secretariat described the concept of economic policy space as referring to “the extent to which national governments have the authority to make decisions concerning economic policy and, correspondingly, the extent to which such authority is constrained by international disciplines and processes.” This concept is also linked, according to the UNCTAD Secretariat, to the concept of “open nationalism” which “suggests policies and approaches that take appropriate account of the pursuit of national objectives and goals but are consistent with the growing integration of the world economy and the increasing participation of developing countries in its challenges and opportunities. Such policies and approaches are conceived primarily as efforts to upgrade the capabilities and skills of the national labour force, as well as of national capital, in order to better integrate into the global economy.” See UNCTAD, *A conceptual note on “open nationalism”*, 4 March 2004, para. 26

¹⁷ UNCTAD, *Preparations for UNCTAD XI: Submission by the Secretary-General of UNCTAD - Part Two: Pre-Conference Text*, TD(XI)/PC/1, 6 August 2003.

¹⁸ *Id.*, para. 33.

¹⁹ *Id.*

²⁰ *Id.*, para. 48.

²¹ UNCTAD, *Consolidated list of points made by delegations at the brainstorming on 7 November 2003*, unnumbered and undated

24. Iterations of the UNCTAD XI negotiating text coming after the UNCTAD Secretary-General's initial pre-conference text show that the concept of policy space has been continuously reflected. For example, the 17 December 2003 pre-conference negotiating text²² issued by the Chairman of the UNCTAD XI Preparatory Committee pointed out that the issue is "how much policy space and flexibility remains in developing countries, to what extent is it necessary and possible to enlarge this policy space, and in which areas."²³ It pointed out that UNCTAD's contributions in this regard could lie in having UNCTAD's expertise "be used to explore how the management of the world economy can be improved in support of development, and how appropriate development strategies should be formulated and implemented in support of a strategic integration of developing countries into the international trading and financial systems, taking into account the need for appropriate policy space at the national level. [emphasis added]"²⁴
25. These paragraphs in the December 2003 text became the focus of much negotiating attention in the subsequent months, with both the US and the EU initially pushing for the removal of references to "policy space" while the G-77 and China pushed for its retention.²⁵
26. Eventually, the explicit text relating to policy space was moved to the chapeau of the negotiated text. In the chapeau of the UNCTAD XI Preparatory Committee Chairman's 28 April 2004 revised consolidated negotiating text, the concept of policy space continued to be reflected, not least in its recognition that "it is for each government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space ... [and that] it is incumbent upon the international community as a whole to consider the issue of an appropriate balance between national policy space and international disciplines and commitments when deciding collectively on future disciplines and commitments and on the implementation and interpretation of existing ones ..."²⁶ Elements of the concept of policy space – e.g. the need for diversity in national policies – could be found in various paragraphs of this 28 April 2004 text.²⁷
27. A significant factor in the continued retention of the language on policy space was the enunciated willingness on the part of the EU to "engage constructively in ... a dialogue [on policy space] with its developing country and other UNCTAD partners. A common understanding of the concept of 'policy space

²² UNCTAD, *Pre-Conference Negotiating Text*, TD(XI)/PC/3, 17 December 2003.

²³ *Id.*, para. 15.

²⁴ *Id.*, para. 47.

²⁵ See e.g. UNCTAD, *Pre-Conference Negotiating Text: Subtheme 1 – Development Strategies in a Globalizing World Economy*, Subtheme 1 Working Paper No. 3, 5 February 2004, paras. 15 and 47. See also UNCTAD, *Pre-Conference Negotiating Text: Subtheme 1 – Development Strategies in a Globalizing World Economy*, Subtheme 1 Working Paper No. 4/Rev.1, 9 March 2004, para. 15.

²⁶ UNCTAD, *Preparatory Committee for UNCTAD XI: Chairman's Revised Consolidated Text*, 28 April 2004, para. 8.

²⁷ See *id.*, paras. 23 and 29.

and its relevance to UNCTAD's mandate will be needed. ... It will be important also to ensure that our consideration of 'policy space' contributes to strengthening coherence between development and trade."²⁸ While such statement did not amount to a full-hearted endorsement of the concept of policy space preferred by developing countries, it nonetheless indicated the EU's recognition that such concept does have relevance in UNCTAD's work. This recognition of the relevance of such a concept and the need to generate a common understanding thereof serves as a valuable foundation for continued mutual engagement among UNCTAD's member States to further flesh out the concept.

28. The 13 May 2004 draft of the UNCTAD XI text continued to reflect wording on policy space, to wit:

8. The increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e. the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. However, in the light of the accepted premise of national responsibility for development and national ownership of development strategies, it is incumbent upon the international community as a whole to consider the issue of an appropriate balance between national policy space and international disciplines and commitments when deciding collectively on future disciplines and commitments and on the implementation and interpretation of existing ones. This should not affect the integrity of the rules and commitments entered into through international negotiations.²⁹

29. The entire text on policy space above was bracketed when the 17 May 2004 version of the draft negotiated text came out.³⁰

30. The text above was substantially revised as the negotiations in UNCTAD XI in Sao Paulo progressed. The 16 June 2004 version of the negotiated text's language on policy space was as follows:

8. The increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e. the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments

²⁸ European Union, *UNCTAD XI – The European Union's Key Objectives and Priorities* (February 2004), para. 13 (as presented by HE Ambassador Mary Whelan of Ireland on behalf of the EU at the UNCTAD XI Preparatory Committee meeting in Geneva on 24-25 February 2004).

²⁹ UNCTAD, *Draft UNCTAD XI Negotiated Text*, TD(XI)/PC/CRP.7, 13 May 2004, para. 8.

³⁰ UNCTAD, *Draft UNCTAD XI Negotiated Text*, TD/L.368, 17 May 2004, para. 8.

and the constraints posed by the loss of policy space. ~~However, in the light of the accepted premise of national responsibility for development and national ownership of development strategies, it is incumbent upon the international community as a whole to consider the issue of an~~ **It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for** appropriate balance between national policy space and international disciplines and commitments ~~when deciding collectively on future disciplines and commitments and on the implementation and interpretation of existing ones. This should not affect the integrity of the rules and commitments entered into through international negotiations.~~^{31*}

 * (Strikethrough for deletions and bold for insertions as compared with the 17 May 2004 text have been added for this paper and are not reflected in the cited text)

31. The final version of the text on policy space that was adopted by UNCTAD XI reads as follows:

8. The increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e. the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments.³²

32. This UNCTAD XI text on policy space does not, however, stand alone. For its proper implementation in the context of UNCTAD's work, it must be related to one or more operational provisions in the UNCTAD XI Sao Paulo Consensus.

33. In this regard, the following paragraphs of the Sao Paulo Consensus would logically serve as the basis through which UNCTAD can make operational the recognition of policy space by UNCTAD XI, to wit:³³

26. UNCTAD should continue its important role and specificity in delivering policy analysis and identifying policy options at the global and national level. The analytical capacity of UNCTAD to undertake research on macroeconomic policies, finance, debt and poverty, and their interdependence, should serve to assist developing countries and countries with economies in transition to face the challenges of

³¹ UNCTAD, *Draft Sao Paulo Consensus*, TD/L.380, 16 June 2004, para. 8.

³² UNCTAD, *Sao Paulo Consensus*, TD/410, 25 June 2004, para. 8.

³³ *Id.*, paras. 26-27 and 30.

globalization. In its work on globalization and development strategies, UNCTAD should focus on interdependence and coherence:

- (i) Identifying specific needs and measures arising from the interdependence between trade, finance, investment, technology and macroeconomic policies from the point of view of its effect on development;
- (ii) Contributing to a better understanding of coherence between international economic rules, practices and processes, on the one hand, and national policies and development strategies, on the other;
- (iii) Supporting developing countries in their efforts to formulate development strategies adapted to the challenges of globalization.

27. The work should help identify policies at the international and national level that are favourable to development. UNCTAD's expertise should be used to explore how globalization can support development, and how appropriate development strategies should be formulated and implemented in support of a strategic integration of developing economies into the global economy. The work should also support greater understanding of the mutuality of interest between developed and developing economies in sustained and sustainable development.

x x x

30. Recognizing the need for diversity in national policies, UNCTAD should identify, from the point of view of trade and development and in light of the successful and less successful development experiences of the past, the basic elements of sound macroeconomic policies that are conducive to an expansion of productive capacity and productivity, faster and sustained growth, employment creation and poverty alleviation. UNCTAD should also analyse the impact of international policies and processes on the scope for implementing national development strategies.

34. In short, in operationalizing the concept of policy space, UNCTAD should be able to benefit and draw lessons from its long engagement with UN Member States, especially developing countries, in order to identify the development policy choices and options that developing countries might have in the existing international economic system to promote their development objectives.

35. Indeed, UNCTAD, with its institutional and intellectual history, technical capacity, and policy research and analysis expertise, is the international organization that is best positioned to provide such intellectual policy research and analysis, as well as the consensus-building mechanism for generating common agreement on ensuring that the development of developing countries becomes the focus of all international initiatives (whether within or outside of the United Nations system).

36. Hence, UNCTAD should be at the forefront of the UN system in:

- identifying what policy flexibilities or options currently exist for developing countries in the context of their existing international

commitments, agreements or disciplines which they can use to promote and advance their national development objectives and priorities;

- identifying the actions that may be taken by UN Member States (both developed and developing), in the UN context or in the context of other international treaty instruments and institutions (such as in the WTO, the World Bank, the IMF, WIPO), so that developing countries may maximize the use of these flexibilities in order to better enable them to observe such international commitments and agreements and obtain developmental benefits from them.

37. In exercising its mandate to clarify and operationalise the concept of policy space, UNCTAD could, for example, come up with targeted policy studies to assess the policy flexibilities and options that developing countries may choose to exercise in the context of existing international agreements, commitments and disciplines.

38. This could include, e.g., policy studies on legal and implementation flexibilities that favour developing countries in the various WTO agreements; or the policy choices that may be provided for the beneficiary country in the context of IMF or World Bank loans, structural adjustment, or other development assistance facilities. UNCTAD may also want to think about coming up with analytical research to identify, and technical assistance packages to implement, concrete policies or policy-based actions that developing countries could take in order to implement any existing flexibility that they might have (but are not aware of or do not have the capacity to take advantage of).

IV. Conclusion – Recommendations on Operationalization of Policy Space in the UNCTAD XI MTR Context

39. The idea that countries should have the freedom and the flexibility to select the development policies that best fit their own national conditions, taking into account those international commitments and disciplines that they have already agreed to, is therefore deeply embedded in UNCTAD's institutional mandate. This idea, this concept, must therefore be made operational. This is neither new nor an addition to UNCTAD's existing mandates.

40. Taken all together, Paragraphs 8, 26, 27 and 30 of the UNCTAD XI Sao Paulo Consensus above clearly indicate that UNCTAD is mandated to undertake work with respect to clarifying and making operational the concept of policy space.

41. In practical terms, the UNCTAD XI Mid-Term Review process should result in a substantive outcome document that further strengthens and clarifies the currently existing mandate established in the Sao Paulo Consensus with respect to the concept of policy space.

42. Appropriate text should be developed and agreed to in the UNCTAD XI MTR process that would provide the UNCTAD Secretariat with clear guidelines on what to do in the next two years leading up to UNCTAD XII in order to clarify the concept of policy space and make recommendations on how such concept can be made operational both at the national and global policymaking levels.

43. In particular, UNCTAD should:

- (i) Deliver policy analysis and identify policy options at the global and national levels, especially with respect to those policies that would be favourable to the development of developing countries such as:
 - (a) appropriate industrial development and growth policies for developing countries, taking into account and reflective of their specific circumstances and national development priorities and objectives;
 - (b) policies to ensure that trade and financial liberalization are supportive of sustainable development;
 - (c) mechanisms for ensuring conceptual and operational coherence in global economic policymaking institutions in promoting and reflecting the development objectives of developing countries;
 - (d) policies to maximize and expand on existing flexibilities in trade and financial rules in order to promote and strengthen South-South cooperation and regional integration;
 - (e) policies relating to the role of transnational non-state economic actors in global economic policymaking;
- (ii) Analyze and clarify the concept of policy space for development, especially in the context of what policies would be required to eradicate poverty, promote development, and maximize the flexibilities that may exist in current international agreements, commitments and disciplines;
- (iii) Identify, clarify and explain the range or extent of policy options, choices or flexibilities in various international policy areas that developing countries currently have, and suggest ways in which such range or extent of options or choices can be operationally used by developing countries in order to promote their development objectives;
- (iv) Engage in collaborative work with the regional ECOSOC commissions, other international organizations, UN Member States, and other stakeholders such as civil society and the private sector, in order to identify and clarify the possible policy choices and options that developing countries may be able to use in promoting their development objectives at the national, regional and global level;

- (v) Provide analysis and recommendations for the operationalisation of this concept in the implementation processes of internationally-agreed development objectives as embodied in the UNFfD, WSSD, and Millennium Development Goals processes.

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South Centre Analysis

**“Operationalizing the Concept of Policy Space
in the UNCTAD XI Mid-Term Review Context”**

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