

American Position and Practice of the CBDR Principle

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doi:10.56397/JRSSH.2023.05.07

Abstract

The special status of the United States and the significant ambiguity of the common but differentiated principles are the important reasons for studying the position and practice of this principle. The United States was mixed on the documents produced at the 1992 Earth Summit, reflecting its sensitivity and caution to its statutory binding obligations. Because of its own interests and unilateralism, but the United States has blocked the application of the Kyoto Protocol through legislation. Due to the differences between its propositions and most countries, the United States intends to establish a self-centered climate governance system through domestic policies and international negotiations, which partly leads to the conflicts and stagnation of various parties and makes the principle compromise applicable to the Paris Agreement.

Keywords: common but differentiated responsibilities, United States, Conference of the Parties

1. Introduction

The earliest international law document to fully describe the principle of common but differentiated responsibilities (common but differentiated responsibility principle, hereinafter referred to as the CBDR principle) was the Rio Declaration on Environment and Development in 1992 (hereinafter referred to as the Rio Declaration). The concise document contains 27 principled provisions, including article 7, namely: "... Countries share different responsibilities for different factors for global environmental degradation. Developed countries recognize that they are responsible in the international search for sustainable development, given the pressure their societies exert on the global environment and the

technology and funding they possess." This principle was reflected in the Framework Convention on Climate Change and the Convention on Biological Diversity signed at the same period, and was continuously applied in subsequent environmental rules documents, becoming a basic principle of international environmental law.¹² It is generally believed that the principle of CBDR consists of two parts. On the one hand, "countries need to cooperate to protect the environment"; on the other hand, developing countries and developed countries assume different responsibilities based on different historical responsibilities and corresponding capabilities.

Despite the written statement of several principles submitted during the 1992 Earth

Summit, the United States signed the Rio Declaration, which shows that the United States agreed in principle with the Rio Declaration, which includes the principle of the CBDR. And however controversial the principle, the United States, at least superficially, consistently supports common but differentiated responsibilities.³ In the subsequent environmental governance negotiations, including the climate negotiations, the United States has been trying to instill its interpretation and understanding of the principle of CBDR into the international community, attracting opposition and criticism from developing countries and even some developed countries.

In view of the status of the United States as the largest emitter in the history, the United States and many countries on the principle of CBDR, in view of the differences in its influence on global environmental governance based on its own interests and understanding, and the single and special discussion on the principle of CBDR, this paper will study the principle of the negotiations and the actual practice of the United States.⁴

2. Research Based on the Earth Summit 1992 Document

During the Earth Summit in 1992, five main documents were adopted: the Rio Declaration, Agenda 21, the Convention on Biological Diversity, the Declaration of Principles on Forests, and the United Nations Framework Convention on Climate Change.

Among them, Agenda 21 and the Statement of Principles on forests are proposed international documents that do not have legally binding force, and the United States has voted to approve them. Agenda 21 has no direct provisions on the principle of CBDR, but it contains assistance to developing countries: "..... Providing substantial new and additional financial resources to developing countries, To pay for the increased costs of these countries to address global environmental issues and accelerate sustainable development"; The same is true of the Declaration of Principles on forests, In article 8 (a), it calls for: "All States, Especially in the developed countries, Positive and explicit action should be taken, Of reforestation, reforestation and conservation of existing forests, as appropriate", In the same article (c): "The implementation of policies and programmes for forest management, preservation and

continuous development, Especially in the developing countries, Should be supported by international financial and technical cooperation."

With regard to the Rio Declaration, the United States submitted a written statement at the meeting to clarify its position on some of these principles, which viewed principle VII as follows:

"The United States understands and accepts the Principle VII emphasis on the particular leadership of developed countries based on our industrial development, our experience in environmental protection policies and actions, and our wealth, technical expertise and capabilities."

"The United States does not accept any interpretation of Principle VII implying that the United States recognizes or accepts any international obligation or liability, or alleviates the liability of the developing country."⁵

This written statement of intention can be divided into two parts: on the one hand, whether the principle requires the corresponding responsibility of developed countries, the United States believes that Principle 7 should not be interpreted as the acceptance of such international obligations or responsibilities; on the other hand, whether the principle gives developing countries relief of responsibilities or obligations, the United States believes that Principle 7 should not be interpreted to reduce the reduction of environmental protection responsibilities of developing countries. In this way, the principle can be limited to cooperation between countries and should be conducted under "special leadership" in developed countries based on their capabilities.

The Framework Convention on Climate Change also contains the principle of CBDR, stating in the preamble, "... all States according to their common but differentiated responsibilities and their social and economic conditions..."; in the text, "All parties shall, on a fair basis and in accordance of their common but differentiated responsibilities and respective capabilities...". In the text, the principle is also embodied through rules: Article 3 states: "... according to their common but differentiated responsibilities and capabilities..."; articles 4 and 7 state specific rights and obligations. developed countries should take the lead in addressing climate

change and its adverse effects, and “the extent to which developing country Parties can effectively fulfill their commitments under this Convention will depend on the effective performance of developed country Parties to their commitments on capital and technology transfer under this Convention”.⁶ The United States has also ratified and acceded to the Convention without making a reserved statement.

The provisions of the Convention on Biological Diversity on the principle of common areas are mainly reflected in the provisions of Article 20 on financing, which clearly require the obligation of developed countries to provide funds to developing countries. However, compared with the framework convention on climate change, the United States to the convention on biological diversity is changeable: after the convention on biological diversity, the then President of the United States George W. Bush rejected the signing of the convention, until the following June, the newly elected President Bill Clinton announced the signing of the convention, and in the same year to the senate for advice and consent. The convention has not been ratified by the United States Senate for years, so it did not come into force for the United States.⁷

In explaining why he refused to sign the convention, Bush said the convention’s financial commitments were “too open,” and Bush administration officials said the treaty could require unlimited financial support from the United States and other rich countries, also fearing that it would be detrimental to US intellectual property protection.⁸ Although due to the influence of policy change, the senate also hold similar to the bush administration reason: In 1994 the senate to join the convention set the conditions of the act, the senate asked to join may not have a negative impact on the domestic finance, the restructuring of the international environmental institutions with financing mechanism established, intellectual property rights, and the United States to get its investment accordingly and full voting rights.⁹

In conclusion, the United States is open to the documents with the principle of CBDR but are not legally binding, and has specific obligations, and needs to explain or avoid harm. As for the Framework Convention on Climate Change, although the United States has ratified its accession, the Convention has no specific obligations for individual parties or an

implementation mechanism. In this sense, the Convention lacks the legal binding force.¹⁰ The real attitude was in the subsequent climate negotiations, starting with the operable Kyoto Protocol negotiations enacted in 1997.¹¹

3. Based on Climate Negotiation Studies Ranging from the Berlin Mandate to the Kyoto Protocol

The series of climate negotiations after 1992 were based on the Framework Convention on Climate Change. In accordance with the provisions of the Convention, the Conference of the Parties mainly played a role, and in addition, some meetings also played an auxiliary role. Meeting reached a number of agreements, they are mainly: the Kyoto protocol, the Marrakech agreement, the Bali action plan, the Copenhagen agreement, the Cancun agreement, “Durban package” (Durban Packages Outcome), “the Doha climate approach” (Doha Climate Gateway) package agreement, the Lima climate action appeal, the Paris climate agreement.¹² But the United States has a negative and capricious attitude towards most of the negotiations and their results.

As the chairman of the Berlin ad hoc group Raul Estrada-Oyuela said at the first group meeting, the 1995 Berlin mandate (Berlin Mandate) process aims to take appropriate action for the late 2000s, including strengthening the commitments of the parties listed in Annex I to the Framework Convention on Climate Change, while the guidelines of the next negotiation process include the principles of fairness and CBDR.¹³ Although the Berlin authorization was agreed by all countries, including the United States, the United States has never given up its responsibility on developing countries.

¹⁴In the G8 communique in June 1997, countries claimed: “The actions of developed countries alone are not enough to achieve this goal. Developing countries must also take measurable steps to recognize that their obligations will increase with economic growth.” By July 25, the United States senate formally passed the Byrd-Hagel resolution (Byrd-Hagel Resolution), the resolution requires the us government if the framework convention on climate change any protocol or other agreement signatory, thought annex a party to make new restrictions or commitment to reduce greenhouse gas emissions, only developing countries during the same performance of developing countries

parties to limit or reduce greenhouse gases to make new specific commitments. In addition, the resolution requires that such protocols or agreements not be signed if they cause serious damage to the U. S. economy.¹⁵ As a result, the United States has actually provided two barriers to its obligations under the co-zone principle: The developing countries, neither the Berlin Authority nor the negotiated Kyoto Protocol, will make the same commitment, and the degree of “serious damage” is not explained.¹⁶

The Kyoto Protocol sets a target for Annex I countries to reduce total greenhouse gas emissions by at least 5 percent from 1990 levels by 2012, without setting any targets for developing countries. It is worth noting that the United States has made a commitment of 7 percent.^{17,18} Still, the United States has not given up on its demands for developing countries. In a statement, Mrs. Clinton said: “There are still serious challenges ahead, especially in the areas of participation in developing countries. If we are to truly engage with this global environmental challenge, we will have to engage in a meaningful way.” After the Clinton administration signed the protocol, the Senate did not approve the Byrd-Hagel resolution. When the Bush administration took power, it immediately announced the signing of the Kyoto Protocol, which meant that the United States officially withdrew from the Kyoto Protocol. In a letter to several senators, Bush explained his reasons for the withdrawal: “I oppose the Kyoto Protocol because it eliminates 80 percent of the world’s compliance, including major population centers such as China and India, and will cause serious damage to the U. S. economy.”¹⁹

Whether intentionally or not, the application of the principle of the United States has formed a set of self-governing logic through the negotiation and subsequent implementation of the Kyoto Protocol. There are two extreme situations of consistent constitutional restriction between the Senate and the ruling president. This has greatly affected the United States’ accession and implementation of the international environmental treaties. Nevertheless, the United States adheres to the self-interest and equivalence of the principle of CBDR.

4. Based on Climate Negotiations from the Kyoto Protocol to the Paris Agreement

Despite constant policy changes, the United States has taken an active part in successive meetings of the Parties, which have almost only adopted a number of decisions that lack of substance.

But it is worth noting that the United States put forward to avoid the principle of initiative, such as in the sixth meeting of the parties, the United States negotiators advocated as market platform of flexible mechanism and carbon sink, give parties trade emissions, allow enterprises trading market share or investment overseas to reduce the cost, so as to achieve energy conservation and emissions reduction goals.²⁰ To some extent, this initiative transforms the marketization and liberalization of the strong emission reduction and aid obligations, but these rules are actually similar to the existing rules and policy tools, which can see that the United States has established its own climate governance system. This attitude has gradually emerged during the George W. Bush and Obama administrations. After withdrawing from the Kyoto Protocol, the Bush administration proposed the so-called new initiative to combat global climate change, which includes the “Clean Sky” program and the “Global Climate Change” program, which plans to reduce some polluting gases, reduce the intensity of greenhouse gas emissions and increase related funding.²¹ During the Obama administration, the Clean Energy Act, which also set specific targets for greenhouse gas emission reduction, and was tied to greenhouse gas powers, still contains the idea that the United States requires equal obligations to reduce emissions.²²

Although the United States has become more positive about global climate governance through the Bush and Obama administrations, its domestic policies remain in line with its international views. The Kyoto protocol during the expiration of the performance of the Copenhagen climate conference, Cancun climate conference and Durban climate conference, the United States hopes that developing countries, especially the carbon power such as China, India can set specific targets, and the idea presents the trend of enlargement, many developed countries have the same or similar and the United States, even through hard negotiations, commitment to the second phase of the number of countries, and both commitment scope also reduced.²³ Although the United States to establish its own rules system is not completely formed, but there

is no doubt that the American attitude affected many countries, the situation needs to reverse, it is important to “in 2015 concluded a applicable to all the convention party legal documents, as after 2020 the parties to strengthen convention implementation, monitoring of greenhouse gas emissions and the basis of climate change”.²⁴ In this situation, the Paris Agreement was passed at the end of 2015.

The Paris agreement in the regulations become a “soft” with advocacy nature, instead of the parties, especially the developed countries before compulsory obligations, and developing countries are “encouraged to the whole economic emissions or limit target”, which makes the treaty through resistance, only on April 22, 2016, 171 countries signed the treaty, the United States. However, during the Trump administration, he once again withdrew from the Paris Agreement. In a dramatic way, the new Biden administration officially rejoined the Paris Agreement just three months after the US officially withdrew from the agreement. The complicated and tortuous process of withdrawal shows the impact of the US government transition and the game between the two political parties on the US climate policy. It is worth noting that the agreement has not been gradually abandoned by the United States after a single withdrawal. On the one hand, the demands of the Paris agreement itself; on the other hand, it reflects the increasing instability of American policy. In any case, the CBDR principle is in less importance to the United States.

5. Brief Summary

Based on the study from several international documents in 1992 to the Paris Agreement in 2016, the United States supports the principle of CBDR, but always adheres to its own interpretation, excludes its own obligations, especially specific obligations, pays attention to the damage to its own interests, and requires developing countries to bear a considerable degree of responsibility. In practice, the United States has an ambiguous attitude towards international legal documents, changing with the change of government, and restricting them through legislation and other means. In specific negotiations, the United States intends to expand its understanding into international consensus, and when contrary to most countries, it intends to establish a self-centered environmental governance system. The position

and practice of the United States on the principle of CBDR roughly reflect the differences and even conflicts between developing countries and developed countries on this principle. However, due to the particularity of the United States, it can constitute a major impact on international environmental governance. How to weigh and compromise in the subsequent negotiations on the implementation of the Paris Agreement is still a problem that the principle of CBDR has to face.

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¹ See Pierre Marie Dup, Jorge E. Venuales, *International Environmental Law*, China Social Sciences Press, p. 97.

² See same as 1.

³ See also the Harris P G. (1999). Common but differentiated responsibility: The Kyoto protocol and United States policy. *NYU Env'tl. LJ*, 34-35.

⁴ The United States here refers to the American authorities, mainly the American government and the American legislature in the House of Representatives.

⁵ See also the A / CONF.151/26(Vol. IV), 17-18.

⁶ See Li Yangyong. (2007). On the Principle of Common but Differential Responsibility, *Journal of Wuhan University (Philosophy and Social Sciences Edition)*, (4), pp. 550-551.

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- ⁹ See S.Res.239 (PCS) - Expressing the sense of the Senate regarding conditions for continued United States participation under the Convention on Biological Diversity.
- ¹⁰ See Wikipedia, login address: <https://zh.wikipedia.Og/wiki/%E8%81%94%E5%90%88%E5%9B%BD%E6%B0%94%E5%80%99%E5%8F%98%E5%8C%96%E6%A1%86%E6%9E%B6%E5%85%A%AC%E7%BA%A6>:27 September 2022.
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- ¹² See statistics see for above.
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- ²³ The United States, Canada, New Zealand, Japan and Russia all said they would not participate in the second phase of the emissions reduction.
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