

## **A Short Introduction to Common But Differentiated Responsibility Principle (CBDR)**

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International environmental law contains numerous principles including sustainable development, polluter pay, precautionary principle, no harm, state responsibility, common but differentiated responsibility (CBDR), and so on. Among these many principles, CBDR is one of the corner stones to promote sustainable development. CBDR establishes that all states are responsible for addressing global environmental destruction, yet they are not equally responsible. This principle balances, on the one hand, the need for all states to take responsibility for global environmental problems and, on the other hand, the need to recognize the wide differences in levels of economic development between states. This idea is similar to the fact that human kind has a collective interest in activities and resources worldwide; however, our ability to protect environment is different due to our capacity and resource.

In this short introductory article to CBDR, this paper covers a short history of the development of CBDR, the underlying ideas and conceptual approach, its interpretation and status, its practices in international environmental treaties, and conclusion.

### **Historical Development of CBDR**

Prior to the Stockholm Conference, international environmental treaties were dominated by the involvement of the developed countries known as the North. However, thing has changed dramatically after the Stockholm Conference. Multilateral Environmental Treaties (MEAs) provide differential treatment to developing countries (the South). CBDR was formalized in international law in the 1992 *United Nations Conference on Environment and Development* (UNCED) in Rio de Janeiro. CBDR was incorporated in Article 7 of the Rio Declaration stipulated that:

“States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

### **Underlying Ideas and Conceptual Approach**

Under the general principle of equity, differential treatment is essential for obtaining real equity. Similarly, to achieve a fair and just decision making among developed and developing states, unequal states should be treated differently.<sup>1</sup> Due to the historical contribution of how developed states had damaged the environment and its present capacity to remedies such damages, CBDR comes to protect the interest of both sides by providing two conceptual approaches.

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<sup>1</sup> Ulrich Beyerlin and Thilo Marauhn, *International Environmental Law* (Hart, 2011), 63.

The first approach is the common responsibility for preserving the global environment and the need for co-operation. This common responsibility arises from the concept of common heritages or common concern of mankind. This is because of the integral and interdependent nature of our earth, where protection of environment is not a matter of domestic jurisdiction.<sup>2</sup> Common responsibility does not call for common obligations; otherwise, states will not fully participate in international environmental law.<sup>3</sup> The second approach is the different contributions of states to global environmental destruction, but avoids directly allocating the cost of pollution to those states, which historically inflicted harm to the environment. Although developed states should play a greater role in environmental protection, accusing them to solve the problem alone might devastated the situation, and they might not be willing to participate in environmental protection.

#### CBDR vs. Polluter Pay

What is the connection between CBDR and Polluter Pay? Why do not we apply Polluter Pay instead of CBDR? If any of these questions appears in your mind, then the simple answer below will help you to solve the puzzle in your head.

CBDR is different from Polluter Pay in the sense that CBDR governs the interstate relation; however, Polluter Pay involves the internal relation between the states' national authorities and the polluters. The polluters can be states, civil societies, or even an individual.<sup>4</sup>

#### **Interpretation of CBDR and Its Status**

If one were to compare the text of Principle 7 of Rio Declaration and the text proposed by G-77, one could clearly see that there are totally different in form and meaning. The text proposed by G-77 reads:

“[t]he major cause of the continuing deterioration of the global environment is the unsustainable pattern of production and consumption, particularly in the developed countries.... In view of their main historical and current responsibility for global environmental degradation and their capability to address this common concern, developed countries shall provide adequate, new and additional financial resources and environmentally sound technologies on preferential and concessional terms to developing countries to enable them to achieve sustainable development.”

In the current text of Principle 7, there is no reference to impose any legal responsibility for industrialized states due to their great historical contributions to global environmental degradation. Instead, the text puts more emphasis on the future responsibility in achieving global sustainable development and avoiding accusation in its term.<sup>5</sup> Based on the United States of America's interpretative statement to Principle 7 in Rio Conference, even the United States accepted the industrial development, wealth, technical expertise, and capabilities of developed countries to cope with environmental problem, but the United States still refused to

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<sup>2</sup> Yoshiro Matsui, “Some Aspects of the Principle of ‘Common but Differentiated Responsibilities,’” in *International Environmental Agreement: Politics, Law and Economics*, 2nd edition (Kluwer Academic Publishers, 2002), 153.

<sup>3</sup> Duncan French, “Developing States and International Environmental Law: The Importance of Differentiated Responsibilities,” *The International and Comparative Law Quarterly* 49, no. 1 (January 1, 2000): 46, <http://www.jstor.org/stable/761577> (accessed September 7, 2015).

<sup>4</sup> Beyerlin and Marauhn, *International Environmental Law*, 64.

<sup>5</sup> *Ibid.*, 65.

comply with the international obligation of the U.S or any diminution in the responsibilities of the developing countries.<sup>6</sup>

If one were to classify the status of CBDR based on Dworkin's typology of norm, CBDR is merely a principle rather than a rule because it gives guidance to all states for future conduct in law making processes as well as in shaping the interpretation and application of rules already established. CBDR has appeared in many international instruments dealing with sustainable development, ranging from soft law documents (e.g Rio Declaration and Agenda 21) to international conventions in their operative parts (e.g UNFCCC<sup>7</sup> and Montreal Protocol).<sup>8</sup> With its existence in different types of international instrument, CBDR serves as a fundamental principle in international environmental law; however, it has not recognized as customary international law due to its less acceptance in general state practices.

### **CBDR Practices in International Environmental Treaties**

International environmental treaties have explicitly and implicitly introduced CBDR in their text. For instance, Agenda 21 of 1992 Rio Conference has stipulated what CBDR required without expressly referring to it. In addition, Plan of Implementation of the 2002 World Summit in Johannesburg has pointed to CBDR, but avoids giving any specification to it.

Furthermore, the multilateral environmental agreements pursue a conceptual approach that conforms to CBDR and favour developing countries in two ways. First, MEAs impose lesser or no obligation for developing countries (differential norms). For instance, UNFCCC and Kyoto Protocol accommodated differential norms in Article 4 of UNFCCC and Article 3(1) of Kyoto Protocol.<sup>9</sup> Second, MEAs impose identical obligation on its parties but grant a longer compliance period only to its developing country parties (contextual norms). For example, under Montreal Protocol on Ozone Depleting Substances (Montreal Protocol), developing countries meeting certain conditions are allowed to delay their compliance with control measures.<sup>10</sup>

It should be noted that there are MEAs, which incorporate both norms into it. The 1987 Montreal Protocol contains differential norm and contextual norm in Article 2A-H, Article 5, and Article 10. The strategy pursued by Montreal Protocol also displayed the combined schemes of differential substantive environmental obligation with the respective schemes of compliances assistances. Article 5(5) of Montreal Protocol had combined the obligation and implementation by developing countries to depend upon the effective implementation of the financial co-operation as provided by Article 10A. This is detrimental to the aim of environmental obligation since it allows the developing countries to withhold their obligation by raising the argument that they are not receiving assistance from developed countries.

### **Conclusion**

To sum up, CBDR is one of the key principles of international environmental law. It acts as a double standard principle, which establish the common responsibility of all states and differentiated

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<sup>6</sup> Ibid., 65–66.

<sup>7</sup> The United Nations Framework Convention on Climate Change

<sup>8</sup> Matsui, "Some Aspects of the Principle of 'Common but Differentiated Responsibilities,'" 166.

<sup>9</sup> See Article 4 of UNFCCC and Article 3(1) of Kyoto Protocol.

<sup>10</sup> The Centre for International Sustainable Development Law, "The Principle of Common But Differentiated Responsibilities: Origins and Scope" (The Centre for International Sustainable Development Law, 2002), 3.

responsibilities between states due to their different level of social, economic, technology, and different level of environmental damage contribution. On the other hand, there is a doubt whether CBDR application in MEAs still fits with the current situation. For example, Kyoto Protocol has exempted the whole group of developing countries (including China and Brazil) from any obligations to reduce greenhouse gas emission. The exemption of China and Brazil's obligation might be reasonable at the time of concluding the Kyoto Protocol; however, during the current situation where China and Brazil are among the main contributors of greenhouse gas emission, the application of CBDR is no longer acceptable.