

A Study of “Common but Differentiated Responsibility” and Paris Agreement

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Abstract

The present article makes a study of the Paris agreement and the sound principle of common but differentiated responsibility and tries to provide a discussion that how the developing nation will be benefited from such principle. Paris agreement is different from any previous international documents on the goal of climate change including the main convention of 1992 in the name of United Nations framework Convention on climate change and subsequently 1997 Kyoto protocol. The present article analyses the situation of the countries and provides efficacy of the principle common but differentiated responsibility to meet with the goal of climate change.

Keywords: UNFCCC, sustainable development, precautionary principle, Paris agreement, Kyoto protocol, differentiated responsibility, self-differentiation

I. Introduction

The Paris agreement² got signed by 187 countries and came into effect from 4 November 2016.³ This Paris agreement is in continuation of the United Nations Framework Convention on Climate Change (UNFCCC) and will be working on focusing the issues connected with changing climate⁴ conditions.⁵ The purpose of

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² Jorge E. Vinales, *The Paris Agreement on Climate Change*, 59 GERMAN Y.B. INT'L L. 11 (2016).

³ Theodore Okonkwo, *Reshaping the Global Climate Change Regime through the Paris Agreement*, 6 Christ U. L.J. 1 (2017).

⁴ Tom Daschle, *Changing the Political Climate on Climate Change*, 9 GEO. J. INT'L AFF. 93 (2008).

⁵ *United Nations Framework Convention on Climate Change*, 22 ENVTL. POL'Y & L. 258 (1992). See also Noelle Higgins, *Changing Climate; Changing Life - Climate Change and Indigenous Intangible Cultural Heritage*, 11 Laws 1 (2022).

this agreement is to inform all the nation that the risk which is associated with the climate change and global warming⁶ in the 21st century and how to control the global warming⁷. Section 1 of the Article 2 of this agreement clearly states that there should be minimum revision of the rise of temperature.⁸ The agreement has another unique feature that it enables the state to be more fit for combating the climate change issues.⁹ The agreement had the proposal to provide proper financial support to combat this global warming¹⁰ issue, similarly, to improve the technology and develop the capacity building structure.¹¹

The Paris agreement makes such provisions by which the obligation will be binding in nature for proper enforcement.¹² The agreement more emphasis on the common but differentiated responsibility and capacity building.¹³ In the first part of this article introduction to the Paris agreement will be discussed. In the second part of the article there will be discussion on the common but differentiated responsibility. The present article will focus on the inception of the international climate framework principle and how it has been inserted in the international instruments The article will also focus on how the principles of may change has been inserted in the Paris agreement. The article is trying to focus on the principle of the Paris agreement and also the earlier documents on the same issue that which one is the best to be followed. Accordingly, the article asserts that the previous framework for combating climate change issue was not sufficient and needs property nothing so that countries complaints can be established well.

⁶ Arnold W. Reitze Jr., *Global Warming*, 31 ENVTL. L. REP. News & Analysis 10253 (2001).

⁷ William F. Pedersen, *Adapting Environmental Law to Global Warming Control*, 17 N.Y.U. ENVTL. L.J. 256 (2008).

⁸ Jennifer Huang, *Climate Justice: Climate Justice and the Paris Agreement*, 9 J. ANIMAL & ENVTL. L. 23 (2017).

⁹ Paul B. Lewis & Giovanni Coinu, *Climate Change, the Paris Agreement, and Subsidiarity*, 52 UIC L. REV. 257 (2019).

¹⁰ *United States Joins Consensus on Paris Climate Agreement*, 110 AM. J. INT'L L. 374 (2016).

¹¹ Neil Craik & William C. G. Burns, *Climate Engineering under the Paris Agreement*, 49 ENVTL. L. REP. News & Analysis 11113 (2019).

¹² Christina Voigt & Felipe Ferreira, *Differentiation in the Paris Agreement*, 6 CLIMATE L. 58 (2016).

¹³ Paul G. Harris, *Common But Differentiated Responsibility: The Kyoto Protocol and United States Policy*, 7 N.Y.U. ENVTL. L.J. 27 (1999).

II. Understanding the Paris Agreement

It is true that the nations are quite serious nowadays to combat the global warming because of climate change and therefore they have enacted national laws so address this crisis as per the UNFCCC.¹⁴ It seems Paris agreement comes in a difference folder than any of the previous international instruments dealing with and climate change issues. The agreement is not providing any stringent application of this provision rather flexible but there are provisions which are not taxable and accordingly the agreement provides a balance between the two. Therefore, the different countries established different strategies for combating climate change issues.¹⁵ The signatories to the Paris agreement made it very clear that they will implement the mandates through the national laws. The fundamental principles of the Paris agreement to be implemented by all the nations without the flexibility but other principles are to be followed as per the need of the respective nations so there is a difference from the Kyoto protocol, because the emission reduction was applicable only to develop nation.¹⁶

It is also true that the obligations mentioned under the agreement was running binding force because of superpower countries the obligations to meet with the climate change became flexible. The countries will be failing to meet with the obligation of the agreement no sanction or remedial measures under the agreement has been mentioned. It is important to mention here that there is a transparency mechanism mentioned under Articles 13 and 15 of the agreement that the compliance mechanism directed by the states will have to submit the progress report in consonance with global standard.¹⁷ The financially weak nation will be given support of the finance by the developed nations who are parties to the agreement.¹⁸ The global investment will be placed in the climate finance and being utilised for the reduction of greenhouse gas emissions in various countries.

¹⁴ Aruna B. Venkat, *Global Warming and Refugees of Climate Change*, 4 ENVTL. L. & PRAC. REV. 116 (2015).

¹⁵ Anatole Boute, *Combating Climate Change through Investment Arbitration*, 35 FORDHAM INT'L L.J. 613 (2012).

¹⁶ Matthew CM Hill, *Keeping Commitments: Examining the New Principles in the Paris Agreement*, 21 N.Z. J. ENVTL. L. 53 (2017).

¹⁷ Jorge E. Vinales, *See Supra Note 1*.

¹⁸ Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope*, 110 AM. J. INT'L L. 288 (2016).

The Paris the agreement works more on procedural part than that of substantive issues. The common but differentiated responsibility is one of the sound principles available under this Paris agreement.¹⁹ The article discusses on this principle in its next part.

III. A Study of the Principle Relating to “Common but Differentiated Responsibility”

The principle of differentiated responsibility is based on the principle of equity that the states will have common goal to reduce the greenhouse gas emission but the threshold of reducing the greenhouse gas will be depending on the capabilities of the respective states.²⁰ The second world conference on climate change in the year 1993 introduced this in 20 principle of common but differentiated responsibility and the same is also found under principle 7 of the Rio declaration of 1992. The same principle has found its place in many international instruments including under the world trade organisation.²¹

The 1992 United Nations framework Convention on climate change mentions the climate change and global warming as a common concern.²² With regard to earth and outer space the expression 'common concern' has been used heavily in environmental conservation policy.²³ Common heritage of the mankind and common concern, both are different. Common right over the property is the main objective of common heritage of the mankind, whereas common goal to meet with the target by all the nations is common concern.²⁴ Since climate change affects all the nations, therefore, the common concern demands cooperation among the

¹⁹ Temitope Tunbi Onifade, *Climate Justice under the Paris Agreement: Framework and Substance*, 2021 CCLR 233 (2021).

²⁰ Christopher D. Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT'L L. 276 (2004).

²¹ Anagha Sharankumar Limbale, *Study of Environmental Principle with Reference to Rio Declaration*, 2 INT'L J.L. MGMT. & HUMAN. 48 (2019).

²² Philippe Sands, *The United Nations Framework Convention on Climate Change*, 1 REV. EUR. COMP. & INT'L ENVTL. L. 270 (1992).

²³ Alan Boyle, *Climate Change, the Paris Agreement and Human Rights*, 67 INT'L & COMP. L.Q. 759 (2018).

²⁴ Michael W. Lodge, *The Common Heritage of Mankind*, 27 INT'L J. MARINE & Coastal L. 733 (2012).

states. Because of inequalities prevailing among the nations in terms of finance and resources, therefore, the new principle has been developed in the name of 'common but differentiated responsibility and respective abilities and capabilities'. The individual nation will have same obligation, but the implementation will depend upon their respective ability is the main concern of 'individual responsibility' and 'common concern'.²⁵

The article 3 of the United Nations framework Convention on climate change for the first time introduced the principle of differentiated responsibility.²⁶ Later on, the same principle was directed in the year 1997 in Kyoto protocol and in 2009 in Copenhagen Accord.²⁷ Generally, there will be seen obligation for all the signatory countries, this is the principle which is different from the same practice.

There reflects the same principle in other international instruments favouring deviation from the same obligation of the state.²⁸ The scholars are bit confused about the principle's application and its content, though the principle has found its place in many international instruments dealing with climate change.²⁹ Accordingly, the principle needs proper interpretation. It seems that the difference of understanding about this principle between developed and developing nation's mind set up. Thus, the meaning of differentiated responsibilities has been understood differently.³⁰

The past emissions report of the countries including history of industrialisation should be considered with regard to the imposing burden as stated by developing countries.³¹ Therefore, the Industrial Revolution faced by the developed nation are having more responsibilities under climate change because they have

²⁵ Susan S. Kuo & Benjamin Means, *Climate Change Compliance*, 107 IOWA L. REV. 2135 (2022).

²⁶ Daniel Bodansky, *See Supra Note 17*.

²⁷ *Copenhagen Accord*, 2009 ROMANIAN J. ENVTL. L. 116 (2009).

²⁸ Siddharth Singh, *Analyzing CBDR Principle under the Paris Agreement*, 12 GNLU J.L. DEV. & POL. 1 (2022).

²⁹ Neha Kurien, *Dealing with Climate Change Migration: Adaptation as the Potential Solution*, 4 ENV't L. & Soc'y J. 1 (2018).

³⁰ Rachel Boyte, *Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law*, 14 N.Z. J. ENVTL. L. 63 (2010).

³¹ Jodie Moffat, *Arranging Deckchairs on the Titanic: Climate Change, Greenhouse Gas Emissions and International Shipping*, 24 Austl. & N.Z. MAR. L.J. 104 (2010).

progressed at the cost of global environment.³² The United States have given the expression responsibility based on the ability of various countries. The principle of differentiated responsibilities is having economic understanding that is advanced by developed countries.³³ Accordingly, the ability of the nation on the industrialised policy will decide that what sort of obligation towards climate change the concerned nation should have. Therefore, the interpretation of the principle between the developed nation and developing nation morphs the basic understanding of the principle from one place to another. Many countries taking that the interpretation given by the developed country is more oriented towards achieving good result, but the Paris agreement worked on balancing the views from both the sides.³⁴

The different international instruments have given different interpretation and meaning of this principle and from different interpretation provided by different countries The Montréal protocol of 1987, for instance, has provided different for developed and developing nations.³⁵ A different annex has been prepared by the United Nations framework Convention on climate change based on the different obligation and capabilities of various nations.³⁶ At the same time the emission restriction has been provided differently to different countries listed in annex I and at the Kyoto protocol.³⁷ Regarding compliance timelines, enforcement and consequence of non-compliance there are differences between United Nations framework Convention on climate change and Kyoto protocol. This inequality in

³² Maxine Burkett, *The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era*, 2 CLIMATE L. 345 (2011).

³³ Maureen F. Irish, *Least Developed Countries, Climate Change and Trade*, 5 LAW & DEV. REV. 2 (2012).

³⁴ Cinnamon P. Carlane & J.D. Colavecchio, *Balancing Equity and Effectiveness: The Paris Agreement & the Future of International Climate Change Law*, 27 N.Y.U. ENVTL. L.J. 107 (2019).

³⁵ *Montreal Protocol on Substances That Deplete the Ozone Layer 1987*, 2014 GLOB. ENVTL. L. ANN. 102 (2014).

³⁶ Uma Outka, *The Obama Administration's Clean Air Act Legacy and the UNFCCC*, 48 Case W. Res. J. INT'L L. 109 (2016).

³⁷ Glenn Wiser & Donald Goldberg, *Hybrid Liability under Kyoto Protocol (continued)*, 1 INT'L & COMP. ENVTL. L. 10 (2000).

application by different countries has been found mainly because of no proper interpretation available in the relevant primary international legal instrument.³⁸

The Paris agreement is different in its working capabilities because of the fact that it can learn from the experience and mould the principle of differentiated responsibility.³⁹ The agreement moves out from the working pattern of Kyoto protocol and provides a comprehensive mechanism for its working pattern.⁴⁰ Self-differentiation⁴¹ is one of the important expressions, this can be found only under Paris agreement. This principle allows the nation to adopt its own policy how to reduce the greenhouse gas emission depending on its capabilities.⁴² Therefore, the agreement gives liberty to the countries to decide that how the obligation to fulfil and classification of different countries will be done. The principle of self-differentiation allows the countries to take steps in the entire field of climate change, technology transfer and enhancement of capabilities.⁴³ The principle of equality, sustainable development, et cetera have been widely accepted under the Paris agreement.⁴⁴

It is very innovative that the Paris agreement has conducted with his other principles of other relevant international environmental law documents. the principle of constructively provides objective for mediation, adaptation, finance, technology, capacity building and transparency making the agreement feasible for implementation.⁴⁵ The article discusses other relevant parts of the agreement in the next phase.

³⁸ Eva Miskolczi-Bodnar, *Requirements for the Successor to Kyoto - The Shortcomings of the Current Protocol*, 8 J. AGRIC. ENVTL. L. 53 (2013).

³⁹ Christina Voigt & Felipe Ferreira, *See Supra Note 11*.

⁴⁰ Edward A. Smeloff, *Global Warming: The Kyoto Protocol and beyond*, 28 ENVTL. POL'y & L. 63 (1998).

⁴¹ Meinhard Doelle, *The Paris Agreement: Historic Breakthrough or High Stakes Experiment*, 6 CLIMATE L. 1 (2016).

⁴² Daniel Bodansky, *See Supra Note 17*.

⁴³ Elizabeth Burleson, *Energy Policy, intellectual Property, and Technology Transfer to Address Climate Change*, 18 Transnat'l L. & CONTEMP. Probs. 69 (2009).

⁴⁴ Francesco Sindico, *Paris, Climate Change, and Sustainable Development*, 6 CLIMATE L. 130 (2016).

⁴⁵ Jobodwana Z. Ntozintle, *Africa, Global Warming and Climate Change Environmental Court*, 8 US-CHINA LAW REVIEW 217 (2011).

IV. Mitigation

The Paris agreement works on nationally determined contributions.⁴⁶ One nation with the help of self-differentiation to fix its own obligation and timeline than that of other state parties. The provision of mitigation do not allow the principle of self-differentiation to be followed by the state parties.⁴⁷ Under the Paris agreement the state parties are having obligation to report to the international platform about meeting with the duty of obligation.⁴⁸ The principles such as sustainable development, precautionary principle example of soft laws and accordingly, the Paris agreement considered has guideline rather binding in nature.⁴⁹ Though, the Paris agreement gives flexibility to meet with the differentiated responsibilities, hence, slight deviation from the original thinking.⁵⁰ The developing countries, for example, can inform about the reduction of greenhouse gas emission depending on the circumstances of the conservation. Which means, they are slowly the agreement they fall under the provisions of primary document of UNFCCC. The agreement can be implemented provided the self-differentiation is adopted by the countries.⁵¹ Therefore, the common ground of mitigation is that the greenhouse gas emission should be reduced but to what extent it should be reduced there is flexibility.

V. Monetary Support

The economic responsibility is also different in different countries, primarily between developed and developing nations. The Paris agreement makes a statement that financial support to the providing from the developed nation

⁴⁶ Athanasios P. Mihalakas & Emilee Hyde, *Implementation of Nationally Determined Contributions under the Paris Agreement - Comparing the Approach of China and the EU*, 6 Athens J.L. 407 (2020).

⁴⁷ Nilufer Oral, *Ocean Acidification: Falling between the Legal Cracks of UNCLOS and the UNFCCC*, 45 ECOLOGY L.Q. 9 (2018).

⁴⁸ Wang Ruibin, *Implementing the Paris Agreement: Achievements and Constraints*, 63 CHINA INT'L Stud. 83 (2017).

⁴⁹ Marie-Claire Cordonier Segger, *Advancing the Paris Agreement on Climate Change for Sustainable Development*, 5 CAMBRIDGE J. INT'L & COMP. L. 202 (2016).

⁵⁰ Duncan French, *Developing States and International Environmental Law: The Importance of Differentiated Responsibilities*, 49 INT'L & COMP. L.Q. 35 (2000).

⁵¹ Jennifer Huang, *See Supra Note 7*.

towards developing nation.⁵² It is presumed that for developing nation it is not possible to meet with the goals of climate change because the burden of financing the entire project is shouldered by few developed nations who are financially very strong.⁵³ There is a view that the developed nations have started the program for climate financing, where the international investment will be done and will meet with the goal of climate change.⁵⁴ It is because the developed nations are capable of financing the project to meet with the goal of climate change.⁵⁵ There is flexibility for the developing nation to contribute to the climate financing fund.⁵⁶ The Katowice conference of the United Nations provides further mechanism to provide financial support to developing countries. The funding available in the climate financing is basically to help the developing nations to meet with the goal of climate change.⁵⁷

VI. Transparency and Accountability

For climate change the transparency mechanism is the fundamental aspect to be followed.⁵⁸ This allows free flow of data and between the developed and developing nations and that encourages nations to fulfil the goals of climate change.⁵⁹ It is fixed that every after five years the nations will be the determining their own obligation that how far they have fulfil to reach the goal of climate

⁵² Paul B. Lewis & Giovanni Coinu, *See Supra Note 8*.

⁵³ Ambuj D. Sagar, Hongyan H. Oliver & Ananth P. Chikkatur, *Climate Change, Energy, and Developing Countries*, 7 VT. J. ENVTL. L. 71 (2006).

⁵⁴ Charles Di Leva, *Financing Climate Mitigation and Adaption*, 2017 CCLR 314 (2017).

⁵⁵ Britta Horstmann & Achala Chandani Abeysinghe, *The Adaptation Fund of the Kyoto Protocol: A Model for Financing Adaptation to Climate Change*, 2 CLIMATE L. 415 (2011).

⁵⁶ Ujjwal Kacker, *Technology Transfer and Financing: Issues for Long Term Climate Policy in Developing Countries*, 2009 CARBON & CLIMATE L. REV. 292 (2009).

⁵⁷ Christopher Campbell-Durufle, *Clouds Or Sunshine in Katowice: Transparency in the Paris Agreement Rulebook*, 2018 CCLR 209 (2018).

⁵⁸ Xueman Wang, *Towards a System of Compliance: Designing a Mechanism for the Climate Change Convention*, 7 REV. EUR. COMP. & INT'L ENVTL. L. 176 (1998).

⁵⁹ Ved P. Nanda, *Climate Change and Developing Countries: The International Law Perspective*, 16 ILSA J. INT'L & COMP. L. 539 (2010).

change.⁶⁰ The common but differentiated responsibility can best be understood through the transparency mechanism that how the developed and developing nations have taken steps to meet with the goal of climate change.⁶¹ The review of the data to be submitted in every interval is one of the necessary requirement under the transparency mechanism.⁶² The developing countries can mould their responsibility as per the mandates of the agreement and also as per the requirement of UNFCCC.⁶³

It is interesting to note here that under the Paris agreement there are no annexes which defines that who are the developed and developing nations.⁶⁴ This is surprising that those who drafted the Paris agreement did not pay any attention to category and classification of the developed and developing nations.⁶⁵

VII. Conclusion

The origin of Paris agreement is depending on the previous international instruments dealing goals of climate change. The researchers consider that the right time there was emergence of Paris agreement and that was the need of the hour to put things in flexible as well as in binding in nature. The very ecosystem is highly threatened now because of climate change issues and global warming. There is enhancement of the global mean temperature, and all the countries are facing hardship of this. The competition between and the nations are so high in terms of showing who is the progress one that such progress is being done at the cost of environmental resources. Therefore, the Paris agreement and in particular

⁶⁰ Michael A. Mehling, Gilbert E. Metcalf & Robert N. Stavins, *Linking Heterogeneous Climate Policies (Consistent with the Paris Agreement)*, 48 ENVTL. L. 647 (2018).

⁶¹ Stellina Jolly & Abhishek Trivedi, *Principle of CBDR-RC: Its Interpretation and Implementation through NDCS in the Context of Sustainable Development*, 11 Wash. J. ENV't L. & POL'y 309 (2021).

⁶² Benoit Mayer, *A Review of the International Law Commission's Guidelines on the Protection of the Atmosphere*, 20 MELB. J. INT'L L. 453 (2019).

⁶³ Margaretha Wewerinke-Singh & Curtis Doebbler, *The Paris Agreement: Some Critical Reflections on Process and Substance*, 39 U.N.S.W.L.J. 1486 (2016).

⁶⁴ Andras Huszar, *Preliminary Legal Issues in the Historic Paris Climate Agreement*, 2016 HUNGARIAN Y.B. INT'L L. & EUR. L. 195 (2016).

⁶⁵ Ian Fry, *The Paris Agreement: An Insider's Perspective - The Role of Small Island Developing States*, 46 ENVTL. POL'y & L. 105 (2016).

the principle of differentiated responsibilities with the flexible nature of the nation stands towards the goal of climate change will play vital role in achieving such goals. The Paris agreement also works on categorisation of countries based on their capabilities, which seems to be a bit complicated. When the principle of differentiated responsibility is not applicable in a uniform manner, the implementation in a uniform way is also difficult. The mitigation aspect as mentioned under Paris agreement and also regarding the emission reduction policy, there are unwillingness to implement such goals have been found because of flexible nature of its obligation. Now, it is applicable to both developed and developing nations to reduce the greenhouse gas emission to a considerable level to save the earth from the global mean temperature enhancement.