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CLIMATE CHANGE NEGOTIATIONS AND DOHA, QATAR

Sophia Sofferman*

I. INTRODUCTION

"Analysis shows that, on the one hand, the growing need for daily necessities and economic development in China will in the future result in more GHG emissions, whereas on the other hand, the implementation of a sustainable development strategy will enable China to do its best within the limits of its capacity and development level to reduce the growth rate of GHG emissions. Thus China can make positive contributions to mitigating global climate change while emissions have to be necessarily increased."¹

The above expressed viewpoint encompasses one of the primary obstacles in today's international climate change negotiations because it speaks to the need of developing countries to continue developing, but also the global need to reduce greenhouse gas emissions overall to prevent catastrophic climate change.

In 1992, 172 governments participated in the United Nations Conference on Environment and Development (or the "Earth Summit") in Rio de Janeiro, Brazil. One-hundred and eight heads of state and government were in attendance, as well as over 2,400 representatives of non-governmental organi-

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¹ THE PEOPLE'S REPUBLIC OF CHINA INITIAL NATIONAL COMMUNICATION ON CLIMATE CHANGE (Oct. 2004).

zations (“NGO’s”).² The Earth Summit, the goal of which was to “redirect international and national plans and policies to ensure that all economic decisions fully took into account any environmental impact,”³ produced a handful of legal documents, among which was the United Nations Framework Convention on Climate Change (“UNFCCC,” or “Convention”). The UNFCCC’s stated objective is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate.”⁴ As such, it was the first international treaty to tackle climate change on this scale, and would be a founding and guiding document for international negotiations dealing with the issue of climate change for at least the next twenty years. There are currently 195 parties to the Convention, including the United States that signed and ratified the Convention under the George H. W. Bush Administration in 1992.⁵

From the very beginning, the Convention took a comprehensive approach to tackling the climate change problem, and fully considered the implied consequences of a global shift away from fossil fuels. The most obvious and contentious consequence is that a reduction in the use of the world’s cheapest and most available energy source would have some effect, possibly negative, on national, regional, and world economies.⁶

² Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), available at <http://www.un.org/geninfo/bp/enviro.html>.

³ *Id.*

⁴ United Nations Framework Convention on Climate Change [UNFCCC], *Kyoto Protocol*, Art. 2, (CORRECT DATE), (available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>) (noting that “such a level [of greenhouse gas concentration] should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and not to enable economic development to proceed in a sustainable manner.”)

⁵ U.N. Framework Convention on Climate Change [UNFCCC], *Essential Background*, (available at <http://www.law.cornell.edu/citation/2-100.htm>).

⁶ The preamble to the Convention “*Recogniz[es]* the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use, and exportation as a consequence of action taken on limiting greenhouse gas emissions, [and] *Affirm[s]* that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter.” U.N. Framework Convention on Climate Change [UNFCCC], *Full Text of the Convention* (available at <http://unfccc.int/>)

However, the Convention recognized that although transitioning away from fossil fuels would be costly and difficult, it does not necessarily have to have a negative effect on economies.⁷ The United Nations Framework Convention on Climate Change notes in its Preamble that “various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems.”⁸ Still, it is apparent that the parties negotiating the United Nations Framework Convention on Climate Change were concerned that a meaningful shift in the way the world uses and produces energy would not be easy, and would require a large commitment from the world’s nations both economically and politically. In the preamble to the Convention, and reiterated in Article 3, Section 1, is the tentative answer to these tough economic issues under the Convention: the principle of common but differentiated responsibilities and respective capabilities.⁹

II. COMMON BUT DIFFERENTIATED RESPONSIBILITIES

The principle of common but differentiated responsibilities and respective capabilities is rooted in equity and shared responsibility for the climate crisis.

The United Nations Framework Convention on Climate Change has adopted the term “common” to suggest that “certain risks affect and are affected by every nation on earth.”¹⁰ This includes the climate and ozone shield.¹¹ The idea behind reducing mutual risks is that “all nations should ‘cooperate in a spirit of global partnership.’”¹² On the other hand, “responsibilities” are said to be “differentiated,” in that not all countries have the same financial responsibilities for addressing climate change because of different financial capabilities and different historic and current levels of carbon-dioxide emissions.¹³ Thus,

essential_background/convention/background/items/1349.php).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Christopher D. Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT'L L. 276 (2004).

¹¹ *Id.*

¹² *Id.* at 277.

¹³ *Id.*

common but differentiated responsibilities “charges some nations, ordinarily the Rich, with carrying a greater share of the burden than others, ordinarily the Poor.”¹⁴

The idea of common but differentiated responsibilities and respective capabilities arguably appears first in the third paragraph of the Preamble of the United Nations Framework Convention on Climate Change, preceded only by the paragraphs acknowledging that climate change is a “common concern of humankind,” and that it is anthropogenic, or man-made. This third paragraph notes:

. . . that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs . . .¹⁵

The acknowledgment that developed nations have a historic responsibility to facilitate in climate mitigation and adaptation efforts is key to understanding not only the principle of common but differentiated responsibilities and respective capabilities, but also to understanding some of the most contentious issues at the negotiating table today. Differentiated responsibilities in this case means that developed countries, listed in Annex-I of the UNFCCC, have a greater responsibility to facilitate a global transition away from fossil fuels because they have not only burned more fossil fuels historically than developing countries, but also have become rich by doing so, and are therefore in a better economic position to tackle the problem.

Also at the heart of the contention over common but differentiated responsibilities as stated in the second-half of the paragraph quoted above which states that “per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs.”¹⁶ This statement anticipated the current situation and the obstacles that current climate negotiations face regarding countries with

¹⁴ *Id.*

¹⁵ UNFCCC, *supra* note 6, Preamble.

¹⁶ *Id.*

emerging economies, such as Brazil, India, South Africa, and especially China.¹⁷ These countries are still both socially and economically developing, yet they emit large amounts of greenhouse gases.¹⁸ This is the most difficult issue that climate negotiations face for the technical reason that there is a significant portion of GHG emissions that are not regulated by any agreement or treaty, and for the political reason that developed countries such as the United States, and now Canada,¹⁹ do not want to be bound by reduction targets while other major emitters are not.

As it first appears in the UNFCCC preamble:

. . . the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions . . .²⁰

Furthermore, the director of the Climate and Energy Program of the World Resources Institute, Jennifer Morgan reflected in response to the slow-moving approach of the UNFCCC that "...the truth is that the UNFCCC will not stop moving in slow motion until key countries do. All eyes must now turn to the newly re-elected President Obama and the new Chinese leadership, amongst others, to see when large-scale change is going to come."²¹ Furthermore, Morgan continues that:

A successful agreement in 2015 will need to preserve the under-

¹⁷ *BASIC countries urge developed nations to raise emissions reduction ambitions*, China Climate Change Info- Net, <http://en.ccchina.gov.cn/Detail.aspx?newsId=38399&TId=97> (last visited July 23, 2013).

¹⁸ *Id.*

¹⁹ Mike De Souza, *It's official: Harper government withdraws from Kyoto climate agreement*, O.CANADA (Dec. 14, 2012), <http://o.canada.com/2012/12/14/its-official-harper-government-withdraws-from-kyoto-climate-agreement/>.

²⁰ *The State of Global Energy Efficiency*, ABB (2010), [http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/9664b7ef441d0339c12579e60039a0d9/\\$file/the%20state%20of%20global%20energy%20efficiency.pdf](http://www05.abb.com/global/scot/scot266.nsf/veritydisplay/9664b7ef441d0339c12579e60039a0d9/$file/the%20state%20of%20global%20energy%20efficiency.pdf).

²¹ Jennifer Morgan, *Reflections on Cop 18 in Doha: Negotiators Made Only Incremental Progress*, WRI Insights (Dec. 14, 2012), <http://insights.wri.org/news/2012/12/reflections-cop-18-doha-negotiators-made-only-incremental-progress>.

lying notion that those with the capacity to take bold climate action should go further faster...and...the simple fact that bold action by *all* countries, including developing ones, will be necessary to hold global mean temperature increase below 2°C above pre-industrial levels.²²

This comment will focus on the role that the principle of common and differentiated responsibilities plays in global climate negotiations under the United Nations Framework on Climate Change and more recent climate negotiations by the Conference of the Parties. More specifically, this comment will focus on the implications this has for developing and developed countries, namely on China and the United States as the two largest emitters of greenhouse gases in the world, and as developing and developed countries respectively.

III. THE KYOTO PROTOCOL

In 1997, the United Nations held its third Conference of the Parties Meeting (“COP 3”), which met in Kyoto, Japan and negotiated the Kyoto Protocol to the United Nations Framework Convention on Climate Change.²³ The Kyoto Protocol outlined specific binding greenhouse gas reduction targets.²⁴ These targets only applied to countries that the United Nations Framework Convention on Climate Change set forth as being developed country (“Annex I”) Parties.²⁵ Unlike the UNFCCC, the Kyoto Protocol legally required nations to reduce their greenhouse gases (“GHG”) emissions by a specific reduction target and on a strict timeline.²⁶ The Kyoto Protocol was negotiated because Parties to the Convention decided that the commitments outlined in the UNFCCC were “not adequate” and they wanted to “take appropriate action beyond 2000, including the strengthening of the commitments of Annex I Parties ... through the adoption of a protocol or another legal in-

²² *Id.*

²³ U.N. Framework Convention on Climate Change, Meetings, UNFCCC Calendar, 1997, *Kyoto Climate Change Conference*, http://unfccc.int/meetings/kyoto_dec_1997/meeting/6378.php.

²⁴ U.N. Framework Convention on Climate Change [UNFCCC], *Kyoto Protocol*, Art. 2, (CORRECT DATE), (available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>).

²⁵ *Id.*

²⁶ See UNFCCC, *supra* note 6.

strument.”²⁷

In the United States, while the Protocol was being negotiated, the 105th Congress unanimously passed Senate Resolution 98, also known as the Byrd-Hagel Resolution, in which the Senate stated that it would not ratify any treaty that had binding emission reduction targets for Annex I parties (developed countries) but did not have binding emission reduction targets for developing countries.²⁸ China was not included as an Annex I party, as the UNFCCC identified it as a developing party.²⁹ This was a critical element to China signing the Kyoto Protocol because, as a developing country, China did not have to limit or reduce its greenhouse gas emissions, as Annex I parties did. Though China is still considered a developing country, it has now grown to become the biggest emitter of greenhouse gases in the world.³⁰

Combined, the United States and China account for over 40% of global GHG emissions, while the European Union as a whole accounts for only 13%, and the next largest single country emitting GHGs, India, accounts for only 6%.³¹ As such, any treaty or agreement that does not effectively reduce both China and the United States' emissions does not regulate nearly half of the world's GHG emissions and will therefore not be effective in tackling the climate change problem. The principle of common but differentiated responsibilities is at the heart of the United States/China gridlock, because the United States refuses to commit to any binding target reductions if other developing country emitters are *not committed* to such binding targets. And China, as a developing country, still faces the same barri-

²⁷ Joanna Depledge, Technical Paper, *Tracing the Origins of the Kyoto Protocol: An Article-By-Article Textual History*, U.N. Framework Convention on Climate Change (Nov. 25, 2000), <http://unfccc.int/resource/docs/tp/tp0200.pdf>.

²⁸ S. Res. 98, 105th Cong. (1997) (enacted).

²⁹ *Id.*

³⁰ *Global Greenhouse Gas Emissions Data*, EPA, <http://www.epa.gov/climatechange/ghgemissions/global.html> (last updated July 9, 2013); see also *China Overtakes U.S. in Greenhouse Gas Emissions*, NY TIMES (June 20, 2007), http://www.nytimes.com/2007/06/20/business/worldbusiness/20iht-emit.1.6227564.html?_r=0.

³¹ U.S. ENVIRONMENTAL PROTECTION AGENCY, EMISSIONS BY COUNTRY, <http://www.epa.gov/climatechange/ghgemissions/global.html> (last visited Mar. 11, 2013).

2014]

CLIMATE CHANGE NEGOTIATIONS

39

ers that other developing countries face in meeting reduction targets such as poverty, economic inequality, out-dated technology, and under-development in the countryside.³²

IV. CHINA'S PRODUCTION AND POTENTIAL TO BECOME A WORLD LEADER IN RENEWABLE ENERGY

Since 1990, China's per capita energy consumption has increased fivefold, while the Middle East and India saw only a twofold increase, and developed countries saw only moderate increases.³³ However, despite this jump, China remains far below average in energy consumption per capita, producing only 275 kilowatt hours (kWh) per capita in 2007, compared to a world average of 675 kWh, and a developed country average of 2,434 kWh per capita.³⁴ Since 2000, China's energy consumption has doubled, yet its *per capita* energy consumption is still far below average and only about one-fifth that of the U.S.³⁵ A "gap remains" between China's energy savings goals, and its ability to meet them, indicating that, like other developing nations, China requires international aid (such as from the Green Climate Fund³⁶) to make meaningful reductions in its energy consumption.³⁷ China is the world's largest consumer of coal, consuming 43% of the world total as of 2008 (almost 2.5 times as much as the U.S.).³⁸ China's second largest source of energy after coal is oil, and China has been a net importer of oil since

³² Second National Communication on Climate Change of the People's Republic of China, United Nations Framework Convention on Climate Change, UNFCCC, Nov. 8, 2012 (Jan. 1, 2012), *available at* http://unfccc.int/essential_background/library/items/3599.php?rec=j&preref=7666#beg.

³³ ABB, *supra*, note 20, at 4.

³⁴ WORLDWATCH INSTITUTE, REPORT 182 9 (Lisa Mastny ed. 2010), *available at* <http://www.worldwatch.org/system/files/182%20China%20Energy.pdf>

³⁵ *Id.* at 8.

³⁶ The Green Climate Fund "contributes to the ultimate objective of the UNFCCC . . . to promote the paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change, taking into account the needs of those developing countries particularly vulnerable to the adverse effects of climate change." GREEN CLIMATE FUND, <http://gcfund.net/home.html> (last visited Jan. 27, 2012).

³⁷ WORLDWATCH INSTITUTE, *supra* note 34, at 6.

³⁸ *Id.* at 8.

1993.³⁹ As China's oil reserves are insufficient to meet its energy needs, securing a reliable supply of oil, mostly from countries in the Middle East, has become increasingly important to China.⁴⁰

The good news is that China shows great potential for improvement. As of 2012, global industry's share of energy consumption reached a world average of 40%.⁴¹ China's industry's share remains at 60% due both to outdated technology, and because a large portion of China's economy is exporting manufactured goods to developed countries.⁴² Because China and other developing countries export much of their manufactured goods, reducing their industries' shares of energy consumption would have a positive impact worldwide.

V. NEGOTIATIONS IN DOHA

During November 26 through December 8, 2012, world leaders met in Doha, Qatar for the latest rounds of climate change negotiations known as Conference of the Parties 18 ("COP 18"). The negotiations in Doha stemmed from many Conferences of the Parties before it. The last two, COP 16 and 17 stand out as particularly significant to the conference in Doha. COP 16 in Cancun, Mexico set a target to keep global temperature rise below 2 degrees Celsius above pre-industrial levels by year 2100.⁴³ COP 17, in Durban, South Africa resulted in the Durban Platform for Enhanced Action, which set the goal for a new treaty to be negotiated by 2015 to enter into effect by 2020.⁴⁴ COP 17 also agreed to a second commitment period ("CP2") for the Kyoto Protocol.

In Doha, Qatar, the parties agreed on the second commitment period of the Kyoto Protocol rules and officially shut down

³⁹ *Id.*

⁴⁰ *Id.* Also note that between 2004 and 2008, a surge in world oil prices caused a decrease in energy intensity in all nations except China. ABB, *supra* note 20, at 2.

⁴¹ ABB, *supra* note 20, at 4.

⁴² *Id.*

⁴³ *Cancun Climate Change Conference*, UNFCCC (2010), http://unfccc.int/meetings/cancun_nov_2010/meeting/6266.php.

⁴⁴ *Ad Hoc Working Group on the Durban Platform for Enhanced Action*, UNFCCC, <http://unfccc.int/bodies/body/6645.php> (last visited Mar. 11, 2013).

the two previous tracks for negotiations⁴⁵ under the COP leaving only the Durban Platform. One of the most important outcomes of the Doha Conference (“COP 18”) is Annex I parties’ commitment to emission reduction targets under the second commitment period.⁴⁶ Furthermore, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (“AWG-LCA”) was tasked with negotiating the terms of the second commitment period before it officially stopped operating at the end of the conference.⁴⁷ Leading into COP 18, the second commitment period was already plagued with uncertainty and hotly contested issues.⁴⁸ For starters, at the end of the Durban Conference (“COP 17”), Canada officially left the Kyoto Protocol. Leading up to COP 18, Japan and Russia both firmly stated that they would not commit to a second commitment period, and Australia and New Zealand were both “wavering.”⁴⁹ Also at issue for the second commitment period was whether the commitment period would last a total of five or eight years and the “ambition level” of the emission reduction targets.⁵⁰ The European Union was largely supportive of an eight-year commitment period, while many developing countries supported a five-year commitment period in order to reevaluate the ambition level following the publication of the new Intergovernmental Panel of Climate Change (“IPCC”) report due in 2014.⁵¹ As far as ambition levels are concerned, most developing countries called for reductions somewhere between forty and fifty percent

⁴⁵ These two tracks for negotiations were called the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (“AWG-LCA”) and the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (“AWG-KP”). See United Nations Framework Convention on Climate Change, *Ad hoc Working Group on Long-term Cooperative Action under the Convention*, UNFCCC.INT, <http://unfccc.int/bodies/body/6431.php> (last visited Mar. 11, 2013).

⁴⁶ Meena Raman & Asad Rehman, *Doha: The Moment of Truth*, AL JAZEERA MAGAZINE, Nov. 2012, at 4.

⁴⁷ *Id.*

⁴⁸ *Id.* at 5.

⁴⁹ *Id.*

⁵⁰ *Id.* at 4.

⁵¹ Jessica Boyle, *A Mirage in the Deserts of Doha? Assessing the outcomes of COP 18*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, Dec. 2012, at 3, available at http://www.iisd.org/pdf/2012/com_mirage_desert_doha_cop18.pdf.

below 1990 levels by 2020.⁵² The alliance of small island states pressed for emission reductions of at least thirty-three percent, while the European Union set its own reduction target at twenty-percent.⁵³

The countries that have signed on to the second commitment only account for 15% of global carbon emissions.⁵⁴ Canada, Russia, Japan, and New Zealand all will not be taking part in the second commitment period of the Kyoto Protocol.⁵⁵ AWG-KP eventually agreed to an eight-year commitment period with a “compromised review function” so that CP 2 parties can reevaluate their ambition levels after the 2014 IPCC report.⁵⁶ In addition, as far as ambition levels are concerned, emission reduction targets for CP 2 are rather consistent with voluntary targets agreed to under the Copenhagen Accord.⁵⁷

Countries that did not commit to targets under CP 2, in the end were not granted access to “Flexibility Mechanisms” such as the Clean Development Mechanism (“CDM” and Joint Implementation.⁵⁸ According to the International Institute for Sustainable Development, “this decision will be a considerable disappointment to regional trading schemes in New Zealand and Japan (and potentially others) that currently have access to CDM markets but will not under CP 2.”⁵⁹ Furthermore, developing countries were granted an increase in the “share of proceeds” from carbon market mechanisms.⁶⁰ When analyzed under a viewpoint of common but differentiated responsibilities, this is an acknowledgement that developing countries

⁵² Rahman, *supra* note 45, at 4.

⁵³ *Id.*

⁵⁴ Jennifer Morgan, *Reflections on Cop 18 in Doha: Negotiators Made Only Incremental Progress*, INSIGHTS.WRI.ORG at ¶ 2 (Dec. 14, 2012), <http://insights.wri.org/news/2012/12/reflections-cop-18-doha-negotiators-made-only-incremental-progress>.

⁵⁵ Boyle, *supra* note 50, at 2-3) (Australia, Belarus, Croatia, Iceland, Kazakhstan, Liechtenstein, Monaco, Norway, Switzerland, and Ukraine will all be following the EU in continuing mitigation commitments under CP2.).

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* (It is also important to note that many of the countries including New Zealand who did not commit to binding reduction targets under CP 2 are still committed to their Copenhagen targets, which are not legally binding.).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

need aid from developed countries to meet their reduction goals and develop in a sustainable manner.

Doha marked another development in the area of climate finance because the “fast-start finance” period ended in 2012.⁶¹ Fast Start Finance was a program to aid developing countries in mitigation, adaptation, and technology development and transfer, which were supposed to total approximately \$30 billion from 2010 to 2012.⁶² In Copenhagen, countries committed to contributing \$100 billion to the Green Climate Fund beginning in 2020. Some parties were hopeful that COP 18 would provide financial assistance by filling in the finance gap between the end of Fast Start Finance and the beginning of the finance period agreed to in Copenhagen, but COP 18 failed to produce such an agreement. The Vice Chairman of China's National Development and Reform Commission, Xie Zhenhua, who heads the Chinese delegation at climate change negotiations, stated that “[o]ne major concern is that there must be a solution for financing. There is long term financing of \$100 billion, which is being talked about, but the focus must be on the medium term, that is 2013-20. There has to be a clear decision on injection of capital from next year to 2020.”⁶³ This reiterates China's position as a developing nation in dire need of financial and technological assistance in meeting GHG reduction goals. Furthermore, the International Institute for Sustainable Development noted that:

[i]nsofar as the process did achieve the key procedural goals of securing a second commitment period of the Kyoto Protocol, seeing the AWG-LCA track draw to a close, and continuing to shape discussions under the Durban Platform, Doha can be measured a “success.” But insofar as concrete or substantial progress was made on key issues including the architecture of a post-2020 agreement, mitigation and financing commitments, the outcomes

⁶¹ Morgan, *supra* note 53, ¶ 3.

⁶² *Fast-start Finance*, UNFCCC.INT, http://unfccc.int/cooperation_support/financial_mechanism/fast_start_finance/items/5646.php (last updated June 3, 2013).

⁶³ Urmi A Goswami, *United Nations Climate Change Negotiations 2012: The BASIC Countries Demand More Fund to Tackle Climate Change*, THE ECONOMIC TIMES (Dec. 5, 2012, 4:37 PM), http://articles.economictimes.indiatimes.com/2012-12-05/news/35620325_1_bali-road-map-green-climate-fund-durban-countries.

were woefully inadequate.⁶⁴

A major development in granting climate related aid to developing countries that emerged during COP 18 is when the “Parties agreed to establish by COP 19 ‘institutional arrangements, such as an international mechanism’ that would help vulnerable, developing countries deal with the irrecoverable losses and damages from climate change.”⁶⁵

Furthermore, this decision:

Invites all Parties, taking into account common but differentiated responsibilities and respective capabilities and specific national and regional development priorities, objectives and circumstances, to enhance action on addressing loss and damage associated with the adverse effects of climate change, taking into account national development processes ...⁶⁶

Such actions would include the assessment of “the risks of loss and damage associated with the adverse effects of climate change,”⁶⁷ designing country-specific risk management strategies,⁶⁸ and “involving vulnerable communities and populations and civil society, the private sector and other relevant stakeholders, in the assessment of and response to loss and damage.”⁶⁹ In line with the earlier mention of common but differentiated responsibilities, this decision also requests, “developed country Parties [...] provide developing country Parties with finance, technology and capacity-building.”⁷⁰

This reiterates the principle of common but differentiated responsibilities in responding to the adverse impacts on climate

⁶⁴ Boyle, *supra* note 50, at 1.

⁶⁵ *Supra* note 30 ¶ 4; United Nations Framework Convention on Climate Change, Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, FCCC/CP/2012/L.4/REV.1 ¶ 9 (Dec. 8, 2012), <http://unfccc.int/resource/docs/2012/cop18/eng/l04r01.pdf>.

⁶⁶ United Nations Framework Convention on Climate Change, Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity, FCCC/CP/2012/L.4/REV.1 ¶ 6 (Dec. 8, 2012), <http://unfccc.int/resource/docs/2012/cop18/eng/l04r01.pdf>.

⁶⁷ *Id.* ¶ 6(a).

⁶⁸ *Id.* ¶ 6(b).

⁶⁹ *Id.* ¶ 6(f).

⁷⁰ *Id.* ¶ 8.

change in developing countries. Climate change has already had an impact on China's agriculture,⁷¹ distribution of water resources,⁷² forest eco-systems,⁷³ sea levels, and human health.⁷⁴ As Su Wei, a member of the China's delegation at the United Nations Climate Change Conference in Bali commented: "China is in the process of industrialization and there is a need for economic growth to meet the basic needs of the people and fight against poverty."⁷⁵ Furthermore, Wei added "I just wonder whether it's fair to ask developing countries like China to take on binding targets or mandatory targets . . . I think there is much room for the United States to think whether it's possible to change (its) lifestyle and consumption patterns in order to contribute to the protection of the global climate."⁷⁶ Although these comments were made regarding the Bali Climate Change Conference in 2007 ("COP 13"), it is important to note the slow movement of progress.

It is obvious from the slow movement of progress in the last few Conferences of the Parties that if China wants to reduce the negative impact of climate change on its people's health and agriculture, that another approach has to be taken in these negotiations by major developing country emitters. As U.N. Secretary-General Ban Ki-moon remarked, "More needs to be done."⁷⁷ Furthermore, while Xie Zhenhua acknowledged that: "The Doha conference has met Chinese delegate's expectations, and we are satisfied with the outcome," he continued to say that "China will follow a low-carbon path and contribute to fighting climate change on the basis of equal and common but differentiated responsibilities and capabilities while pursuing

⁷¹ Second Nat'l Comm'n on Climate Change of the People's Republic of China, 12 (2012), <http://unfccc.int/resource/docs/natc/chnnc2e.pdf>.

⁷² *Id.*

⁷³ *Id.* at 13.

⁷⁴ *Id.*

⁷⁵ *China, U.S. Face Off on Climate Policies: Differences over who should cut carbon emissions and how*, NBC NEWS, Dec. 7, 2007, http://www.nbcnews.com/id/22148697/ns/us_news-environment/t/china-us-face-climate-policies/#.UUZcK6W5g5g.

⁷⁶ *Id.*

⁷⁷ *Doha Talks End with Slight Progress*, CHINA.ORG.CN (Dec. 10, 2012), http://www.china.org.cn/environment/doha_climate_talks/2012-12/10/content_27363169.htm.

sustainable development.”⁷⁸ During negotiations, Zhenhua presented China’s first climate documentary called “Warm and Cold, We Share Together.” The documentary, in which hundreds of scientists, experts, and officials took part, described the “relationship between the change of ecological environment and human civilization from both historical and realistic perspectives . . . [while also] . . . call[ing] on the mankind to take the responsibility to deal with the consequences of environment degradation and adopt a path of sustainable development.”⁷⁹ Zhenhua also “called on developed economies to be more ambitious in cutting greenhouse gas emissions and raise the money needed to help developing economies address climate change.”⁸⁰

Thus, the International Institute for Sustainable Development (“IISD”) noted that “China has been particularly vocal in the ADP⁸¹ track, reinforcing beliefs that any future mitigation agreement must be firmly rooted in the principle of CBDR and reflect developed countries’ disproportionate historical responsibility for emissions.”⁸² Furthermore, the IISD acknowledged that:

All parties agree that there will be differentiation in action under a future agreement, particularly with respect to least developed countries and small island states. The key question remains how to design a regime that brings the major emitters from both the developed and developing worlds together under the same rules-based system. It is this discussion that will be important to watch as the ADP takes shape, particularly as balances of power shift. By 2025, the combined GDP of China and India is set to be bigger than that of France, Germany, Italy, Japan, the United Kingdom, the United States and Canada put together.⁸³

China’s role in negotiations were significant because it is a major emitter, a rapidly growing GDP, and it hangs onto the principal of CBDR so tightly that its blocking progress in nego-

⁷⁸ *Id.*

⁷⁹ *China Presents Climate Documentary to UN Official*, CHINA.ORG.CN (Dec. 9, 2012), http://www.china.org.cn/environment/doha_climate_talks/2012-12/09/content_27359415.htm.

⁸⁰ Doha Talks End with Slight Progress, *supra* note 76.

⁸¹ ADP stands for the Ad Hoc Working Group on the Durban Platform for Enhanced Action. *See* Boyle, *supra* note 50, at 1.

⁸² Boyle, *supra* note 50, at 9.

⁸³ *Id.*

tiations that need to be made in order to significantly reduce global GHG emissions. Some of the policies and actions that China has undertaken in response to climate change adaptation include enhancing infrastructures in coastal zones, establishing direct online reporting systems for infectious disease outbreaks and public health emergencies, and enhancing scientific research on climate change.⁸⁴

In order for China to implement these crucial actions and policies, they need to have the available funds and technologies for climate change mitigation and adaptation.⁸⁵ Thus, “the developed countries should fulfill their commitments by providing funds, technologies and supports in capacity building to the developing countries, which is the fundamental assurance for the developing countries to effectively address climate change.”⁸⁶ Despite the progress it has made in mitigation and adaptation, China still has a dire need for aid in capacity building if it wants to reduce global climate impact in a meaningful manner.

VII. THE ROLE OF THE UNITED STATES IN CLIMATE CHANGE NEGOTIATIONS

“The threat from climate change is serious, it is urgent, and it is growing. Our generation’s response to this challenge will be judged by history, for if we fail to meet it—boldly, swiftly, and together—we risk consigning future generations to an irreversible catastrophe,” President Barack Obama said at the *United Nations Summit on Climate Change* on September 22, 2009.⁸⁷

In the past few years, the United States has been actively interested in the issue of climate change through domestic policy actions. One such action was the passage of the American Recovery and Reinvestment Act, which allocated over \$90 bil-

⁸⁴ United Nations Framework Convention on Climate Change Second National Communication on Climate Change of the People’s Republic of China, *supra* note 70, at 14.

⁸⁵ *Id.* at 22.

⁸⁶ *Id.*

⁸⁷ Fifth Nat’l Comm’n of the U.S. Under the U.N. Framework Convention on Climate Change, *U.S. Climate Action Rep.*, 1 (2010), http://unfccc.int/resource/docs/natc/usa_nc5.pdf.

lion for investments in clean energy and green jobs.⁸⁸ In 2009, President Obama issued an Executive Order “requiring federal agencies to set and meet strict GHG reduction targets by 2020.”⁸⁹ In 2010, the Environmental Protection Agency (“EPA”) set GHG “emissions thresholds” to limit the emissions of the nation’s largest emitters including power plants, refineries, and cement production facilities, facilities covered under the Clean Air Act.⁹⁰ There has also been a push “. . . for more aggressive efficiency standards for common household appliances.”⁹¹ Additionally, in 2009, the United States began the Light-Duty Vehicle Greenhouse Gas Emissions Standards Program, which is “. . . the first-ever joint fuel economy and carbon dioxide tailpipe emission standards for cars and light-duty trucks began.”⁹² Thus, “throughout the United States, Americans are taking action to address the grave challenge of climate change, and to promote a sustainable and prosperous clean energy future. These efforts are occurring at all levels of government, in the private sector, and through the everyday decisions of individual citizens.”⁹³

Despite United States Special Envoy Todd Stern’s assertion at the Doha Conference that the United States is on track to meet its voluntary 16.3% cut in emissions by 2020,⁹⁴ other reports by the Energy Information Administration and White House Council for Environmental Equality indicate that the United States will only meet between a 9% and 10% reduction from 2005 levels.⁹⁵ These less optimistic projections are in spite of the EPA’s latest decision to regulate emissions from

⁸⁸ *Id.* at 1- 2.

⁸⁹ *Id.* at 3.

⁹⁰ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Regulatory Initiatives*, <http://www.epa.gov/climatechange/EPAactivities/regulatory-initiatives.html> (last visited at Mar. 17, 2013).

⁹¹ U.S. Climate Action Report, *supra* note 86, at 3.

⁹² *Id.* at 3.

⁹³ *Id.* at 1-2.

⁹⁴ Suzanne Goldenberg, *US Envoy’s Cutting Remark on CO₂ Emissions Fails to Add Up*, *The Guardian* (Dec. 6, 2012) <http://www.guardian.co.uk/environment/2012/dec/06/us-envoy-emission-cut-doha-climate>.

⁹⁵ *Id.*; see also Dallas Burtraw & Matt Woerman, *US Status on Climate Change Mitigation*, Discussion Paper (Resources For the Future., D.C.), October 2012, at 15 available at <http://www.rff.org/RFF/Documents/RFF-DP-12-48.pdf>.

new motor vehicles and coal fired plants.⁹⁶

Stern stated in a speech at Dartmouth College this past summer that:

Climate change negotiations are very difficult...because climate change is not just an environmental issue – it implicates virtually every aspect of national economies, including industry, energy, transportation, agriculture and forests. So limits on emissions make countries nervous about economic growth and development.”⁹⁷

Stern went on to say that negotiations are complicated by the fact that the United Nations Framework Convention on Climate Change includes over 190 countries that have established various alliances with each other with differing objectives, viewpoints, and intersecting priorities and agendas.⁹⁸ Furthermore, “north-south resentments continue to rile the debate” and “negotiations are governed by a consensus rule of procedure, which, in effect, enables any small handful of determined countries to block progress.”⁹⁹

Stern went on to criticize what he called a “dubious foundation” of past Conference of the Parties meetings, specifically in Copenhagen: the principle of common but differentiated responsibilities.¹⁰⁰ He continued to claim that:

The prevailing paradigm of climate negotiations was still that a firewall existed between developed and developing countries as they were defined in the 1992 Framework Convention, with all specific obligations to cut emissions assigned to developed countries. This paradigm is embodied in the 1997 Kyoto Protocol . . . The U.S. never thought that paradigm was legitimate. In 2009 [Copenhagen] we saw it as an unworkable basis for moving forward.¹⁰¹

While Stern acknowledged China’s “economic success” and determination in being a world leader in renewable energies,

⁹⁶ See generally *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007).

⁹⁷ Todd Stern, Special Envoy for Climate Change, Remarks at Dartmouth College, (Aug, 12, 2002), available at <http://www.state.gov/e/oes/rls/remarks/2012/196004.htm>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

he also acknowledged the scientific fact that developing countries currently account for approximately 55% of global emissions from fossil fuels, a figure that may rise to 65% by 2030.¹⁰² Under the current regime of the Kyoto Protocol, which treats all developing countries equally, leaving such a large percentage of global emissions unaccounted for and unrestricted does create undeniable problematic effects. In addition, such a regime will most likely make meeting the goal of keeping the global average temperature below a rise of 2-degrees Celsius by year 2100 target unattainable.

Furthermore, Stern suggests that a global climate change treaty should account for all major emitters, both developed and developing, equaling approximately 80% of global emissions and “build out from there.”¹⁰³ He also reiterated the major political obstacle for the United States, the Byrd-Hagel Resolution, emphasizing that:

Securing Senate support for climate agreements is difficult under any circumstances, but unless all major countries are seen as committing to real action, it will be hopeless. Of course, the actions of different countries need not be the same – addressing climate change is not a one-size fits all proposition – but they need to be seen as fair.¹⁰⁴

Stern emphasizes that reduction targets should be voluntary based on a country's own capabilities, because an agreement that tries to force a country to accept the terms of a treaty that are unfavorable to the country's interests, will most likely not be successful.¹⁰⁵ These voluntary commitments would then be legally binding at either the national or international level.¹⁰⁶ Stern admits that these goals may not be stringent enough to meet the 2-degree goal, but such a treaty would be less likely to result in the “deadlock” that we see now.¹⁰⁷ The United States is calling for a treaty that will be “applicable to all” but also takes into account each country's “circumstances,

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

capabilities, and responsibilities.”¹⁰⁸

It can be inferred from Stern’s speech that binding reduction targets for developed countries, but not developing countries, provide a huge hindrance to climate change negotiations in general, and most currently impacted the climate change negotiations in Doha. More importantly, requiring that only developed country parties reduce their GHG emissions undermines the ultimate objective of the Convention stated in Article 2, which is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with climate system.”¹⁰⁹

A treaty more in line with Stern’s suggestions, while not guaranteeing that the 2-degree target is met, may be more effective overall in reducing GHG emissions. It may also encourage developed country Parties to agree to reduction limits and may also in turn encourage developed country Parties to participate in climate finance programs such as the Green Climate Fund.¹¹⁰ It seems likely that if the participation of developing countries was contingent on receiving international aid or funding, then developed countries might feel incentive to reduce binding targets.

VIII. AFTER DOHA

After Doha, Ban Ki-moon stressed that: “[a] global climate change agreement would give us the engine we need to advance us decisively on this path.”¹¹¹ In addition, Ki-moon remarked: “I welcome President Obama’s new resolve to address climate change and give it high political priority.”¹¹² Furthermore, when addressing the current obstacles, Ki-moon says he is “reaching out to government and business leaders to mobilize the capital and the political will for a global, legally binding climate change agreement by 2015. World leaders have pledged to reach an agreement, and we must hold them to that prom-

¹⁰⁸ *Id.*

¹⁰⁹ UNFCCC, *supra* note 4, Art. 2.

¹¹⁰ See generally, *supra* note 20.

¹¹¹ *Gateway to the United Nations Work on Climate Change*, UNITED NATIONS (Feb. 11, 2013), http://www.un.org/wcm/content/site/climatechange/pages/gateway/template/news_item.jsp?cid=39006

¹¹² *Id.*

ise.”¹¹³

In addition, the ADP met twice since Doha to discuss future plans for the 19th Session of the Conference of the Parties, which took place on November 11 to November 22, 2013 in Warsaw, Poland.¹¹⁴ The ADP agreed that they needed at least one additional session in 2014, and requested that the incoming co-chairs of the ADP propose a “balanced focused, and more formal mode of work” for Warsaw.¹¹⁵

In November 2014, the White House issued a joint announcement from the United States and China, which addressed the post 2020 actions “to transition to low-carbon economies, [to be] mindful of the global temperature goal of 2-degrees Celsius.”¹¹⁶

The announcement specifically focused on the future of “reaching an ambitious 2015 agreement that reflects the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances.”¹¹⁷ This seems to be a positive step for both countries as it stresses “the importance of strengthening bilateral cooperation on climate change.”¹¹⁸

Finally, President Obama and President Xi have high hopes for the 2015 UNCC which will take place in Paris as they discuss their goals of “adopt[ing] a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties at the United Nations Climate Conference in Paris in 2015.”¹¹⁹ While there is still much work to be done for the United States to meet the continued goal of reducing emissions by 28% in 2025, the announcement does

¹¹³ *Id.*

¹¹⁴ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *Meetings*, http://unfccc.int/meetings/warsaw_nov_2013/meeting/7649.php (last visited June 23, 2013).

¹¹⁵ UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, *Bonn Climate Change Conference*, http://unfccc.int/meetings/bonn_jun_2013/meeting/7431.php#cu (last visited July 22, 2013).

¹¹⁶ Press Release, Office of the Press Sec’y, U.S.-China Joint Announcement on Climate Change (Nov. 11, 2014), *available at* <http://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

point to many efforts taken by both countries utilizing resources such as the United States-China Climate Change Working Group, the U.S.-China Clean Energy Research Center and the U.S.-China Strategic and Economic Dialogue.¹²⁰ Ultimately, the countries “hope that by announcing these targets now, they can inject momentum into the global climate negotiations and inspire other countries to join in coming forward with ambitious actions as soon as possible.”¹²¹

IX. CONCLUSION

Common but differentiated responsibilities is an important and foundational principle in climate change treaties, but may not need to be adhered to so strictly. This principle is essential to ensuring that those with the political, social, and economic ability to confront the problem of climate change do so. However, it should not be adhered to so strictly that it deadlocks negotiations between developed and developing countries and hinders progress in actually solving the problem. The principle of common but differentiated responsibilities is an important element in the area of climate finance, technology transfer, and capacity building. If this principle was entirely absent from the area of climate finance, then developing countries and those vulnerable to the adverse impacts of climate change would be unfairly left to fix a problem that they had in some cases very little part of creating. And just as importantly, developing countries with large amounts of GHGs, while contributing to the climate change problem, without help from the developed world will not be able to reduce their emissions substantially without significant damage to their own econo-

¹²⁰ *Id.* Specifically, China and the United States have discussed establishing a new carbon storage project, which will monitor carbon storage using industrial carbon dioxide. The countries are also working together on a new Enhanced Water Recovery pilot project “to produce fresh water from CO₂ injection into deep saline aquifers.” China and the United States will also launch a Climate-Smart/ Low-Carbon Cities Summit to ignite a new initiative on Climate-Smart/Low Carbon Cities. Some other initiatives listed include promoting trade in green goods focusing specifically on “smart low-carbon cities and smart low-carbon growth technologies.” The countries also note launching additional pilot programs, which include directing studies to focus on “the importance building efficiency, boiler efficiency, solar energy and smart grids.”

¹²¹ *Id.*

mies and the social and political issues that arise from such damage.

China is a country that currently contributes greatly to global climate change, but unfortunately cannot be expected to reduce its GHG emissions significantly on its own. On the other hand the United States cannot be expected to agree to international binding targets if other major emitters are also not expected to do so.

Although progress has been made by both countries to reduce emissions, negotiations need to go in the direction which Stern suggested in which all major emitters are committed to binding reduction targets whether voluntary or imposed by an international body. Logistically this requires more contributions from developed countries to finance climate programs such as the Green Climate Fund. It is possible to have legally binding voluntary reduction targets for all major emitters, both developed and developing, while still adhering to the principles of the convention, which state that: "the developed country Parties should take the lead in combating climate change and the adverse effects thereof."¹²²

The United States' view is not inconsistent with its ratification of the United Nations Framework Convention on Climate Change. The United States can and should be a leader in future climate change negotiations by advocating for a more equal and effective climate change treaty in 2015.

¹²² UNFCCC, *supra* note 4 at Art. 3.