# Common but Differentiated Responsibilities: A Shield for Equity or Barrier to Global Climate Action?

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https://doi.org/10.62345/jads.2024.13.4.94

## Abstract

*The principle of Common but Differentiated Responsibilities (CBDR) was meant to balance fairness and action by recognizing historical emissions and differing capabilities. However, it has become a two-sided weapon that seeks equality but hampers it simultaneously. The developed world advocates for equitable responsibility as emission levels increase globally, while the developing world seeks justice for previous transgressions. As such, CBDR has become both a mechanism for equitable distribution and a hindrance to much-needed action. The article's results show that the CBDR principle has evolved into a political and legal conflict source, undermining effective climate change responses. The shift from binding emission reductions to voluntary Nationally Determined Contributions (NDCs) in the Paris Agreement is highlighted as a key concern, as it raises doubts about CBDR's ability to address historical emissions disparities. The article also addresses how multinational corporations, as major contributors to emissions, are becoming an urgent focus in applying CBDR to non-state actors. It reveals how CBDR has led to political divisions, particularly between developed and developing nations, with the Global South calling for climate justice. Through cases like Urgenda Foundation v. Netherlands, the article highlights CBDR's limitations in forcing non-compliant governments to take action on their climate responsibilities. Lastly, the article critiques the Paris Agreement's reliance on voluntary NDCs, arguing that it weakens CBDR by allowing developed countries to set minimal emission reduction targets. As the climate crisis accelerates, the world must ask: Is CBDR still the magic bullet for fostering international cooperation, or is it the elephant in the room stalling the necessary solidarity needed to confront the threat of extinction?*

**Keywords:** Common but Differentiated Responsibilities (CBDR), Climate Justice, Global Climate Governance, Equity vs. Effectiveness, International Environmental Law.

## Introduction

Common but Differentiated Responsibilities (CBDR) is widely regarded as the quintessential principle of international environmental law, but is the concept a solution or part of the problem? CBDR was formulated and adopted after the 1992 Rio Earth Summit and was designed to promote equity and cooperation while acknowledging that all countries are not equally at fault or impacted by environmental issues. (Yong & Xin, 2024) CBDR has never become collectively shared and coherently applied due to factors such as developed countries failing to internalize it, developing countries not uniting behind it, and fiercely contested key tenets (Kolmaš, 2023). Some countries are demanding justice for the harm of industrialized nations, while some developed countries insist on equal responsibility for increasing emissions. This clash raises excruciating but necessary

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Compliance with ethical standards: There are no conflicts of interest (financial or non-financial). This study did not receive any funding.

questions: Is it possible to prioritize fairness while guaranteeing the immediate change required to avert climate disaster? Has CBDR provided a cloak for complacency to some countries with an excuse of shifting blame to other countries? Or does it still have the capacity to lead the world to a just and practical solution? Under the Kyoto Protocol (1997), developed countries committed to specific emission reductions: the United States aimed for a 7% decrease, the European Union collectively pledged an 8% reduction, and Japan targeted a 6% cut, all relative to 1990 levels during the 2008–2012 period. Fast forward to COP29 in Baku (2024), and the global community agreed to triple climate finance to developing nations, setting a goal of $300 billion annually by 2035. However, this figure falls short of the $1 trillion per year that developing countries estimate is necessary to tackle climate change impacts effectively. Complicating matters, nations like China, South Korea, and several Gulf states have transitioned from being considered developing to emerging as significant economic powers and major investors in global green projects. This shift has sparked debates about their role in climate finance, suggesting they should contribute more substantially to international climate funds. These developments highlight the evolving and complex nature of international climate responsibilities and financial commitments.

This article addresses questions such as:

1. Analyzing how CBDR has been understood and utilized in various international treaties and controversies. The objective is to explain its legal structure and force one to contemplate its position in the current climate politics.
2. Is it possible to uphold a set of principles that has its basis in past injustices, or should it adapt or be discarded because the climate is changing?
3. Perhaps the most important of these questions is whether justice and the call to action in the struggle for the future are still compatible.

## Historical Context of CBDR

The principle of Common but Differentiated Responsibilities (CBDR) emerged from the Rio Declaration in 1992,(Ibrahim et al., 2016) reflecting the growing recognition that environmental problems are global in scope but irregular in their causes and impacts. It acknowledged two key realities: first, that the developed countries are the major culprits of environmental problems because of industrialization, and second, that the developing countries cannot effectively combat environmental issues because of certain limitations such as economic and technological (Haider et al., 2024). The Paris Agreement to the UNFCCC shifts the principle of common but differentiated responsibilities (CBDR) from substantive mitigation obligations to procedural considerations for developing countries. (Huggins & Karim, 2016) UNFCCC and Kyoto Protocol sought to operationalize CBDR by imposing differentiated obligations: developed countries pledged to legally enforceable emission cuts while developing countries obtained financial and technological support to meet environmental changes. (Selementová, 2019) Nevertheless, the evolution of CBDR has not been without some controversy. The Paris Agreement signed in 2015 also altered the approach from the strict division of burden sharing to the principle of “universal national commitments.” Some stakeholders have countered that this weakens CBDR by reducing the responsibility of developed countries. (Huggins & Karim, 2016) Some people view it as a rational move given new developments in the global emissions landscape where countries such as India, classified as developing nations, emit more than developed nations.  This historical background raises a critical question: Has CBDR adapted to the shifting landscape of climate governance, or has it been compromised to the detriment of justice and effectiveness?

**Legal and Practical Challenges of CBDR**

The CBDR principle in climate change negotiations faces challenges such as being misinterpreted as preferential treatment for developing countries and being weakened by the single-track negotiation pattern. The CBDR principle has been challenged by emerging economies and the multiplication of State categories and appears to be fading in the 2011 Durban decisions, giving way to general contextual norms. (Deleuil, 2012) In what way does CBDR achieve the dual objectives of equity and urgency? CBDR is based on equity, those who contributed more to pollution should allocate more to the mitigation of environmental impacts. However, fairness comes at a cost. The Paris Agreement tried to find a balance in this regard by shifting from the strict divide between developed and developing countries. But, the use of voluntary targets, known as Nationally Determined Contributions (NDCs), has resulted in a lack of coherent efforts. NDCs need to become more transparent and comparable to achieve the Paris Agreement on climate change, as they currently omit important mitigation sectors and lack details on costs and financing. (W. P. Pauw et al., 2018) Developed countries are usually unreliable in their financial and technological commitments while developing nations cannot meet their adaptation and mitigation requirements. Is CBDR too ambiguous to be useful? This makes CBDR flexible and versatile in design but also has been seen as its major advantage and disadvantage at the same time. Although it enables states to structure obligations individually, it fails to offer much guidance on compliance. There is non-compliance because there are no legally binding measures present (Ahmad et al., 2023). The US pullout from the Kyoto Protocol in 2001 is a clear example of developed countries shifting the burden to developing countries without any responsibility.(Pachauri & Gupta, 2002) Moreover, the legal vagueness of CBDR raises a question of distinction between theory and practice. Whether the principle should be based on historical responsibility, which has been discussed by the representatives of the Global South? Or should it base its targets on current and future emissions rates, as the Global North advocates state? Such disagreement has resulted in weak and disorganized climate policy coherence and no strategic direction on how to close the gap. Will CBDR further deepen the North-South divide? In as much as CBDR was intended to promote international cooperation, it has instead widened political divisions between developed and developing countries. (Kolmaš, 2023) The Global South claims that climate change has been initiated by industrialized countries and calls for climate debt as financial compensation and technology transfer. On the other hand, developed countries, especially the US, have argued for the principle of common but differentiated responsibility in light of upsurges in emissions by developing countries. For example, in the case of Massachusetts v. EPA (2007), the U.S. Supreme Court agreed to address emissions but did not embrace CBDR directly. Likewise, the Paris Agreement did not try to address the burden of emissions that occurred in the past, focusing on future actions instead. CBDR compromises can define the constraints of addressing rooted inequalities. Can CBDR adapt to modern dynamics? Climate change is still happening globally and the measures to counter it are still lame in the face of this problem. Nevertheless, CBDR becomes a problem since the source of emissions is not limited to domestic entities but also transnational emitters such as multinational corporations. Thus, it may be interesting to discuss the applicability of the principle and its potential to be applied to non-state actors. Moreover, how can it call for justice while advocating for collective action to prevent climate disasters?

## Case Studies and Critical Analysis

To evaluate the CBDR approach, it is important to observe that it exists and analyze it in several important cases, through which it is possible to determine its work and the problems it encounters while combating global climate change. Such cases raise important questions about the function and place of the principle in current climate regulation.

**1. Urgenda Foundation v. Netherlands (2019): A Test of National Responsibility**

In Urgenda, the Dutch court directed the government to cut its emissions to 25% by 2020 on climate-related human rights abuses. While the ruling marked a significant victory for climate justice, it raises important questions: How does CBDR function in a case where national courts intercede to compel climate change implementation outside of treaty-making? This case raises the possibility that the principle cannot make national governments act where political will is lacking. However, the ruling is more fundamental by challenging the application of CBDR if national legal systems are to advance environmental governance as opposed to international cooperation. Does this imply that CBDR is inadequate in today's climate change governance structure? The answer is that, while CBDR might not be effective in other areas, the new reality of climate change requires stronger instruments to enforce climate justice in the face of non-compliant governments.

**2. Milieudefensie v. Shell (2021): Corporate Accountability vs. State Responsibility**

In this case, a Dutch court recently directed the company to reduce its emissions by 45% by 2030 in Milieudefensie. This case provokes the debate on whether CBDR should go further than the state level and encompass multinational corporations. Originally, CBDR had been a principle that mainly focused on states, however, during the last decades, corporations have become one of the biggest sources of emissions. Should they be treated in the same manner as states? This case prompts us to ask: Is CBDR only for states or can it be developed further to accommodate corporate responsibility for both historical and current emissions? The ruling questions the premise of CBDR, which is hitherto restricted to the states, and opens up a case for including non-state actors in future climate governance. Without such an expansion, CBDR is likely to miss a big portion of the problem and thus reduce its strength.

**3. Massachusetts v. EPA (2007): The US Attitude about Global Accountability**

In Massachusetts v. EPA, the US Supreme Court found that the EPA is required to regulate greenhouse gases under the Clean Air Act. (De Saillan, 2007) Although the case did not directly invoke CBDR, it highlights a crucial issue: the case of the U.S. refusal to undertake legal obligations on climate change despite it being one of the highest emitters. This raises the question: Can CBDR be effective if countries such as the U.S. that are considered big emitters remain reluctant to undertake drastic measures domestically? The Massachusetts case shows that the CBDR approach used in the Paris Agreement has major limitations for holding powerful countries to account. Embedded in the language of CBDR, this is a highly problematic situation for addressing the emissions of historically dominant states, given that the US has been known to frequently withdraw or reduce its commitments. The success of CBDR therefore rests on the actions of the world's largest emitters, which is never definite and leaves us with the fundamental question of whether CBDR can sustain itself without the actual support of these states.

**4. The Paris Agreement (2015): Connecting the Gap or Compromising Equity?**

The Paris Agreement's success depends on the implementation of Nationally Determined Contributions (NDCs), but the large number of conditional NDCs and the costs of implementing them challenge the feasibility of NDC implementation. (W. P. Pauw et al., 2020) Although it is good to have broad support from member countries, this approach has questioned the future of

CBDR. Is the transition to voluntary contributions damaging to CBDR by enabling top polluters to establish low and aspirational goals or is this flexibility necessary for effective global interaction and collaboration? Some critics have claimed that the NDCs erode the very premise of CBDR since the developed countries are given the window to make negligible pledges. The answer seems clear: CBDR's shift to nationally determined contributions poses the danger of derailing its core objective and undermining CBDR's ability to address existing disparities in emissions and consequences. This change from hard and fast legal guarantees to suggestive commitments points to the periods when CBDR may not be useful in creating responsibility for climate change.

## Future of CBDR: Evolving or Obsolete?

As climate change progresses in the world, the future of the CBDR principle is being questioned as the world faces new challenges. Conflicting views of the CBDR principle between developed and developing countries may impede legislation efficiency and consensus in the context of climate change. (Chen, 2021) Traditionally, CBDR has been at the heart of international environmental law, especially in the climate regime, where it is aimed at trying to balance out the capabilities of developed and developing countries in combating climate change. However, the question arises here as to whether the concept of CBDR can remain relevant as a guiding principle given the ever-changing dynamics of the world in the need to address more and more complex and pressing environmental issues.

### 1. The Changing Global Landscape: The Emergence of New Giants and Increasing Global Connectedness

The concept of CBDR presumes that the earlier contributors to the climate change process are the developed countries while the latter are given some flexibility in addressing their emissions. (P. Pauw et al., 2014) Nevertheless, it can be stated that with the emerging global economic environment, the traditional dichotomy is being challenged. Is CBDR relevant when the emerging economies were less rich and polluting in the past but now contribute to over 50% of the emissions? The relevance of the principle comes into question since it can explain the rise of industrialization speed and emissions in such countries. In light of this, do the developing nations that are now industrializing have to bear more of the burden for fighting climate change, or does CBDR still excuse their minor contribution towards global warming? Also, the question of 'differentiation' becomes very delicate as the world continues to be a global village. Globalization through transnational corporations, technology, and supply chain networks has eroded the barriers to national emissions. Is CBDR sustainable when the emission is a consequence of globalized practices that affect more than one country? In turn, this integration sparks doubts regarding the capacity of the CBDR regime based on national distinctions to adequately clarify contemporary environmental management.

### 2. Voluntary Contributions and the Paris Agreement: Weakening or Adapting CBDR?

The Paris Agreement can be considered another stage in the development of CBDR since it moves away from the legally binding, 'Tiered Convergence' approach to the NDC approach where there is no legal obligation to set quantified emission reduction targets. (Huggins & Karim, 2016) This shift raises a critical question: Is CBDR, in its conventional sense, now outdated, or is it transitioning to a less fixed, more situational approach that can address the concerns of a pluralistic and politicized world?

On one hand, the flexibility provided by the NDCs as the instrument of the Paris Agreement lets countries choose their climate policies based on their capabilities. (Leiter, 2024) This flexibility perhaps enhances the tenet of national sovereignty and the fact that developing countries require some leeway to grow economically. However, this flexibility is problematic in certain ways. This is because commitment is not binding and is not backed by law; there is no way to force countries to stick to their targets as a way of enhancing accountability as promoted by CBDR. Suppose there are no adequate checks and balances in place. In that case, the principle may be weak to become something symbolic in the political domain rather than a reliable legal recourse for climate justice. Furthermore, the Paris Agreement fails to assign the developed countries a fair share of the blame and responsibility. (Ari & Sari, 2017) Unlike in the Kyoto Protocol, the structure of the NDCs does not explicitly spell out how developed countries must accept higher responsibility for the decrease in emissions. This indeterminacy undermines CBDR's basic tenet, and it becomes challenging to understand whether the framework is adapting for modern usage or gradually fading away. Is it possible for CBDR to serve as a useful instrument in international climate cooperation when the essential principle of equity seems to be sacrificed for the sake of inclusiveness?

### 3. Non-State Actors and Corporate Responsibility: Expanding the Scope of CBDR

The other weakness of CBDR is the emerging influence of non-state actors like multinational companies, which are sources of greenhouse gases. The case of *Milieudefensie v. Shell* illustrates the increasing pressure on corporations to be held accountable for their emissions, but this raises important questions: Is it also appropriate that CBDR should be offered to non-state actors apart from states? Is it possible to generalize the principle to include the ecological responsibilities of international business organizations whose operations are global? If so, how can CBDR be implemented to incorporate corporate responsibility and what would be the appropriate legal instruments to ensure that corporations are subject to responsibility in the same way as states are? This argument raises the question of whether CBDR, which has been hitherto a state-centered principle, is capable of assuming the new realities of modern environmental governance. As corporate power increases and private sector contributions to environmental problems intensify, there may be a need to broaden the concept of CBDR to include corporate responsibility (Haider, 2024). If corporations are left out of the picture, CBDR may eventually evolve into a partial and conservative framework incapable of addressing the whole gamut of climate change issues.

### 4. The Future of CBDR: A Principle in Crisis or an Evolving Framework?

Therefore, the future of CBDR remains dependent on its adaptability to the shifts in the trends and patterns of global emissions and environmental regimes. The principle cannot be frozen when there is a change in political power, expansion of emissions from the new economy, and the emergence of new climate change actors. CBDR has also offered an important narrative of how historical responsibility can be distributed in responding to the climate crisis; however, it may not offer an adequate answer to the current climate crisis.

The principle of Common but Differentiated Responsibilities (CBDR) has long served as a cornerstone in international climate policy, aiming to balance global environmental protection with equitable responsibility distribution. However, as climate challenges intensify, it's evident that CBDR requires significant evolution to address contemporary issues effectively.

## Recommendations for Enhancing CBDR's Effectiveness

Integrate Corporate Accountability: Beyond nation-states, multinational corporations play a pivotal role in global emissions. Incorporating Corporate Social Responsibility (CSR) into the CBDR framework can ensure that corporations are held accountable for their environmental impact, aligning their operations with global sustainability goals.

*Implement Progressive Emission Targets:* Wealthier nations and regions, with their higher historical and current emissions, should adopt more ambitious emission reduction targets. This approach aligns with the principle of equity, ensuring that those with greater capacity contribute more significantly to mitigation efforts.

*Expand CBDR to Cover All Sustainability Dimensions:* Traditionally focused on environmental aspects, CBDR should be broadened to encompass social and economic dimensions. This expansion acknowledges that sustainable development is multifaceted, requiring differentiated responsibilities across various sectors.

*Foster Climate Finance Mechanisms:* Developed countries should enhance financial support to developing nations, facilitating technology transfer and capacity-building. Establishing robust climate finance mechanisms can bridge the gap between nations with differing capabilities, promoting global cooperation.

*Promote Inclusive Decision-Making:* Engaging a diverse range of stakeholders, including marginalized communities and non-state actors, in climate policy discussions ensures that the voices of those most affected by climate change are heard, leading to more equitable and effective solutions.

## Conclusion

CBDR's future is uncertain. Either it could adapt to exist in a world that is increasingly connected, integrated, and interdependent; or it could simply become irrelevant in an age where climate change is no longer a national or regional issue but a global one that requires urgent global solutions. Only time will tell if it can evolve to fit the new norms of climate governance or if it will be superseded by more intricate and effective standards. As we move forward, the question remains: To what extent can CBDR remain as a basic principle of IEL or is there a need to shift towards a more egalitarian framework of climate justice?

## References


- Ahmad, I., Haider, A., & Zeb, B. (2023). In the Name of Nature: The Legal Frontiers of Environmental Preservation. *Journal of Asian Development Studies*, *12*(4), 401–411.
- Ari, I., & Sari, R. (2017). Differentiation of developed and developing countries for the Paris Agreement. *Energy Strategy Reviews*, *18*, 175–182.
- Chen, Y. (2021). Reconciling common but differentiated responsibilities principle and no more favourable treatment principle in regulating greenhouse gas emissions from international shipping. *Marine Policy*, *123*, 104317.
- De Saillan, C. (2007). United States Supreme Court rules EPA must take action on greenhouse gas emissions: Massachusetts v. EPA. *Nat. Resources J.*, *47*, 793.
- Deleuil, T. (2012). The common but differentiated responsibilities principle: Changes in continuity after the Durban conference of the parties. *Review of European Community & International Environmental Law*, *21*(3), 271–281.
- Haider, A. (2024). Application of the United Nation Convention against Transnational

Organized Crime: An Analysis. *Available at SSRN 4686710*.

- Haider, A., Mathlouthi, N., & Ahmad, I. (2024). Beyond the Books: Real World Challenges in Implementing Environmental Laws in Pakistan. *Available at SSRN*.
- Huggins, A., & Karim, M. S. (2016). Shifting traction: Differential treatment and substantive and procedural regard in the international climate change regime. *Transnational Environmental Law*, *5*(2), 427–448.
- Ibrahim, I., Deleuil, T., & Farah, P. D. (2016). The Principle of Common But Differentiated Responsibilities in the International Regime of Climate Change. In *China's Influence on Non-Trade Concerns in International Economic Law* (pp. 182–193). Routledge.
- Kolmaš, M. (2023). The failure of CBDR in global environmental politics. *Global Environmental Politics*, *23*(1), 11–19.
- Leiter, T. (2024). Nationally determined contributions (NDCs) as a governance instrument–accounting for politics, negotiation progress, and related mechanisms under the Paris Agreement. *Environmental Politics*, *33*(3), 552–557.
- Pachauri, R. K., & Gupta, S. (2002). Editorial. *Climate Policy*, *2*(2–3), 127–128. https://doi.org/10.3763/cpol.2002.0215
- Pauw, P., Brandi, C., Richerzhagen, C., Bauer, S., & Schmole, H. (2014). *Different perspectives on differentiated responsibilities: a state-of-the-art review of the notion of common but differentiated responsibilities in international negotiations*, *6*. Discussion Paper.
- Pauw, W. P., Castro, P., Pickering, J., & Bhasin, S. (2020). Conditional nationally determined contributions in the Paris Agreement: foothold for equity or Achilles heel? *Climate Policy*, *20*(4), 468–484.
- Pauw, W. P., Klein, R. J. T., Mbeva, K., Dzebo, A., Cassanmagnago, D., & Rudloff, A. (2018). Beyond headline mitigation numbers: we need more transparent and comparable NDCs to achieve the Paris Agreement on climate change. *Climatic Change*, *147*, 23–29.
- Selementová, Z. (2019). Common but Differentiated Responsibilities for Developed and Developing States: A South African Perspective. *Law and Development: Balancing Principles and Values*, 75–94.
- Yong, W., & Xin, P. (2024). The Application of the Principle of Common but Differentiated Responsibilities in Environmental Governance on the High Seas. *Chinese Journal of International Law*, *23*(1), 151–184.