
REGIONAL FOCUS & CONTROVERSIES

Towards a New Global Agreement under the Doha Climate Gateway: A Chinese Way

Hui Zhang*

The Doha Climate Gateway launched the second commitment period of the Kyoto Protocol and restated the vision of a new global agreement binding all countries. To reach the goal of the new agreement and further to save the Earth, the principles regarding CBDR of UNFCCC and the Kyoto Protocol may need a reflection and re-interpretation. The common responsibility would be emphasized more than before, and the differentiated responsibility might improve the feasibility to be operated considering the principles of equity and respective capabilities. In climate change conferences, China has shown its flexibility on the issue of a new agreement. As a developing responsible power, China should contribute to addressing climate change upon the call of common responsibility, but it also needs an appropriate differentiated treatment according to its capability.

Keywords

New Global Agreement, Doha Climate Gateway, CBDR principle, Common Responsibility, Differentiated Responsibility, Chinese Way

* Professor of law at Wuhan University School of Law and Institute of International Law, P.R.C. LL.B., LL.M., LL.D. (Wuhan), Diploma (Paris 1). ORCID: <https://orcid.org/0000-0001-6238-6672>. This study was supported by China National Social Sciences Foundation (Project No. 11AZD105) and the Key Research Institutes Project of China Ministry of Education (Project No. 2009JJD820005). The author may be contacted at: fxzyh@whu.edu.cn / Address: Luojiashan, Wuchang District, Wuhan, Hubei Province, 430072, China.

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1. Introduction

The current climate changes may be the most serious environment crisis that Earth has experienced in the modern times. “It is extremely likely that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in greenhouse gas (“GHG”) concentrations and other anthropogenic forcing together.”¹ Reduction of GHG emissions would be thus one of the direct ways to mitigate the climate change. Recently, the international community has achieved some legal progresses regarding this issue through, *e.g.* the United Nations Framework Convention on Climate Change of 1992 (“UNFCCC”)² and the Kyoto Protocol of 1997.³ UNFCCC provides:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.⁴

According to the principle of “common but differentiated responsibilities” (hereinafter CBDR Principle),⁵ the developed countries should take the lead in combating climate change, provide financial resources, and promote the transfer of technologies to developing countries in their implementation of UNFCCC.⁶

The main ideas of UNFCCC have been enforced by the Kyoto Protocol, which provide concrete obligations in reduction of GHG emissions with the developed countries.⁷ Pursuant to the Kyoto Protocol, the developed countries shall ensure that their emissions of GHG do not exceed their assigned amounts; they should reduce their overall emissions by at least 5 percent below 1990 levels in the commitment

¹ IPCC, 2013: *Summary for Policymakers*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, at 17, available at <http://www.ipcc.ch/report/ar5/wg1> (last visited on Sept. 5, 2014).

² United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107.

³ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, reprinted in 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol].

⁴ UNFCCC art. 3(1).

⁵ The CBDR Principle was formulated as Principle 7 in Rio Declaration on Environment and Development, see Report of the United Nations on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, Annex I, U.N. Doc. A/CONF.151/26 (vol. I) (Aug. 12, 1992).

⁶ UNFCCC art. 4(3), (4) & (5).

⁷ Kyoto Protocol art. 3. (The US did not accept the Protocol).

period from 2008 to 2012.⁸

The first commitment period under the Kyoto Protocol expired at the end of 2012.⁹ Currently, it is the only binding agreement concerning the mandatory reduction of GHG emissions. Without a new commitment period under the Kyoto Protocol system, the world could fall back into the age of free emissions. Fortunately, it was extended up to 2020. However, it is not possible to guarantee the future of the post Kyoto Protocol system as of today.

The primary purpose of this research is to search for an appropriate solution to such unthinkable regression in the course of human environmental protection with a Chinese lawyer's viewpoint. This paper is composed of seven parts including Introduction and Conclusion. Part two will discuss the Doha Climate Change Initiatives. Part three will look into new global agreement for the post Kyoto Protocol system. Part four will tackle the Chinese stance on the new binding agreement. Part five will interpret the UNFCCC principles from a Chinese perspective. Part six will suggest the Chinese responses to the Doha Climate Gateway.

2. The Doha Climate Change Initiatives

The Doha Climate Change Conference (hereinafter COP 18/CMP8), held in Doha, Qatar from November 26 to December 7 of 2012, made a package deal to achieve greater ambition and action, called "The Doha Climate Gateway."¹⁰ The main outcomes are as follows.

A. Amendment of the Kyoto Protocol

The Kyoto Protocol was amended so that it resumed as of January 1, 2013. The Parties decided that the length of the second commitment period would be eight years (2013-2020).¹¹ As a result, the Protocol's important legal and policy models were preserved; it was also underlined that the developed countries should

⁸ *Id.* art. 3(1).

⁹ *Id.* art. 3(1) & (7).

¹⁰ UNFCCC, Doha Climate Gateway, available at http://unfccc.int/key_steps/doha_climate_gateway/items/7389.php (last visited on Sept. 29, 2014).

¹¹ UNFCCC, Doha Amendment to the Kyoto Protocol art. 1, available at http://unfccc.int/files/kyoto_protocol/application/pdf/kp_doha_amendment_english.pdf (last visited on Sept. 5, 2014).

lead a mandated action to cut GHG emissions.¹² The second commitment period would guarantee that the international GHG reducing process would continue smoothly. This result avoided the collapse of global carbon market under the Clean Development Mechanism (“CDM”).¹³ The Parties taking on further commitments under the Kyoto Protocol agreed to review their emission reduction commitments by 2014 at the latest, with a view to increasing their respective levels of ambition.¹⁴

B. Timetable for Climate Change Agreement

The Parties agreed to accelerate work towards a universal climate change agreement covering all countries. If adopted by 2015 and entered into force in 2020, this agreement would find ways to enhancing the GHG emission reduction efforts so that the world could stay below the agreed maximum 2 degrees Celsius temperature rise.¹⁵

C. Completion of New Infrastructure

A new infrastructure was introduced to channel technology and finance to the developing countries. The Parties agreed to set up the Green Climate Fund (“GCF”) in Songdo City, Korea in 2013 and adopted the work plan of the Standing Committee on Finance.¹⁶ They also confirmed hosting the Climate Technology Center (“CTC”) and constituting the CTC advisory board. CTC, along with its associated Network, is the implementing body of the UNFCCC Technology Mechanism.¹⁷

D. Long-term Climate Finance

The developed countries are committed to mobilize USD 100 billion, both for adaptation and mitigation by 2020.¹⁸ The Doha Climate Gateway also encourages developed countries to raise financial aid in 2013-2015, at least to the average annual

¹² *Id.*

¹³ Jialin Liang, *The Kyoto Protocol Was Saved in the Last Minute* [京都议定书最后一刻得救], XINHUA NEWS <available only in Chinese>, Dec. 10, 2012, available at http://news.xinhuanet.com/fortune/2012-12/10/c_124072330.htm (last visited on Sept. 5, 2014).

¹⁴ UNFCCC, Report of the Conference of the Parties on its eighteenth session, Nov. 26 – Dec. 8, 2012, FCCC/CP/2012/8/Add.1, (Feb. 28, 2013) at 4-5, available at <http://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf> (last visited on Sept. 29, 2014).

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 28.

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 13.

level; they provided funds during the 2010-2012 fast-start finance period.¹⁹ Having problem understanding this part, so is the author saying developed countries to continue provide funding like they did in 2010-2012?

E. Assessment

Indeed, the Doha Conference seemed to achieve much in many areas. However, it did not produce any substantial outcomes. Due to the global economic crisis looming in the background and the retrogressive positions and attitude of developed countries since the Copenhagen Conference,²⁰ no major breakthrough was expected at the Doha Conference for Chinese scholars, either.²¹

The Chinese government evaluated the results of Doha Conference *neutrally*, or to some extent, positively. [Emphasis added] Before going to Doha, the head of Chinese delegation, also the deputy head of the National Development and Reform Commission of China (“NDRC”) in charge of climate change issues. Xiw Zhenhua Xie stated that the most important outcome of the Doha Climate Change Conference should be making definite arrangements for the implementation and enforcement of the second commitment period of the Kyoto Protocol.²² After the conference. Xie told that: “The Doha conference has met Chinese delegate’s expectations, and we are satisfied with the outcome. But there are disappointing aspects...”²³ In the other side, however, many Chinese NGOs and scholars evaluated the Doha Conference very *negatively*. [Emphasis added] Changhua Wu, the president of Climate Change Organization China Division, said that the international regime was still alive due to the start of the second commitment period, but it was barely surviving on life support.²⁴ Another fellow, Fuqiang Yang also pointed out that because no high

¹⁹ *Id.*

²⁰ UNFCCC, Copenhagen Climate Change Conference – December 2009, available at http://unfccc.int/meetings/copenhagen_dec_2009/meeting/6295.php (last visited on Sept. 29, 2014).

²¹ Peijun Gao & Fangni Huang, *The Doha Climate Conference: Negotiation in Embarrassment* [多哈气候大会: 越谈越尴尬] <available only in Chinese>, ELITE REFERENCE [青年参考], Dec. 6, 2012, available at http://qncck.cyol.com/html/2012-12/05/nw.D110000qncck_20121205_1-06.htm (last visited on Sept. 26, 2014). See also Zhihui Li et al., *The Doha Climate Conference: Negotiation Will Be in Extreme Difficulty* [多哈气候变化会议 谈判将极为艰难] <available only in Chinese>, ZHENGZHOU DAILY [郑州日报] (2012), available at http://zzrb.zynews.com/html/2012-11/27/content_423006.htm (last visited on Sept. 26, 2014).

²² Danlu Tang, *China expects Doha climate conference to produce “balanced” result*, XINHUA NEWS, Nov. 21, 2012, available at http://news.xinhuanet.com/english/china/2012-11/21/c_131989949.htm (last visited on Oct. 23, 2014).

²³ Lan Yu & Rui Zhou, *Doha Conference Postponed 24 Hours, China Satisfied with Its Outcomes* [多哈会议延期24小时闭幕 中方对结果感到满意] <available only in Chinese>, CHINA NEWS NET, Dec. 9, 2012, available at <http://finance.chinanews.com/ny/2012/12-09/4393382.shtml> (last visited on Oct. 23, 2014).

²⁴ Yanyan Xu, *Doha Conference Concluded, Kyoto Protocol a Living Death* [多哈大会落幕 (京都议定书)虽生犹死] <available only in Chinese>, FIRST FINANCIAL DAILY [第一财经日报], Dec. 10, 2012, available at <http://www.yicai.com/>

target of reduction was established in the second commitment period, the Kyoto Protocol was dead as a door nail.²⁵ “Gone to the death” is grammatically correct, but the phrase does not really roll off the tongue.

The author would argue that the most meaningful results of the Doha Conference are (1) to reaffirm the ambition of a new global binding agreement and (2) to launch the second commitment period for the transition before the coming of new agreement. The CBDR principle is a core policy to allocate the responsibility of reducing emissions. Considering the difficult position of the Kyoto Protocol system and the plan of a new global agreement, however, does it imply that CBDR and other principles of UNFCCC are faced with re-interpretation?

3. The Vision for the New Global Agreement

The US was reluctant to be bound by the international mandatory system of emission reduction. In March 2001, the Bush Administration finally announced that it would not implement the Kyoto Protocol; President Bush claimed that ratifying the treaty would create economic setbacks in the United States and does not put enough pressure to limit emissions from developing nations.²⁶ The US was the only developed country to reject the Kyoto Protocol.

In fact, the concept of a new global agreement appeared for the first time in the Durban Conference instruments. The Parties “decides to launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties”²⁷ which would be adopted in the session of 2015 and come into force from 2020. The Doha Conference restated the plan of the new global agreement with a concrete working schedule and key points to reach the goal.²⁸

news/2012/12/2318911.html (last visited on Oct. 23, 2014).

²⁵ Fuqiang Yang, *Confusion of the Second Commitment Period of Kyoto Protocol* [《京都议定书》第二承诺期的迷惘] <available only in Chinese>, Dec. 2, 2012, available at <http://green.sohu.com/20121202/n359254267.shtml> (last visited on Oct. 23, 2014).

²⁶ See Q & A: The Kyoto Protocol, Feb. 16, 2005, available at <http://news.bbc.co.uk/2/hi/science/nature/4269921.stm>; L. West, What Is the Kyoto Protocol?, available at <http://environment.about.com/od/kyotoprotocol/i/kyotoprotocol.htm> (all last visited on Sept. 8, 2014).

²⁷ UNFCCC, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, FCCC/CP/2011/9/Add.1, (Mar. 12, 2012) at 2, available at <http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf> (last visited on Oct. 23, 2014).

²⁸ *Supra* note 14.

To some extent, the new global agreement would be a victory for developed countries. Under the Kyoto Protocol, only the developed countries should undertake the obligation of qualified emissions reduction based on their historical responsibility. The developing countries could join here voluntarily. Before the Copenhagen Conference, *e.g.*, China announced a target of cutting carbon dioxide emissions per unit of GDP by 40 to 45 percent from the 2005 level by 2020.²⁹ In the last decade, however, the CO₂ emissions from some important developing countries such as China and India, increased very rapidly beyond the prediction of the Kyoto Protocol's drafters. The annual report of the Netherland Environmental Assessment Agency pointed out that in 2006 China became the biggest emitter of CO₂ in the world;³⁰ in 2012 China took a share of 29 percent, compared with the 16 percent for the US, 11 percent for the EU, and 6 percent for India.³¹ Under the new circumstances, the major developing emitters were given heavy pressure from the developed countries on the issue of responsibility to emission reduction. In the Durban Conference, Runge-Metzger, chief negotiator of the EU, said that the difference of responsibility to reduce emissions between the developed and the developing countries was unable to accurately reflect the current economic power of countries, and a more vigorous regime to share the responsibility should be taken.³² The US even claimed that it would not consider committing to reduce emissions until major developing countries such as China and India do.³³

As the largest emitter in the world suffering from the environmental damage caused by the high energy consumption and pollution industries, China is under immense pressure to shift its current economic growth model into rather environment friendly one. However, China must strike a right balance between reducing its GHG emission and developing her economy at a relatively high rate simultaneously.

Although China, always sticking to the CBDR Principle, opposes to the binding

²⁹ See Premier Wen Defends China's Development Rights, XINHUA NEWS, Dec. 27, 2009, available at http://news.xinhuanet.com/english/2009-12/27/content_12711466.htm (last visited on Oct. 23, 2014).

³⁰ The annual report of the Netherland Environmental Assessment Agency pointed out that in 2006 China became the biggest emitter of CO₂ in the world. See *Experts Contest CO₂ Emissions Report*, available at <http://www.china.org.cn/english/environment/214726.htm> (last visited on Oct. 25, 2014).

³¹ See China produces as much CO₂ per person as Europe, available at <http://phys.org/news/2012-07-china-co2-person-europe.html> (last visited on Oct. 25, 2014).

³² China Climate Change Info-Net, *EU and U.S. Accuse China of Impeding UN Climate Change Negotiation*, available at <http://www.ccchina.gov.cn/Detail.aspx?newsId=27133&TId=58> (last visited on Oct. 23, 2014).

³³ Aislinn Laing & L. Gray, *Durban Climate Change Conference: US refusal to negotiate carbon emissions cuts risks derailing summit*, THE TELEGRAPH, Nov. 30, 2011, available at <http://www.telegraph.co.uk/earth/environment/climatechange/8926101/Durban-Climate-Change-Conference-US-refusal-to-negotiate-carbon-emissions-cuts-risks-derailing-summit.html> (last visited on Oct. 23, 2014).

quantified reduction target for the developing countries, she has actually shown a flexible position on this issue at the Durban and the Doha Conferences. The Director of Research Center of Energy Environment and Climate Change NDRC, Huaqing Xu said in Durban: "It is reasonable to establish a reduction target after 2020 for China."³⁴ China agreed to undertake obligation of quantified reduction; it was the first compromise made by a major developing country. This concession would help pave the way toward a new binding global agreement pursuant to UNFCCC. It is very vital for the developing countries.

4. Chinese Stance on the New Binding Global Agreement

A. Environmental Deterioration

The rapid economic growth over the past 30 years brought China not only prosperity, but also serious pollution. As to air pollution, the fog and haze have plagued central and eastern China in recent years. According to an annual report issued by the Ministry of Environmental Protection, the air quality monitoring in 74 major cities showed that only three cities were up to the standard in 2013.³⁵ The current situation is so serious for the Chinese policymakers to realize that the social and economic developing model should be urgently re-designed for more energy saving and emission reduction.³⁶ The Report to the Eighteenth National Congress of the Communist Party of China (November 8, 2012) has a separate chapter to illustrate 'ecological progress,' which emphasizes that China should strive for green, circular and low-carbon development.³⁷ The Chinese society widely acknowledges that emission reduction is necessary to mitigate environmental pollution.

³⁴ China Climate Change Info-Net, *Winner and Loser of UN Climate Change Negotiation* [联合国气候变化大会谈判中的赢家 and 输家] <available only in Chinese>, available at <http://www.ccchina.gov.cn/Detail.aspx?newsId=30083&TId=88> (last visited on Oct. 23, 2014).

³⁵ Ministry of Environmental Protection, *Report of Environmental Situation of China 2013* [2013年中国环境状况公报] <available only in Chinese>, at 20, available at <http://www.mep.gov.cn/gkml/hbb/qt/201407/W020140707500480541425.pdf> (last visited on Oct. 23, 2014).

³⁶ National Development and Reform Commission, *China's National Climate Change Program*, June 2007, available at <http://en.ccchina.gov.cn/Detail.aspx?newsId=38741&TId=107> (last visited on Oct. 30, 2014).

³⁷ Hu Jintao, *Firmly March on the Path of Socialism with Chinese Characteristics and Strive to Complete the Building of a Moderately Prosperous Society in All Respects: Report to the Eighteenth National Congress of the Communist Party of China* [坚定不移沿着中国特色社会主义道路前进 为全面建成小康社会而奋斗 - 在中国共产党第十八次全国代表大会上的报告] <available only in Chinese>, XINHUA NEWS, available at http://www.xj.xinhuanet.com/2012-11/19/c_113722546.htm (last visited on Sept. 8, 2014).

B. Moral Requirement as a Responsible Power

Since late 1990s, the so-called ‘China threat’ has been popularly spreading among the western intellectuals.³⁸ As a response, China began to construct its own identity as a responsible power.³⁹ In environmental protection, China advocates the CBDR principle. However, she held sometimes a different position regarding climate change from the Alliance of Small Island States (“AOSIS”). The AOSIS strongly supports a new agreement binding all countries because they are urgently in need of vigorous reduction act to save their nations from being submerged by rising sea level.⁴⁰ Due to the huge contribution of GHG emissions, China is still under the pressure to be bound by quantified reduction obligation. If China could not respond to the requirements from other developing countries, it would definitely lose the moral advantage as a responsible power.

C. Strengthening the Economic Influence

Differential treatment is not a permanent exception, but a temporary remedial measure.⁴¹ Nowadays, China’s economy has grown to become the second largest in the world, which is enough to contribute in addressing climate change. Jufeng Li, the Director of the National Center for Strategy Research and International Cooperation on Climate Change, pointed out that China should assume appropriate obligations; she will inevitably graduate from developing countries on the issue of climate change in the near future.⁴² Name order should be consistent.

D. Constructing Domestic Carbon Market

Although exempted from the mandatory reduction under the Kyoto Protocol, as ex-Chinese premier Wen Jiabao declared at the Copenhagen Conference that China set

³⁸ For details, see, e.g., B. GERTZ, *THE CHINA THREAT: HOW THE PEOPLE’S REPUBLIC TARGETS AMERICA* (2000).

³⁹ For details on the Chinese response, see Dong Chen, *Who Threatens Whom: The Chinese Threat and the Bush Doctrine*, 7 J. EAST ASIA & INT’L L. 31-49 (2014).

⁴⁰ For details, see AOSIS, *Climate Change*, available at <http://aosis.org/documents/climate-change> (last visited on Oct. 23, 2014).

⁴¹ P. Cullet, *Differential Treatment in International Environmental Law* 27 (JSD Dissertation, Stanford University, 1998). See also P. Cullet, *Differential Treatment in International Environmental Law: Towards a New Paradigm of Inter-State Relations*, 10 EUR. J. INT’L L. 549-582 (1999).

⁴² Jinguang Long, *Countries Participating the Second Commitment Period and Their Targets of Emission Reduction* [参与第二承诺期的国家及各自减排目标争论焦点] <available only in Chinese>, NANFANG DAILY [南方日报], Nov. 26, 2012, at A08.

up a long-term program to reduce emissions on the voluntary basis.⁴³ In order to reduce the emission, China invested over RMB 1000 billion during the Eleventh Five-Year Plan period (2006 - 2010); and over RMB 2000 billion during the Twelfth Five-Year Plan period (2011 - 2015). Because of such huge amount of funding required, the Chinese government has realized that the carbon trading market should be introduced to reach the goal more efficiently.⁴⁴ Zhenhua Xie pointed out that a high and strict reduction target is the ground of constructing carbon market.⁴⁵

5. The Chinese Interpretations of the UNFCCC Principles

A. *The Equity*

The 'equity' is one of the fundamental values pursued by the law.⁴⁶ Because this is such a broad and vague concept, however, its precise meaning can be hardly defined. Generally, the equity may be classified into two categories such as formal and substantive one.⁴⁷ In the context of climate change, the 'formal' equity requires all countries to take a part in mandatory emission reduction regardless of their individual and different circumstances. Obviously, the formal aspect is not the focus of the equity principle in UNFCCC, because the sentence "common but differentiated responsibilities and respective capabilities" may indicate the substantive aspect of the equity.

The equity principle is the basis of CBDR and respective capabilities principles.⁴⁸ When trying to apply CBDR and respective capabilities principles in negotiations

⁴³ *Supra* note 29. See also *Chinese premier stresses cooperation against climate change*, XINHUA NEWS, Dec. 19, 2009, available at http://news.xinhuanet.com/english/2009-12/19/content_12672098.htm (last visited on Oct. 23, 2014).

⁴⁴ *Xie Zhenhua Elaborates Chinese Carbon Market, Four Aspects Need Attentions* [解振华阐述中国碳市场现状 需要注意四方面问题] <available only in Chinese>, Dec. 6, 2012, available at <http://www.ditan360.com/Zhuanti/Temptanshui/Info-119968-1224.html> (last visited on Oct. 23, 2014).

⁴⁵ *See Discussions on New Market Mechanism of Greenhouse Gas Emission Reduction* [有关温室气体减排新市场机制的讨论] <available only in Chinese>, Dec. 7, 2012, available at <http://green.sohu.com/20121207/n359771796.shtml> (last visited on Oct. 23, 2014).

⁴⁶ A. ZIMMERMANN ET AL. EDS, *THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY* 723-724 (2006).

⁴⁷ See PENGCHENG XIE, *ON THE FUNDAMENTAL LEGAL VALUES* [基本法律价值] <available only in Chinese> 91-94 (2000); WENXIAN ZHANG et. al., *JURISPRUDENCE* [法理学] <available only in Chinese> 368-379 (2007); YONGKUN ZHOU, *JURISPRUDENCE* [法理学] <available only in Chinese> 188-190 (2010).

⁴⁸ W. Scholtz, *Equity as the basis for a future international climate change agreement: between pragmatic panacea and idealistic impediment. The Optimization of the CBDR principle via realism*, 42 *COMP. & INT'L L. J. S. AFR.* 171 (2009). See also S. MCLNERNEY-LANKFORD et al., *HUMAN RIGHTS AND CLIMATE CHANGE* 49 (2011).

and rules-making, the notion of equity is indispensable to justify all kinds of arguments, proposals and plans from different perspectives. There are two views of equity: inter-generation equity⁴⁹ and intra-generation equity. The former emphasizes the responsibility of all countries for the future generations, while the latter focuses on the equity of use of natural sources and clean environment for all peoples in contemporary era.⁵⁰ Also, some scholars brought forward the notion of inter-person equity against the inter-State equity which is unfavorable for the developing countries with large population.⁵¹ They further argued that the emission based on the necessary living needs is one of basic human rights.⁵²

Despite the crucial role in application of CBDR and respective capabilities principles, the equity principle is not a paramount and direct rule in addressing climate change. As the notion of equity has found articulation in various areas of law and is expressed in multiple concepts,⁵³ the content of equity is too complex and uncertain. It can be, however, an important element in assessment and distribution of responsibility among countries.⁵⁴

Although the substantive equity is highlighted in climate change researches, the slow progress of climate change addressing actions has prompted many to reconsider their positions. Some Chinese scholars began to discuss the relation between 'equity' and 'efficiency.' They pointed out that the issue of efficiency should be given more attention in the course of achieving global reduction target and the international community has to coordinate equity and efficiency well.⁵⁵ The application of the equity principle has some limitations; it is not reasonable to insist the substantive equity only.

⁴⁹ E. Weiss, *In Fairness to Future Generations and Sustainable Development*, 8 AM. U. INT'L L. REV. 20-23 (1992). See also E. AGUIS, et al., *FUTURE GENERATION AND INTERNATIONAL LAW* (2009).

⁵⁰ XI WANG, *INTERNATIONAL ENVIRONMENT LAW* [国际环境法] <available only in Chinese> 102 & 104 (2005).

⁵¹ Ying Chen & Jiahua Pan, *Climate Change and Equity* [气候变化与公平问题] <available only in Chinese>, *SCIENCE & TECHNOLOGY DAILY* [科技日报], Apr. 23, 2008, at 1. See also Guiying Rong, *Reconstruction and Development of the CBDR Principle in International Climate Regime* [国际气候制度中共同但有区别的责任原则的重构与发展] <available only in Chinese>, 7 *LEGAL SYS. & SOC'Y* [法制与社会] 176 (2013).

⁵² *Id.* at 1.

⁵³ E. LOUKA, *INTERNATIONAL ENVIRONMENT LAW* 68 (2006).

⁵⁴ A. HALVORSSSEN, *EQUALITY AMONG UNEQUALS IN INTERNATIONAL ENVIRONMENT LAW* 54 (1999) (Some authors view the common but differentiated treatment as requiring intra-generational equity).

⁵⁵ Tianbao Qin & Han Cheng, *The Coordination of Equity and Efficiency in the International Law on Climate Change* [气候变化国际法中公平和效率的协调] <available only in Chinese>, 13 *WUHAN U. INT'L L. REV.* [武大国际法评论] 265-284 (2010).

B. The CBDR Principle

1. Overview

As a ground for UNFCCC and the Kyoto Protocol, the CBDR principle has developed from the application of equity in general international law.⁵⁶ It would reflect a maxim, “Equality among unequals may be inequitable and differential treatment may be essential for real equality.”⁵⁷ It also reflected the industrialized countries’ desire and good faith in cooperation with developing countries to address the crisis of climate change which is a common challenge for humankind. The ‘differentiated responsibilities’ is therefore a sign that the international community is beginning to recognize itself as a ‘human community.’⁵⁸ In recent years, however, the developed countries have been strongly ignoring the CBDR principle, mainly due to the inefficiency of the Kyoto Protocol regime and some other elements of reality, such as the costs and current economic condition. From Copenhagen to Doha, the developed countries’ intention to reduce emissions had steadily been weakening.⁵⁹ They tried to fade the CBDR principle or emphasize the *common* part of the principle instead of the *differentiated* part. [Emphasis added] For them, the CBDR principle seems to be in big trouble.

2. China’s Position

Since the concept of “common but differentiated” was introduced the principle has been viewed by the developing countries as a useful tool to safeguard their right to development. For China, the CBDR principle is:

The core principle of the UNFCCC. Both developed and developing countries are obliged to adopt measures to mitigate and adapt to climate change. Due to the difference in historical responsibility, level and stage of development, capabilities and ways of contribution, developed countries should be responsible for their historical accumulated emissions and current high per-capita emissions, and take the lead in reducing emissions, in addition to providing financial support and transferring technologies to developing countries. The

⁵⁶ P. SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENT LAW* 285 (2d ed. 2003). See also T. SWANSON & S. JOHNSTON, *GLOBAL ENVIRONMENTAL PROBLEMS AND INTERNATIONAL ENVIRONMENTAL AGREEMENTS* 237 (1999).

⁵⁷ U. BEYERLIN & T. MARAUHN, *INTERNATIONAL ENVIRONMENT LAW* 63 (2011). See also O. SCHACHTER, *SHARING THE WORLD’S RESOURCES* 7 (1st ed. 1977).

⁵⁸ D. French, *Developing States and International Environmental Law: The Importance of Differentiated Responsibilities*, 49 *INT’L & COMP. L. Q.* 60 (2000).

⁵⁹ Currently, many countries are reluctant to the second commitment period or withdrew from the Kyoto Protocol. See UN, *UN Urges Rapid Doha Ratification*, Press Release, Aug. 21, 2014, available at <http://newsroom.unfccc.int/unfccc-newsroom/un-urges-rapid-doha-ratification> (last visited on Oct. 23, 2014).

developing countries, while pursuing economic development and poverty eradication, should actively adopt adaptation and mitigation measures, control greenhouse gas emissions and contribute to the common efforts of addressing climate change.⁶⁰

Additionally, China's National Climate Change Program pointed out that:

The first and overriding priorities of developing countries are sustainable development and poverty eradication. The extent to which developing countries will effectively implement their commitments under the Convention will depend on the effective implementation by developed country of their basic commitments.⁶¹

For Chinese scholars, the CBDR principle is regarded as the reflection of 'climate justice.'⁶² The CBDR principle is so critical for the future of the developing countries including China that it cannot be replaced or faded in any excuse.

When commenting on the outcomes of the Doha Conference, the Deputy Head of Chinese delegation, Wei Su said that: "The CBDR principle consistently held by China is an effective measure to take care the interest of all Parties. Because China is still in the fast development of industrialization and urbanization, it should increase emission reasonably under the CBDR principle."⁶³ Another member of Chinese delegation, Yanduan Li also told that: "The second commitment period of the Kyoto Protocol is a big victory for developing countries; the Kyoto regime which embraces the CBDR principle is particularly favorable to the development of developing countries."⁶⁴

3. Questions

Literally, it seems clear that CBDR equals the common plus the differentiated responsibility. Some critical questions would arise, however, such as: (1) What is

⁶⁰ Information Office of the State Council, *China's Policies and Actions for Addressing Climate Change*, Oct. 2008, at 12, available at <http://en.ccchina.gov.cn/Detail.aspx?newsId=38743&TId=107> (last visited on Oct. 23, 2014).

⁶¹ *Supra* note 36, at 24.

⁶² Jianwei Zhang, *Climate Justice and International Solutions of Climate Change* [气候正义与气候变化的国际法律应对] <available only in Chinese>, 13 WUHAN U. INT'L L. REV. [武大国际法评论] 290 (2010). See also Zhongfa Ma, *Climate Justice and International Legal System of Environmental Technology Transfer: Difficulties and Improvement* [气候正义与无害环境技术国际转让法律制度的困境及其完善] <available only in Chinese>, 2 XUEHAI [学海] 151-158 (2014).

⁶³ Hengchen Liu, *Reducing Emissions: China Makes Great Efforts for Implement of Promise* [减排：中国为履行承诺做了巨大努力] <available only in Chinese>, CHINA ECONOMIC HERALD [中国经济导报], Dec. 17, 2011, at C01, available at <http://www.ceh.com.cn/ceh/ztbd/jnjp/95570.shtml> (last visited on Oct. 23, 2014).

⁶⁴ Jinguang Long, *Exclusive Interview with Mr. Li Yanduan* [专访外交部特别谈判代表李燕端] <available only in Chinese>, NANFANG DAILY [南方日报], Dec. 7, 2012, at A15, available at http://epaper.southcn.com/nfdaily/html/2012-12/07/content_7149496.htm (last visited on Oct. 23, 2014).

common responsibility?; (2) What is differentiated responsibility?; and (3) How about the relation between these two kinds of responsibilities? In fact, there is no consensus on this issue among Parties.

The common responsibility entitles or requires all concerned countries to participate in international response measures aimed at addressing climate change.⁶⁵ The 'common' responsibility is not simply the 'equivalent' responsibility, however, considering that it is implemented differently between different groups of countries. In other words, this is the differentiated responsibility. Under the Kyoto Protocol regime, the developed countries assume mandatory legal responsibility to reduce emissions, while the developing countries do moral responsibility to reduce emissions voluntarily. Why is it going as such?

The differentiated responsibility relates to differing circumstances, particularly each country's contribution to the creation of a particular environmental problem.⁶⁶ At the Cankun Conference, the Parties agreed on the issue of historical responsibility and wrote it into the decision of the COP, which stated:

Acknowledging that the largest share of historical global emissions of greenhouse gases originated in developed countries and that, owing to this historical responsibility, developed country Parties must take the lead in combating climate change and the adverse effects thereof.⁶⁷

Despite the rapid increase of emission of China, *e.g.*, the 2012 emission per capita of China was only half of the US.⁶⁸ If looking at the historical emission per capita, an enormous gap lies between the two groups of countries. The historical emission per capita of the United States and the United Kingdom is 1100 ton, compared to 66 ton of China and 23 ton of India.⁶⁹ There is solid proof linking consumption to emission. In the last several decades, a large number of industries with high energy-consumption and high emission have been moving from the developed countries to the developing countries to avoid the stricter regulations in their domestic countries, but most of the products are exported to and consumed by the residents of

⁶⁵ SANDS, *supra* note 56, at 286.

⁶⁶ SWANSON & JOHNSTON, *supra* note 56, at 237.

⁶⁷ Report of the Conference of the Parties on its sixteenth session, Nov. 29 - Dec. 10, 2010 FCCC/CP/2010/7/Add.1, Mar. 15, 2011, at 8, available at <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (last visited on Oct. 23, 2014).

⁶⁸ Despite the rapid increase of emission of China, *e.g.*, the 2011 emission per capita of China was less than half of the US. See *supra* note 31.

⁶⁹ Angang Hu & Qingyou Guan, *Addressing Global Climate Change: China's Contribution* [应对气候变化: 中国的贡献], 4 J. CONTEMP. ASIA-PAC. STUD. [当代亚太] 9 (2008).

developed countries.⁷⁰ Lingjuan Wang put forward the principle of ‘beneficiary-pay.’ She argued that the consumer of the product with GHG emission should undertake part of the responsibility.⁷¹ As Scholtz said, the differential treatment mostly relates to the differentiation between developed and developing countries, and it aims to achieve substantive equality.⁷² Thus, the differential treatment promotes more effective and efficient implementation of international environmental agreements.⁷³

4. *Re-interpretation*

The ‘common’ responsibility would indicate that all countries in the world constitute a community in the face of the environmental crisis.⁷⁴ In the process of establishing UNFCCC, it was the common responsibility which united the participating countries and made the Convention adopted. The common responsibility is too abstract to be operated, however. When countries were thus called together in the name of the common responsibility, they promptly turned to negotiate the issues of differentiated responsibility. It finally led climate negotiation to an endless quarrel enough to bring an impasse.

Some Chinese authors pointed out that, although CBDR contains two criteria for allocating responsibility, i.e., common responsibility and differentiated responsibility, they do not interact effectively in practice; instead, they counteract each other.⁷⁵ This counteraction comes from the misunderstanding over the responsibility of the CBDR principle. From the wording, the ‘but differentiated’ is a supplementary term of the ‘common.’ Here, ‘common’ is the dominant character of responsibility, while ‘differentiated’ is just supplementary.⁷⁶ The nature of responsibility under the CBDR principle should be thus decided by that of common responsibility; the nature of differentiated responsibility should be in line with that of common responsibility. Accordingly, these responsibilities are homogeneous.

⁷⁰ Jiankun He, *China’s Strategic Consideration on Global Climate Change* [我国应对全球气候变化的战略思考], 2 *Sci. & Soc.* [科学与社会] 50-51 (2013).

⁷¹ Lingjuan Wang, *The Question to the Principle of Polluter-Pay* [对污染者付费原则的质疑], in *Proceedings of Annual Symposium of Wuhan University Institute of Environmental Law 2004*, at 103.

⁷² W. Scholtz, *A Sustainable and Equitable Legal Order*, in *ENVIRONMENTAL LAW AND SUSTAINABILITY AFTER RIO* (J. Benidickson et al. eds., 2011).

⁷³ T. HONKONEN, *THE COMMON BUT DIFFERENTIATED RESPONSIBILITY PRINCIPLE ON MULTINATIONAL ENVIRONMENTAL AGREEMENTS* 4 (2009).

⁷⁴ *Supra* note 58, at 45 (Some authors think that the common responsibility is based on ‘no harm’ obligation in customary international law).

⁷⁵ Yanfang Li & Wei Cao, *Breaking the Deadlock: A New Interpretation of “Common but Differentiated Responsibilities”* [打破僵局对共同但有区别的责任原则的重释], 2 *J. RENMIN U. CHINA* [中国人民大学学报] 93 (2013).

⁷⁶ Yijian Chen, *The Evolution of the CBDR Principle and China’s Response* [共同但有区别责任原则的演变及我国的应对 - 以后京都进程为视角], 4 *STUDIES IN LAW & BUSINESS* [法商研究] 78 (2013).

It means the differentiated responsibility should be also characterized as 'legal' responsibility.⁷⁷

The differentiated responsibility is not the exemption of responsibility, but refers to the differences in terms of form, field, intensity, time of the application of responsibility.⁷⁸ Also, the effect of differentiated responsibility should be in compliance with the objective and purpose of UNFCCC. Article 2 of UNFCCC provides:

The ultimate objective ... is to achieve... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.⁷⁹

In addition, the Assessment Report of the Intergovernmental Panel on Climate Change set the stabilized 'level' as to "hold the increase in global average temperature below 2°C above pre-industrial levels."⁸⁰ If the scientific evidence shows that the application of differentiated responsibility is probable to hinder the achievement the objective of UNFCCC, we should adjust or suspend its application temporarily or even in the long run. After all, the differential treatment is just a temporary exception.⁸¹

Under UNFCCC and its Kyoto Protocol, the right to the 'differentiated' responsibility is based on the status of the developing country. The Kyoto Protocol divided the Parties into two groups: the Parties included in Annex I and the other Parties. The former includes most part of the OECD members and some East-European countries, while the latter mainly refers to the developing countries.⁸² The status of developing country can be identified rather objectively in the practices of the World Bank, the WTO, and domestic foreign-aid policies. However, the division of the developed and the developing country in climate change regime is ambiguous. *E.g.*, Turkey is the Party of Annex I, but Korea and Mexico are not, though all of them are members of OECD. Also, the East-European countries which

⁷⁷ *Id.*

⁷⁸ Xing Yang, *Research on the CBDR Principle in International Environmental Law* [试论国际环境法的共同但有区别的责任原则], 1 CONTEMP. LAW SCIENCE [时代法学] 86 (2003). See also Dashen Sun, *The Content and Significance of the Common Principle in International Law* [浅谈国际法上共同责任原则的内涵和意义], 5 LEGAL SYS. & SOC'Y [法制与社会] 243 (2013).

⁷⁹ UNFCCC art 2.

⁸⁰ *Supra* note 14.

⁸¹ C. Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT'L L. 281 (2004).

⁸² Kyoto Protocol, Annex B.

are in the process of transition to market economy should not be regarded as the developed countries in this context. Such vague identification criterion would undermine the justification of the CBDR principle.

C. The Respective Capabilities Principle

It is natural that each country's capability differs due to her economic, political, military, technological and other factors. As far as the climate change is concerned, a country's capability to address emissions is closely linked with its economic and technological power. The great difference of capability lies between the developed and developing countries. Even in the same group, the capability between countries varies greatly, too.⁸³

The 'respective capability' may be an important factor to determine the differentiated responsibility. Australia argued: "There has to be yet further differentiation of responsibilities and capabilities other than highlighting the vulnerability and lack of capacity of some Parties to respond to the impacts of climate change."⁸⁴ China opposed to differentiation among developing countries, however, saying that:

The principle of 'common but differentiated responsibilities' between developed and developing countries is the keystone of the Convention... Any further sub-categorization of developing countries runs against the Convention.⁸⁵

Actually, China is more capable than some other developing countries in addressing climate change due to her economic power. China has invested a lot of money in decreasing the emissions and committed voluntarily to cut emissions per unit of GDP by 40 to 45 percent from the 2005 level by 2020,⁸⁶ although, compared with developed countries, still lagging behind a lot particularly on technology capacity.

In the Durban Conference, China expressed the willingness to accept the

⁸³ J. Brunnee, *From Bali to Copenhagen: Towards a Shared Vision for a Post-2012 Climate Regime?* 25 MD. J. INT'L L. 93-94 (2010), available at <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1519&context=mjl> (last visited on Sept. 24, 2014) (More recently, there has also been growing support for differentiation among developed and developing countries).

⁸⁴ *See Ad Hoc Working Group on Long-Term Cooperative Action under the Convention: Submissions from Parties-Addendum*, FCCC/AWGLCA/2008/MISC.1/Add.2, (Mar. 20, 2008) at 7-8, available at <http://unfccc.int/resource/docs/2008/awgca1/eng/misc01a02.pdf> (last visited on Sept. 27, 2014).

⁸⁵ *See Ideas and Proposals on the Elements Contained in Paragraph 1 of the Bali Action Plan: Submissions from Parties*, FCCC/AWGLCA/2008/MISC.5 (Oct. 27, 2008), at 34 available at <http://unfccc.int/resource/docs/2008/awgca4/eng/misc05.pdf> (last visited on Oct. 23, 2014).

⁸⁶ *Supra* note 44.

quantified reduction obligation.⁸⁷ Later, in the Fifth BRICS Summit of March 2013 in Durban, BRICS countries⁸⁸ confirmed their willingness to participate in a binding global agreement for cutting emissions.⁸⁹ It means that China decided to consume differentiated legal responsibility according to its capability.

6. Suggestions for China's Response to the Doha Climate Gateway

Under the Doha Climate Gateway, a new binding global agreement has been set as the goal to address climate change. The interpretation of the CBDR principle will necessarily turn to the emphasis of 'common responsibility.' It does not mean, however, the differentiated responsibility will be abandoned. It is just a re-balance of the two parts of the CBDR principle, especially for the developing industrialized powers. They can enjoy more flexibility during the negotiations to better protect their right to development. The following are possible suggestions that China would consider.

A. The Form of Responsibility should be Multiple and Flexible

The most direct and important form of responsibility to address climate change is "reduction of emissions," but it should not be seen as the only one. The possible forms of responsibility include as follows.

1. **To enlarge and protect the carbon sink.** The forests can absorb plenty of carbon and play an important role in controlling climate change.⁹⁰ Many CDM projects in China are related to afforestation. Increasing the volume of carbon sink equals to reducing emissions.

⁸⁷ *Supra* note 34.

⁸⁸ BRICS countries refer to Brazil, Russia Federation, India, China and South Africa.

⁸⁹ Fifth BRICS Summit Declaration and action plan stated that: "Acknowledging that climate change is one of the greatest challenges and threats towards achieving sustainable development, we call on all parties to build on the decisions adopted in COP18/CMP8 in Doha, with a view to reaching a successful conclusion by 2015, of negotiations on the development of a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, guided by its principles and provisions." See Fifth BRICS Summit Declaration and Action Plan, available at http://www.china.org.cn/world/2013-03/28/content_28382621_3.htm (last visited on Sept. 7, 2014).

⁹⁰ C. Streck, *Protecting Forests to Mitigate Global Climate Chang*, in CRUCIAL ISSUES IN CLIMATE CHANGE AND THE KYOTO PROTOCOL 560 (K. Koh et al. eds., 2010).

2. **To set the emission cap or emission peak time.** Although China has taken measures to reduce emissions, the emissions will be increasing until they reach the peak. China may commit to the world a cap or a time to reach the peak.
3. **To establish domestic emission trading market.** It is widely acknowledged that the market-based measure is necessary and effective for reducing emissions. China has chosen seven areas as pilots of emission trading and decided to set up the national emission trading market once the regime in pilot areas is proven to be feasible.⁹¹

B. The Intensity of Responsibility should be Reasonable and Appropriate

In spite of her growing hegemony in world politics, China is still a developing country. Considering that there are still 120 million people living below the poverty line in China,⁹² the emissions reduction target of China should be reasonable and appropriate. If the requirements of other Parties to China are so high enough to exceed the capability of China and impede its development, China will refuse to commit or, even worse, withdraw from the agreement just like Canada. China favors to set the reduction target by the method of 'intensity' control rather than that of volume control. Frankly, the method of volume control is not feasible for China for the time being. Maybe, as a compromise, China can set a time limit for volume control. Before then, the emission intensity is the applicable standard to assess China's mandatory responsibility of emissions reduction.

C. A Period of Transition is Necessary

When undertaking compulsory obligation, the developing countries are often granted a period of transition. Pursuant to the Montreal Protocol on Substances that Deplete the Ozone Layer, *e.g.*, "a developing country ... shall ... be entitled to delay for ten years its compliance with the control measures."⁹³

D. The Emission Should be Classified More Deeply

The emissions involve different types according to different criteria. If illustrating the

⁹¹ National Development and Reform Commission, *China's Policies and Actions for Addressing Climate Change*(2013), at 37, available at <http://en.ccchina.gov.cn/Detail.aspx?newsId=38743&Tid=107> (last visited on Oct. 23, 2014).

⁹² Rui Zhou & Lan Yu, *XieZhenhua Reaffirm CBJDR Principle* [解振华重申共同但有区别责任原则] <available only in Chinese>, Dec. 5, 2012, available at <http://finance.chinanews.com/cj/2012/12-05/4385617.shtml> (last visited on Oct. 23, 2014).

⁹³ The Montreal Protocol on Substances that Deplete the Ozone Layer art. 5(1).

emissions more clearly, it would be helpful to clarify and justify the responsibility. The main divisions include as follows:

1. **Historical emissions and current emissions.** The former is the primary cause of warming of the Earth.⁹⁴
2. **Living emissions and developing emissions.** The living emissions should be exempted from responsibility for its character of the human basic needs to survival.⁹⁵
3. **Adaptation emissions and mitigation emissions.** Because the warming is mainly resulted from historical emissions, the developed countries should be responsible for the emissions from developing country's adaptation actions.⁹⁶
4. **Transferring emissions and non-transferring emissions.** The Transferring emissions can be categorized into two forms: The first is international investment where the investors transfer the high emission industries to developing countries and make profit from investment. The second is international consumption where the productions with high emission take place in developing countries, but the products are mainly consumed by developed countries.⁹⁷
5. **Emissions per capita and emissions per country.** China and some developing countries have a high emission per country, but a low emission per capita. All those elements mentioned above should be considered in the future negotiations for a new binding agreement.

E. Some Agenda Should be Highlighted and Come to an Outcome

In the past negotiations on climate change, the agenda was often dominated by developed countries. In the future talks, this situation should be changed in order to highlight or add the following two agenda. One is financial support and technology transfer. Although both issues are clearly written in UNFCCC/the Kyoto Protocol and were discussed in every conference, the progress has been slow. Some scholars proposed to establish a special mitigation fund for major developing countries who

⁹⁴ *Supra* note 67.

⁹⁵ *Supra* note 76, at 84.

⁹⁶ Dejin Gu, *Bali Action Plan and the Evolution of the CBDR Principle* [巴厘岛路线图: 共同但有区别责任的演进] <available only in Chinese>, 2 JURISPRUDENCE [法学] 137 (2008). *See also supra* note 76, at 84.

⁹⁷ *Id.*

would undertake the obligation of emission reduction.⁹⁸ If the developed countries want the developing countries to accept binding responsibility, the financial support and technology transfer must be pushed ahead substantially.

The other is energy consumption and natural resource endowment. A major reason why China is the largest emitter, is its natural resource endowment. China is rich in coal but short on oil and natural gases. By the end of 2012, coal had accounted for 67.1 percent in the one-time energy consumption.⁹⁹ The energy structure of China has been optimizing, but it will take a long time to complete the transformation. India is confronted with the same situation as China has.¹⁰⁰

F. Solidarity with BASIC Countries and Other Newly Industrializing Countries

In the climate change negotiations, the Parties are not always divided into two groups. There exist many sub-groups, such as the umbrella group, the AOSIS, and the BASIC countries. In developing group, the Parties also have different interests. The countries of the AOSIS strongly argued that the developed countries and the newly industrializing countries should undertake quantified responsibility to reduce emissions.¹⁰¹ The BASIC countries¹⁰² and other newly industrializing countries share many similar positions and views.¹⁰³ China should keep solidarity with them to cope with the challenges in the future talks.

7. Conclusion

Under the Doha Climate Gateway, the second commitment period was adopted to wait for the successor of the Kyoto Protocol, a new binding agreement covering all

⁹⁸ A. Halvorssen, *Common, but Differentiated Commitments in the Future Climate Change Regime-Amending the Kyoto Protocol to include Annex C and the Annex C Mitigation Fund*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 247 (2007).

⁹⁹ *Supra* note 91, at 18.

¹⁰⁰ *Supra* note 31. The energy structure of China has been optimizing, but it will take a long time to complete the transformation. India is confronted with the same situation as China. See India and coal, available at http://www.sourcewatch.org/index.php/India_and_coal (last visited on Oct. 25, 2014).

¹⁰¹ *Supra* note 40. (Especially refer to the document AOSIS Non Paper for ADP Workstream 2, May 2013). See also *China readies big climate offer, India mulls support*, available at <http://www.facenfacts.com/NewsDetails/18861/china-readies-big-climate-offer-india-mulls-support.htm> (last visited on Sept. 8, 2014).

¹⁰² BASIC countries refer to Brazil, India, China and South Africa.

¹⁰³ Lan Lan, *Developing Countries Meet on Climate Change*, CHINA DAILY, Mar. 5, 2013, available at http://www.chinadaily.com.cn/world/2013-03/05/content_16280638.htm (last visited on Oct. 23, 2014).

countries. For the common interest of humankind, the new agreement is necessary and desirable in addressing climate change. To achieve the target of saving our Earth, all countries should be serious and flexible in negotiations. For China, the principles (especially the CBDR principle) of UNFCCC should be followed, but the flexibility regarding the understanding of CBDR is also needed. In fact, China's approval of a new agreement in the Durban and Doha Conferences indicated its flexibility and implied the subtle change of its position on CBDR. Meanwhile, whether the new agreement can be concluded as scheduled still depends on the position and actions of developed countries. If the developed countries cannot make progress on the issues that the developing countries are deeply concerned, namely, the finance and technology transfer, the Doha Climate Gateway may endure further difficulties.