

Equitable But Ineffective: How The Principle Of Common But Differentiated Responsibilities Hobbles The Global Fight Against Climate Change

Mary J. Bortscheller

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/sdlp>

 Part of the [Environmental Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Bortscheller, Mary J. "Equitable But Ineffective: How The Principle Of Common But Differentiated Responsibilities Hobbles The Global Fight Against Climate Change." *Sustainable Development Law & Policy*, Spring 2010, 49-53, 65-68.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Sustainable Development Law & Policy* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

EQUITABLE BUT INEFFECTIVE: HOW THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES HOBBLER THE GLOBAL FIGHT AGAINST CLIMATE CHANGE

by Mary J. Bortscheller*

INTRODUCTION

Scientists now predict that despite global efforts to reduce greenhouse gas emissions, climate change effects like long-term droughts and significant sea-level rise are inevitable.¹ Consequently, the climate change crisis demands a comprehensive international response, with meaningful participation by all the major greenhouse gas (“GHG”) emitters.² The current climate regime embodied in the Kyoto Protocol distinguishes between developed and developing countries in a way that maintains an invidious inertia in the international fight against climate change.

China is a major GHG emitter that does not have any obligations to reduce emissions under the Kyoto Protocol, the current binding international climate change regime.³ The international community took a fresh look at the Protocol at the 15th Conference of the Parties (“COP”) in Copenhagen in December 2009. A critical question at that time was whether China would agree to reduce its GHG emissions; China’s position impacts the global community’s ability to combat climate change because other major GHG emitters (most notably the United States) have used China’s lack of binding commitments to justify their non-participation in the Kyoto Protocol.⁴ Positive signs were evident during and in the wake of the Copenhagen COP, however, when China played a key role in drafting the Copenhagen Accord, and further acknowledged the need for all countries to take action to fight climate change.⁵ Notably, China agreed to international verification of domestic mitigation measures, a significant step towards increased transparency in the regime.⁶

The fight against climate change is necessarily a global one, and China’s full participation in the United Nations’ Framework Convention on Climate Change (“UNFCCC”) is especially crucial in the short term.⁷ And although the Copenhagen COP did not produce a binding document, future COPs will. In so doing, the international community must reassess the application of the principle of common but differentiated responsibilities (“CDR”), which divides countries into two primary categories—developing and developed—and determines obligations accordingly.⁸

This article examines China’s unique situation within the UNFCCC and argues that the current interpretation of CDR is politically and practically flawed because it leaves out emerging economies that are major GHG emitters. The principle of CDR, as currently applied, does not distinguish among developing nations

in a way that recognizes the critical importance of emerging economies like China.⁹ China and other large emerging economies, no longer fit comfortably in the CDR’s existing developing country category.¹⁰ A third category is therefore necessary to encompass emerging economies like China. The international climate regime’s failure to actively engage China presents a problem for the entire international community.¹¹ Indeed, as an emerging economy and a major GHG emitter, and as an international actor whose participation in the climate regime impacts other major emitters’ compliance, it is essential that China actively participates in the successor agreement to the Kyoto Protocol.¹² Current incentives in the Protocol are not sufficient to persuade China to accept emission reduction commitments; consequently, the next protocol requires a combination of extra-legal incentives to convince China to take a more active role.¹³ Further, while China has made statements about working together within the UNFCCC structure, the United States and other developed countries have not yet succeeded in persuading China to accept binding commitments in a climate change regime.¹⁴

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

In recognition of the daunting environmental problems it faces, China is shifting toward increased domestic environmental responsibility, making resource conservation and environmentalism major policy goals.¹⁵ China’s commitment to the international fight against climate change, however, is not on par with other major emitters like the United States and Europe because it does not involve any GHG emissions reductions.¹⁶ This situation results from the application of CDR in the international climate change regime.¹⁷ The presence of the principle of CDR, in turn, is the result of a complex negotiation process between developing and developed countries.

During the UNFCCC negotiations in 1992, both developed and developing countries had concerns about who would be the first to reduce GHG emissions, and who would finance the associated costs.¹⁸ Developed countries wanted an inclusive international agreement for maximum effect and legitimacy.¹⁹ Developing countries hesitated to commit themselves to reduction targets when they had historically not contributed to global

* Mary J. Bortscheller is a J.D. Candidate, May 2010, at American University Washington College of Law.

greenhouse gas stocks, nor benefited from such emissions in the form of elevated standards of living.²⁰ Thus, in order to reach a comprehensive international agreement that brought all the necessary players to the table, the first COP used the principle of CDR to strike a political compromise with continuing legal implications.²¹

The principle makes developed countries the first actors in reducing emissions, and allows developing countries to follow over time. The notion of common but differentiated responsibilities is not new: it reflects general principles of equity in international law.²² The principle was present in nascent form in the 1987 Montreal Protocol, which acknowledged the “special situation” of developing countries by allowing them to delay their compliance with Protocol control measures for ten years.²³ The UNFCCC has attempted to duplicate this successful model in a climate change context.²⁴

CDR DISTINGUISHES BETWEEN DEVELOPED AND DEVELOPING COUNTRIES

The principle of CDR now embodied in the UNFCCC means that two factors determine a nation’s obligations concerning climate change. The first factor is a particular nation’s contribution to climate change through GHG emissions; the second is its economic and technological capacity to reduce emissions.²⁵ The CDR is primarily backward-looking, as it focuses on past contributions to existing stocks of emissions and lays out responsibilities intended to have remedial effects.²⁶

Based upon the two central considerations of CDR, the UNFCCC distinguishes between member countries, with the primary division occurring between developed and developing country parties.²⁷ Though the developed/developing paradigm dominates in the Convention, there is also intra-group differentiation between types of developed countries and types of developing countries.²⁸

In practice, the principle of CDR means that developed countries are subject to binding commitments to cut GHG emissions.²⁹ Further, certain developed countries are responsible for money and technology transfer to aid developing countries in adapting to and mitigating the effects of climate change.³⁰ In contrast, the UNFCCC does not require developing countries to reduce emissions or contribute funding, because of their minor contribution to existing GHG stocks and their reduced economic and technological capacity.³¹ Moreover, the Convention pays special attention to the plight of so-called “least developed countries,” as well as countries that will be especially harmed by climate change.³²

Country designation as Annex I or II is self-imposed.³³ In other words, the Conference of the Parties to the UNFCCC is not vested with the power to determine which countries are developed and which are developing. Rather, any country desiring to be included in Annex I or II “may” notify the Secretary-General of the United Nations that it “intends to be bound” by developed country commitments.³⁴ There are no further provisions in the UNFCCC or the Kyoto Protocol that elaborate on the process of categorizing member nations.³⁵ This makes the international law-making process on climate change especially vulnerable

to political horsetrading, as entering into binding agreements is entirely voluntary for countries designated under the UNFCCC as “developing.”

As the first measure arising from the UNFCCC with binding commitments carrying the force of law, the Kyoto Protocol set specific emission reduction commitments for each developed country party.³⁶ To date, 183 nations and the European Community have ratified the instrument; the United States is the only developed country party that has not.³⁷ Developing countries have no binding commitments under the Kyoto Protocol but do agree to monitor emissions, promote sustainable development, and cooperate with the Conference of the Parties in mitigating and adapting to the impacts of climate change.³⁸ China is designated a developing country party, and therefore did not commit itself to any emissions targets when it signed and ratified the UNFCCC and subsequent Kyoto Protocol.³⁹ The highly-anticipated December 2009 Copenhagen COP did not produce a binding successor-instrument to the Kyoto Protocol, but instead resulted in the Copenhagen Accord.⁴⁰

CHINA’S UNIQUE SITUATION IN THE INTERNATIONAL CLIMATE CHANGE REGIME

CDR guides China’s official position with respect to the international climate change regime.⁴¹ As a self-designated developing country party, China’s current obligations under the Kyoto Protocol extend only to soft commitments like GHG monitoring and information-sharing, promoting sustainable development, and enhancing carbon-absorbing resources, like forests.⁴² A key contributor to the drafting of the Copenhagen Accord in December 2009 at the Copenhagen COP, China nonetheless remains among the group of countries which is not legally obligated to reduce GHG emissions.⁴³

One of China’s chief strategies for addressing global climate change is to “uphold” the principle of CDR, which currently allows China to avoid emissions reduction commitments.⁴⁴ In support of its position, China advances several arguments, noting the nation’s relative poverty, its relatively low per capita emissions, and low level of responsibility for the existing stock of GHG emissions.⁴⁵ Moreover, China argues that it would not be fair to deprive a developing nation of the right to emit freely in the course of its development, as developed countries have already done.⁴⁶

Although China underscores its low development status, recent history shows that the country is unique among developing nations, as it has rapidly gained stature in the international community.⁴⁷ Starting in 1979 with its Reform and Opening Policy, China has implemented an ambitious plan to modernize the once-marginalized nation.⁴⁸ An illustration of China’s remarkable success at modernization is the 2008 Beijing Olympic Games, which engaged the world with China in an unprecedented way. The last decade has made it clear that China is an increasingly dominant player on the global stage.⁴⁹

Even as China gains prominence in the international community, its GHG emissions and air pollution problems are mounting; stark statistics detailing the situation abound.⁵⁰ Perhaps most

importantly, China now leads the world in annual GHG emissions.⁵¹ Further, a recent World Bank report estimated that air pollution causes about 750,000 deaths per year in China.⁵² The World Bank also reported that the nation is home to sixteen of the world's twenty most-polluted cities.⁵³ Atmospheric brown clouds, produced by automobile emissions and coal-fired power plants, have reduced sunlight and interfered with crop yields in several cities.⁵⁴

In light of these facts, the Chinese government has given more attention to environmental issues.⁵⁵ Because environmental degradation has emerged as an increasingly popular cause of citizen activism, China's leadership will not be able to ignore the issue in the future.⁵⁶ With an eye on its own continued legitimacy, the Chinese Communist Party ("CCP") is concerned with the delicate balancing of continued economic growth against the domestic and international imperatives for environmental protection.⁵⁷

A SOUND PRINCIPLE, WITH FLAWED APPLICATION

In its stated terms, CDR is sound and equitable; it has widespread acceptance in the international community, and will continue to play a central role in climate negotiations.⁵⁸ Although some scholars find the principle objectionable, their opposition arises out of a different interpretation of what is equitable for developed and developing country parties.⁵⁹ Critics argue that it is too difficult to predict the differentiated needs of developing countries in light of scientific uncertainty about the specifics of adverse climate change impacts.⁶⁰ While it is true that some scientific uncertainty remains about the impacts of climate change, widespread agreement exists that developing countries will bear a disproportionate amount of damages from climate change.⁶¹ Therefore, the principle of CDR correctly seeks to bridge the divide.

Detractors also find it questionable that multi-lateral environmental agreements should hold developed countries accountable for their historic emissions stocks, finding it unjust to ask modern-day citizens to make amends for pollution emitted generations ago.⁶² This argument fails to acknowledge the benefits that current generations have derived and continue to derive from living in a developed country. For example, a high standard of living, solid infrastructure, and economic strength are all after-effects of development and industrialization achieved through significant pollution.⁶³ Because citizens of developed countries currently enjoy the fruits of past GHG emissions, it is only fair to require those nations to bear a greater burden in solving the climate change problem.

THE PRINCIPLE OF CDR IN APPLICATION IS POLITICALLY INEFFECTIVE

Notwithstanding the soundness of CDR, the principle is problematic because it has created a paradigm that, if it persists, will not allow the nations of the world to effectively combat global warming.⁶⁴ The current interpretation of CDR in the Kyoto Protocol is politically ineffective because its exception of emerging economy, major-emitter countries like China has a chilling effect on global climate change negotiations.⁶⁵ Because of its status as the leading GHG emitter and its rising prominence

in the international community, China's participation is especially crucial to a multilateral climate change agreement. Within the United States, the fact that the Kyoto Protocol did not include obligations for China was advanced by President Bush and prominent congressional leaders as a reason for refusing to ratify the document.⁶⁶ This is a direct result of the vague construction of the principle of CDR in the current climate regime.

For example, the regime does not sufficiently distinguish between developing countries like China and Botswana.⁶⁷ The closest it comes to distinguishing between developing country parties is to emphasize the need to help developing countries that are "particularly vulnerable" to the adverse impacts of climate change.⁶⁸ Accordingly, China frames its policy statements on climate change to fit this characterization; indeed, a recent government White Paper echoes the UNFCCC's provision distinguishing the especially susceptible developing countries.⁶⁹ By describing itself as a country that is "particularly vulnerable" to climate change, China seeks to fit its increasingly square reality into the round hole of the developed country category of the UNFCCC.⁷⁰ Unfortunately, the language of the UNFCCC is not sufficiently specific to prevent such subtle mischaracterizations, which then lead to an undesirable result.⁷¹

China's willingness to accept increased responsibility under a more nuanced interpretation of the CDR could contribute significantly to the success of a post-Kyoto regime.⁷² On the other hand, without at least some corresponding commitments by China, the United States is unlikely to commit to the Kyoto Protocol's successor.⁷³ The interpretation of the CDR and the concomitant assignment of obligations, therefore, have major political implications for the success of a multilateral climate regime.

THE PRINCIPLE OF CDR IN APPLICATION IS PRACTICALLY INEFFECTIVE

Any climate change agreement that excludes China and other emerging economies from emission reduction targets will not have practical utility because these countries' rates of emissions are increasing rapidly. Although China leads the world in GHG emissions, it is in complete compliance with the Kyoto Protocol under the current interpretation of CDR.⁷⁴ Indeed, emissions from China and other developing nations are growing so fast today that even if all developed countries reduced their emissions to zero, emissions from developing countries will cause global concentrations of GHGs to increase by over eighteen percent in sixty years.⁷⁵ This would be a dramatic increase, as GHG concentrations have increased by thirty-five percent in the last 200 years, and this comparatively gradual shift has set in motion the current climate change crisis.⁷⁶ These facts illustrate the present danger in failing to engage developing countries—particularly China—in more concrete efforts at long-term GHG emissions reduction.⁷⁷ A continued application of CDR in a way that allows major-emitter, developing countries to avoid reduction targets will result in a considerable amount of GHG emissions left unregulated.⁷⁸

Moreover, because CDR is chiefly backward-looking, it does not provide any mechanism to adapt to the evolving global reality.⁷⁹ The principle is now focused on the existing stocks of

emissions that were produced when the major economies of the United States and Europe industrialized and thus does not account for the current and future emissions of emerging economies.⁸⁰ The remedial nature of the principle of CDR in the UNFCCC is necessary, as developed nations emitted the majority of the current stock of greenhouse gases in the atmosphere, and they are comparatively well-situated to reduce emissions.⁸¹ Nevertheless, it is not sufficient for the principle to be merely backward-looking because China and other developing countries are making significant current contributions to the global stock of emissions, and will continue to do so in increasing proportions.⁸² Without consideration for future emissions, the current application of CDR excludes major portions of emissions from regulation and therefore hinders the overall effectiveness of the climate change regime.⁸³

NO CATEGORY CURRENTLY EXISTS TO PROPERLY ADDRESS EMERGING ECONOMIES LIKE CHINA

The current division of obligations created by the principle of CDR in the Kyoto Protocol lacks a proper category to encompass China, an emerging economy and major-emitter that continues to develop rapidly.⁸⁴ The Protocol adopts the language of CDR from the UNFCCC, and does not further differentiate among the group of developing country parties.⁸⁵ Rather, it re-emphasizes the distinctions of the UNFCCC, calling on the Annex I developed country parties to implement policies that minimize the adverse effects of climate change, including the adverse impacts on other developing country parties and “especially” those types of developing countries listed in Article 4.8 of the UNFCCC.⁸⁶

Despite China’s efforts to depict itself as one of the developing countries that is “particularly vulnerable” to adverse climate change impacts, economic data does not support that characterization.⁸⁷ Further, recent history—from the Beijing Olympics to China’s influence on global financial issues—also contradicts the idea that China is a developing country by demonstrating its relatively advanced level of development and sophistication.⁸⁸ Plainly China does not fit into the same developing country category as the least developed countries in Africa or especially-vulnerable small island nations, and thus should not have similar rights and obligations.⁸⁹

Furthermore, it is highly relevant that China recently passed the United States as the leading global emitter of GHGs because it demonstrates the shifting realities of the climate change crisis.⁹⁰ China may well want to maintain the current unnuanced construction of CDR, which allows it to self-categorize as a developing country without binding reduction commitment targets. If the world were not in such a precipitous position with regard to climate change—as most scientists agree it is—under basic principles of equity China would not be required to take the measures the moment now demands of them.⁹¹ Consequently, a set of differentiated responsibilities that allow a major-emitting country like China to go unregulated is fundamentally flawed.⁹²

Although China does not fit into the current developing country category, neither does it fit in with the developed countries of Annex I and Annex II.⁹³ For all of its recent progress, China

has not yet fully industrialized and continues to develop both its physical infrastructure and its economy.⁹⁴ A useful metaphor is to envision China as consisting of a set of relatively developed islands located in a sea of people living in developing country conditions.⁹⁵ Indeed, hundreds of millions of Chinese remain in poverty, a characteristic China distinctly does not share with the developed nations in Europe or the United States.⁹⁶ According to the 2008 World Development Index, all of the Annex I and Annex II countries qualified as highly developed; China, by contrast, has only medium development.⁹⁷ Neither a developed, nor a least developed country, China does not fit into either category under the current application of the principle of CDR.⁹⁸

THE UNFCCC NEEDS A NEW CATEGORY OF EMITTER TO ENSURE GREATER PARTICIPATION

Although member countries must agree to be bound by the protocols of the UNFCCC, there is no clear mechanism in the Convention to determine the degree to which each country will be bound.⁹⁹ Therefore, the regime relies upon individual actors’ sense of responsibility for damage done to a common good—the climate—and provides little else as incentive to commit to reducing emissions. The UNFCCC as a legal instrument relies on self-designation and elective commitments made in the global public interest.¹⁰⁰

China and other emerging economies are unlikely to undertake the costly and burdensome task of reducing GHG emissions solely in the interest of an international common good.¹⁰¹ Therefore, because it lacks both the teeth to impose binding commitments upon parties and sufficient incentives to draw parties to voluntarily commit, the UNFCCC has very few legal tools at its disposal to obtain increased commitments out of unwilling parties.

THE INTERNATIONAL COMMUNITY MUST USE A VARIETY OF INCENTIVES IN CLIMATE NEGOTIATIONS

To many observers and participants, the 2009 Copenhagen COP ended rather disappointingly, without a binding successor to the Kyoto Protocol.¹⁰² The international community, however, retains the opportunity, and in fact the imperative, to create a more effective climate change agreement in the near future. The division of responsibilities under the CDR is one area that must be revised.

China could be persuaded by a combination of extra-legal incentives to participate in a future international climate regime that entails binding commitments.¹⁰³ The incentives include the prospect of increased global stature and an opportunity to efficiently solve an international problem that domestically poses great dangers, as well as pressure from internal and external sources.¹⁰⁴

The first key incentive for China to accept binding commitments in a successor to the Kyoto Protocol would be to mitigate the serious threats that climate change impacts pose to Chinese public health.¹⁰⁵ As China’s GHG emissions increase, it will become more difficult for the Chinese government to ignore the link between outdoor air pollution and mortality.¹⁰⁶ Significantly reducing GHG emissions could deliver important improvements in public health while also contributing to the global effort to

fight climate change.¹⁰⁷ Second, greater participation in the post-Kyoto regime would provide a corresponding opportunity for China to influence the design of the next international climate change agreement to their national benefit.¹⁰⁸ Because successful international regimes distribute net benefits to participating countries, if China takes the lead among developing nations in fighting global climate change, its position at the negotiating table will be enhanced and benefits flowing to China from the structure of the plan would reflect that position.¹⁰⁹ Finally, greater participation in the fight against climate change would further enhance China's reputation as an international leader and indicate to the world that China envisions a leadership role that involves greater global responsibility.¹¹⁰

In addition to the incentives directly derived from greater commitment to fighting climate change, China faces pressure to act from domestic as well as foreign sources.¹¹¹ Within China, intense GHG emissions have translated to incredible air pollution, which in turn has caused a corresponding public health problem.¹¹² This situation poses a threat to the legitimacy of the CCP, which has thus far focused on rapid development at the expense of environmental quality.¹¹³ Further, the danger of widespread civil unrest over climate change impacts is real.¹¹⁴ China may need to take more aggressive action on air pollution and climate change and deliver tangible results in order for the CCP to maintain control over the country.¹¹⁵

Finally, China may face increasing pressure to reduce emissions from developing countries that are not enjoying a similar economic boom.¹¹⁶ For example, small island developing countries and those countries the UNFCCC designates as least developed may resent that China lacks binding commitments yet is a major GHG emitter.¹¹⁷ Likewise, developing countries that are not experiencing rapid economic development should take a more aggressive and vocal role in negotiations. Developing nations, on average, will suffer greater costs than developed countries in the wake of significant climate change.¹¹⁸ These actors must rally support during the international climate negotiations for all major emitters to take responsibility in reducing emissions.


Although the UNFCCC does not include many legal tools, the COP could pursue other strategies to obtain greater Chinese participation. If engaged in a general appeal to enlightened pragmatism, China may agree to some binding commitments in the successor to the Kyoto Protocol so long as it can expect both global and domestic net benefits.¹¹⁹

A NEW CATEGORY FOR HIGH-EMITTING, EMERGING ECONOMIES

If China can be persuaded to commit to reducing emissions in an international climate change regime, this could involve the creation of a category creating obligations at a level somewhere in between those of developed and developing countries parties. Because the principle of CDR applied in the Kyoto Protocol already has created distinctions within both the developed and the developing country categories, the post-Kyoto regime could carry the differentiation one step further to take into account emerging economies.

Specifically, one option would be to create a third distinct category for China and other similarly-situated countries like India and Indonesia.¹²⁰ This category would require emerging economies to reduce emissions to a lesser degree than developed nations, but their commitments would increase over time as the emerging economies attain developed nation status. In a converse construction to the relationship between Annex I and Annex II countries, emerging economies would commit to some binding emission reduction targets, and would continue to receive the benefit of money and technology transfer from developed countries in Annex I.¹²¹ China would certainly fall into an emerging economy category and thus could be subject to a set of commitments occupying the middle ground between developed countries and developing countries.¹²²

CONCLUSION

Climate change is a complex, daunting problem requiring a high degree of international cooperation for any effective solution. Thus far, the nations of the world have agreed on the existence of a problem, but a functional solution remains elusive.¹²³ The Copenhagen Accord represents a step in the right direction, as major-emitting, emerging economies like China and India have signaled their intent to engage in the UNFCCC in the future.¹²⁴ Going forward at subsequent COPs, China and the rest of the world must reexamine the current interpretation of CDR, and realize that a more nuanced categorization model is necessary. China can and must be persuaded—perhaps through an appeal to Chinese pride and pragmatism—to accept binding emissions-reduction quotas in a revised application of the principle of common but differentiated responsibilities.¹²⁵ Although achieving such goals will be difficult, it is nevertheless incumbent upon the global community to seek out a feasible international regime to fight the adverse impacts of climate change. 

Endnotes: Equitable But Ineffective: How the Principle of Common But Differentiated Responsibilities Hobbles the Global Fight Against Climate Change

¹ See Juliet Eilperin, *Long Droughts, Rising Seas Predicted Despite Future CO2 Curbs*, WASH. POST, Jan. 27, 2009, at A4 (reporting the results of an international study showing that such impacts could persist for as long as 1,000 years).

Endnotes: Equitable But Ineffective: How the Principle of Common But Differentiated... *continued on page 65*

ENDNOTES: EQUITABLE BUT INEFFECTIVE: HOW THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES HOBBLER THE GLOBAL FIGHT AGAINST CLIMATE CHANGE *continued from page 53*

² See U.N. NEWS CENTRE, *World Has 'Responsibility to Deliver' in Year of Crises, Ban Declares*, Dec. 17, 2008, <http://www.un.org/apps/news/story.asp?NewsID=29337&Cr=crises&Cr1=> (last visited Jan. 29, 2009) (quoting UN Secretary-General Ban Ki-moon on the urgent need for a comprehensive and balanced international climate change regime).

³ See Kyoto Protocol to the United Nations Framework Convention on Climate Change, art. 3, Dec. 11, 1997, 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol] (requiring that only the "Parties included in Annex I shall . . . ensure that their aggregate [GHG] emissions . . . do not exceed their assigned amounts," while China is not an Annex I party).

⁴ See Juliet Eilperin, *Developing Nations Plan Emission Cuts*, WASH. POST, Dec. 12, 2008, at A10 [hereinafter Eilperin, *Developing Nations*] (reporting that getting emerging economies like China to limit their GHG emissions is considered crucial to the success of a global climate regime); see also PEW CENTER ON GLOBAL CLIMATE CHANGE AND THE ASIA SOCIETY, COMMON CHALLENGE, COLLABORATIVE RESPONSE: A ROADMAP FOR U.S.-CHINA COOPERATION ON ENERGY AND CLIMATE CHANGE 18 (Jan. 2009) [hereinafter PEW CENTER REPORT] (emphasizing that China, along with the United States, must actively work to reduce GHG

emissions in order to solve the global climate change problem).

⁵ Barbara Finamore, *China's Recent Steps Towards Meeting Its Climate Commitments*, Mar. 5, 2010, http://switchboard.nrdc.org/blogs/bfinamore/china_pushes_ahead.html (last visited Mar. 18, 2010) (reporting from a post-Copenhagen round-up conference in Beijing that China views Copenhagen as representing an unprecedented common political effort on a global scale to address climate change and expressing optimism that "China is not sitting still when it comes to addressing climate change").

⁶ United Nation Framework Convention on Climate Change Conference of the Parties, Copenhagen Accord (advance unedited version) at 3 (Dec. 18, 2009) [hereinafter Copenhagen Accord] available at http://unfccc.int/files/meetings/cop_15/application/pdf/cop15_cph_auv.pdf (agreeing that Non-Annex I Parties like China will report their mitigation actions, and these reports "will be subject to international measurement, reporting and verification").

⁷ See United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, 31 I.L.M. 849, entered into force 1 Jan. 1999 [hereinafter UNFCCC]; see, e.g., Jonathan B. Wiener, *Climate Change Policy and Policy Change in China*, 55 U.C.L.A. L. REV. 1805, 1807 (2008) (emphasizing

that 2009 is a critical year for international climate change policy, and arguing that an international climate regime must engage China in order to solve the climate change problem).

⁸ See UNFCCC, *supra* note 7, art. 3.1 (setting forth that developed country parties should “take the lead” in fighting climate change and its adverse impacts).

⁹ See *id.*, art. 4.8 (emphasizing that the parties should pay special attention to the needs of particularly vulnerable developing countries; no reference is made to developing countries that may have more capacity to fight climate change).

¹⁰ See, e.g., Pamela Constable, *The Anti-Junket is Coming to Town: As World Leaders Converge on D.C., Nothing But Business on the Agenda*, WASH. POST, Nov. 15, 2008, at A10 (noting China’s recent participation in the G20 Summit); see also Philip Hersh, *Beijing 2008 Opening Ceremony*, L.A. TIMES, Aug. 9, 2008, at Special Section 1 (characterizing the opening ceremony of the Olympics as an announcement to the world that China’s 1.3 billion citizens were entering the 21st century).

¹¹ E.g., Kenneth Lieberthal and David Sandalow, CHINA CENTER AT BROOKINGS, OVERCOMING OBSTACLES TO U.S.–CHINA COOPERATION ON CLIMATE CHANGE 3, 26 (January 2009), available at http://www.brookings.edu/reports/2009/01_climate_change_lieberthal_sandalow.aspx (stating that both the United States and China must reduce emissions in order to adequately fight climate change and noting that China’s lack of commitments in the Kyoto Protocol was a major reason the United States rejected the Protocol).

¹² See Wiener, *supra* note 7, at 1809-10 (arguing that it is crucial for the United States, China, and other major emitters to cooperate in order to effectively reduce global GHG emissions); see also Cass R. Sunstein, *The World vs. the United States and China? The Complex Climate Change Incentives of the Leading Greenhouse Gas Emitters*, 55 U.C.L.A. L. REV. 1675, 1676 (2008) [hereinafter Sunstein, *The World vs. the United States and China?*] (observing that the practical benefits of GHG reductions depend on broad participation by major emitters).

¹³ See Kyoto Protocol, *supra* note 3, pmb. (adopting the principles and provisions of the UNFCCC, which do not include incentives to reduce emissions beyond a recognition of the common concern of mankind).

¹⁴ See *China Hopes for Major Progress at Mexico Climate Conference*, CHINA DAILY, Mar. 7, 2010, http://www.chinadaily.com.cn/china/2010-03/07/content_9550951.htm (last visited Mar. 16, 2010) (quoting Foreign Minister Yang Jiechi, “China will work actively with other countries...to tackle the climate change challenge according to the [UNFCCC], Kyoto Protocol, Bali road map and the principle of common but differentiated responsibilities.”).

¹⁵ See, e.g., Gov.cn, *Ten Features in China’s 11th Five-Year Plan*, Mar. 8, 2006, http://www.gov.cn/english/2006-03/08/content_246945.htm (last visited Feb. 18, 2009) (highlighting China’s recent policy goals to, for example, build an environmentally-friendly society).

¹⁶ See UNFCCC, *supra* note 7, at Annex I, II (demonstrating that China is not on the list of parties that have accepted binding commitments to reduce GHG emissions and assist with money and technology transfer to developing country parties).

¹⁷ See generally UNFCCC, *supra* note 7 (referencing differentiated obligations for all parties throughout the instrument).

¹⁸ See, e.g., Eilperin, *Developing Nations*, *supra* note 4, (quoting South Korea’s climate ambassador on the existence of a culture of finger-pointing and mistrust among the member countries, where each country insists that others move first to cut emissions).

¹⁹ See Cass R. Sunstein, *Of Montreal and Kyoto: A Tale of Two Protocols*, 38 ENVTL. REP. NEWS & ANALYSIS 10566, 10572 (2008) [hereinafter Sunstein, *Of Montreal and Kyoto*] (noting that a broader agreement including China and India would not only increase the global benefits of GHG reduction, but also would make plans to reduce domestic carbon emissions more palatable for the United States and other developed countries).

²⁰ See Daniel Barstow Magraw, *The Worst of Times, or “It Wouldn’t Be Cool,”* 38 ENVTL. L. REP. NEWS & ANALYSIS 10575, 10577 (concluding that this history led to a sense of inequity felt by nearly all of the developing countries, and therefore hindered the negotiation process).

²¹ See *id.* (explaining that, unlike during Montreal Protocol negotiations, developing countries were extremely reluctant to accept any binding reduction targets until developed countries indicated that they would actually reduce their emissions first).

²² See CENTRE FOR INT’L SUSTAINABLE DEV. L., THE PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITIES: ORIGINS & SCOPE, 1 (Aug. 26, 2002), http://www.cisd.org/pdf/brief_common.pdf (last visited Jan. 7, 2009) (finding CDR to be widely accepted in treaty and state practices).

²³ Montreal Protocol on Substances that Deplete the Ozone Layer, art. 5, Sept. 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st Sess., 26 I.L.M. 1541.

²⁴ See Sunstein, *Of Montreal and Kyoto*, *supra* note 19, at 10566, 10568 (deeming the negotiating model established by the Montreal Protocol extraordinarily successful at reversing ozone depletion).

²⁵ See Eric A. Posner & Cass R. Sunstein, *Climate Change Justice*, 96 GEO. L.J. 1565, 1607 (June 2008) (summarizing the principle as meaning that developed countries have to spend a significant amount of money on emissions reduction, while developing countries do not).

²⁶ See Sunstein, *The World vs. the United States and China?*, *supra* note 12, at 1698 (suggesting that existing stocks and current flows of emissions be considered on separate bases in determining commitments of participating countries in subsequent climate change agreements).

²⁷ See, e.g., UNFCCC, *supra* note 7, pmb. (recognizing the need for developed countries to act immediately to reduce emissions, and further recognizing that developing countries face additional challenges from climate change).

²⁸ E.g., *id.* at Annex I and Annex II (distinguishing between developed countries that have completed a transition to a market economy and those developed countries that have not).

²⁹ See *id.* art. 4.2(a) (asserting that developed countries commit themselves specifically to limit their human-generated GHG emissions to demonstrate that they “are taking the lead” under the Convention).

³⁰ See UNFCCC, *supra* note 7, arts. 4.4, 4.5 (emphasizing that developed country Parties shall assist “developing country Parties . . . in meeting costs of adaptation” to the adverse effects of climate change, and that developed countries will “take all practicable steps to promote, facilitate and finance . . . the transfer of, or access to, environmentally sound technologies and know-how to . . . developing country Parties”).

³¹ See UNFCCC, *supra* note 7, art. 3.1 (“The Parties should protect the climate system . . . on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead. . .”).

³² See *id.*, pmb. and arts. 3.2, 4.8-4.9 (recognizing that some developing countries have specific needs and special circumstances that merit differentiated treatment – such as low-lying countries; small island countries; and countries with areas prone to flooding and fragile mountainous ecosystems – and highlighting the vulnerability of the least developed countries).

³³ See UNFCCC, *supra* note 7, art. 4.2(g) (explaining that parties may shift their status under the Convention at any time).

³⁴ See *id.* arts. 4.2(g), 19.

³⁵ See generally *id.* (lacking formal guidance on how the Conference of the Parties should determine country designations for purposes of CDR differentiation).

³⁶ See United Nations Framework Convention on Climate Change, *Kyoto Protocol*, http://unfccc.int/kyoto_protocol/items/3145.php (last visited Mar. 19, 2010) (noting that while the UNFCCC encourages developed countries to reduce GHG emissions, the Kyoto Protocol actually committed them to reduction targets).

³⁷ See United Nations Framework Convention on Climate Change, *Kyoto Protocol Status of Ratification*, http://unfccc.int/files/kyoto_protocol/status_of_ratification/application/pdf/kp_ratification_20091203.pdf (last visited Mar. 19, 2010).

³⁸ See Kyoto Protocol, *supra* note 3, art. 3 (mandating that only developed countries listed in Annex I shall limit their GHG emissions); see also *id.* art. 10 (stating all Parties reaffirm existing commitments “in pursuit of the ultimate objective of the [Framework] Convention”).

³⁹ See Sunstein, *The World v. The United States and China?*, *supra* note 12, at 1682 (arguing that although China ratified the Kyoto Protocol, that decision was meaningless to the international negotiation process because China’s ratification entails no obligations).

⁴⁰ See generally Copenhagen Accord, *supra* note 6.

⁴¹ See CHINA STATE COUNCIL INFO. OFFICE, WHITE PAPER: CHINA’S POLICIES AND ACTIONS ON CLIMATE CHANGE § III (Oct. 29, 2008) available at http://www.china.org.cn/government/news/2008-10/29/content_16681689.htm [hereinafter WHITE PAPER: CLIMATE CHANGE] (citing CDR as a China guide in addressing climate change).

⁴² See Kyoto Protocol, *supra* note 3, art. 10.

⁴³ See Kyoto Protocol, *supra* note 3, art. 10; see also Copenhagen Accord, *supra* note 6, at 4, 5 (committing Annex I Parties to achieve emissions targets for 2020, and committing Non-Annex I Parties like China to implement mitigation actions).

⁴⁴ See WHITE PAPER: CLIMATE CHANGE, *supra* note 41, at § III.

⁴⁵ See *id.* at § III (maintaining that, for their part, in addressing climate change developing countries should merely adopt adaptation measures, reduce emissions as much as possible, and generally fulfill their duties under the UNFCCC); see also Sunstein, *The World v. The United States and China?*, *supra* note 11, at 1682 (noting the reasons China refused to yield to U.S.-led pressure to agree to emissions limitations under the Kyoto Protocol).

⁴⁶ See Lieberthal, *supra* note 11, at 38 (detailing China's suspicions that international demands for the nation to cut emissions are actually a thinly veiled effort to impede China's growth and development).

⁴⁷ See *The Impact of the 2008 Olympic Games On Human Rights and the Rule of Law in China: Hearing Before the Congressional Executive Commission on China*, 110th Cong. 11 (Feb. 27, 2008) (statement of Roger R. Martella, Jr., Gen. Counsel, EPA) available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:41150.pdf (testifying that the Beijing Olympics demonstrated China's world-class level of sophistication and its ability to understand and address environmental issues).

⁴⁸ See Gov.cn, *China Fact File: Economic System*, http://english.gov.cn/2006-02/08/content_182584.htm (last visited Jan. 29, 2009) (explaining that economic reforms were the centerpiece of the Reform and Opening Policy, as China transitioned from a planned economy to a market economy).

⁴⁹ See, e.g., Sheryl Gay Stolberg, *As Leaders Wrestle With Downturn, Developing Nations Get Ringside Seats*, N.Y. TIMES, Nov. 15, 2008, at A13 (noting the clout of developing nations' leaders at a November 2008 G20 summit on the global economic crisis, especially Chinese President Hu Jintao, "a leader with a fat checkbook and the power that comes with it").

⁵⁰ E.g., Jonathan Watts, *China Wakes Up To the Dangers of Pollution*, THE GUARDIAN, July 18, 2007, <http://www.guardian.co.uk/environment/2007/jul/18/china.pollution> (last visited Feb. 18, 2009) (reporting that Beijing's air quality can be so poor sometimes that schoolchildren are not allowed to go outside to play at recess); see also Elizabeth C. Economy, *The Great Leap Backward? The Costs of China's Environmental Crisis*, FOREIGN AFF., Sept./Oct. 2007 at 40 (noting that GHG emissions like particulate matter and sulfur dioxide contribute to respiratory problems in Chinese citizens and cause agriculture-harming acid rain).

⁵¹ See PEW CENTER REPORT *supra* note 4, at 18 (reporting that together, China and the United States emit forty percent of global GHGs, and that while China is the current leader in annual emissions, China accounts for only eight percent of historic emissions stocks).

⁵² See Economy, *supra* note 50, at 47 (citing the World Bank report's controversial finding, which Beijing reportedly did not want publicly released, fearing incitement of social unrest).

⁵³ See Louisa Lim, *Air Pollution Grows in Tandem With China's Economy*, NATIONAL PUBLIC RADIO, May 22, 2007, <http://www.npr.org/templates/story/story.php?storyId=10221268> (last visited Mar. 19, 2010) (explaining that the main sources of pollution are industry, car emissions, and coal-processing).

⁵⁴ See Andrew Jacobs, *U.N. Report Points to Peril from Noxious 'Brown Clouds'*, N.Y. TIMES Nov. 13, 2008, at A6 (calling the resulting air a toxic mix that can cause cardiovascular and respiratory disease).

⁵⁵ See, e.g., *Tougher Law to Curb Water Pollution*, CHINA DAILY, Feb. 2, 2008, http://www.chinadaily.com.cn/china/2008-02/29/content_6494712.htm (last visited Feb. 18, 2009) (reporting on amendments to the Water Pollution Prevention and Control Act, which involve tougher punishments for polluters through increased fines); see also Steven M. Dickinson, *Energy Efficiency Law Devoid of Substance*, CHINA ECONOMIC REVIEW, Oct. 2008, http://www.chinaeconomicreview.com/columnists/teven_m_dickinson/2008_10_01/An_empty_vessel.html (last visited Mar. 19, 2010) (reporting that the primary goal of the Circular Economy Law is to increase energy efficiency).

⁵⁶ See CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, ANN. REP. 32, 133 (2008) (observing increased participation in environmental protests in the last few years, particularly among the urban middle-class).

⁵⁷ See Economy, *supra* note 50, at 46 (describing the threat that domestic environmental problems present to the Communist Party authority).

⁵⁸ See UNFCCC, *supra* note 7, art. 3.1 (asserting the equitable basis that the parties to the Convention rely on in the climate change regime); see also Christopher D. Stone, *Common But Differentiated Responsibilities in International Law*, 98 AM. J. INT'L L. 276, 278 (chronicling the history of CDR, which is present in the Treaty of Versailles, the General Agreement on Tariffs and Trade, and various United Nations agreements); Lieberthal *supra* note 11, at 3, 55 (arguing that if the United States and China cooperate on fighting climate change, their collaboration will help establish a successful post-Kyoto agreement, and that their agreement should be based upon the principle of CDR).

⁵⁹ See, e.g., Stone, *supra* note 58, at 277-80 (arguing that CDR creates an

arbitrary distinction, and citing the principle as a primary cause of struggles in climate negotiations).

⁶⁰ See, e.g., *id.* at 290-91 (likening instruments that adhere to CDR to rescue vehicles for developing countries).

⁶¹ See Sunstein, *Of Montreal and Kyoto*, *supra* note 19, at 10571 (detailing how countries in Africa are projected to lose nearly 4 percent of their GDP from a 2.5 degree Celsius warming, whereas OECD Europe would lose 2.83 percent and the United States would only lose 0.45 percent).

⁶² See Stone, *supra* note 58, at 291-92 (arguing that the Polluter Pays principle would be a better justification for differentiated responsibilities in MEAs than general equitable considerations).

⁶³ See Lieberthal *supra* note 11, at 38 (identifying the United States' great institutional capacity and simultaneous refusal to accept GHG emissions targets as a source of resentment to China).

⁶⁴ See *id.* at 8 (noting alarming new studies that show rates of atmospheric GHG accumulation have accelerated faster than expected because of China's rapid development).

⁶⁵ Compare Kyoto Protocol, *supra* note 3, art. 3.1 (excluding emerging economies like China from emissions reduction commitments), with Sunstein, *Of Montreal and Kyoto*, *supra* note 19, at 10568-69 (correlating the Kyoto Protocol's exclusion of developing nations with the United States' refusal to ratify the instrument).

⁶⁶ See Lieberthal, *supra* note 11, at 25 (explaining the U.S. government's concern that any benefit from emissions reductions in the U.S. would be cancelled out by unregulated GHG emissions from China).

⁶⁷ See UNFCCC, *supra* note 7, art. 4.8 (including all self-designated developing countries in the same category, without quantitative commitments).

⁶⁸ See *id.* pmb1.

⁶⁹ Compare WHITE PAPER: CLIMATE CHANGE, *supra* note 41, at § I (highlighting China's fragile environment, coastal areas vulnerable to sea level rise, and areas prone to desertification), with UNFCCC, *supra* note 7, art. 4.8 (listing developing countries with "low-lying coastal areas," "liable to . . . desertification" and with "fragile ecosystems" as those most deserving of funding and technology transfer from developed countries).

⁷⁰ *Id.* Compare Central Intelligence Agency, *The World Factbook: China*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html> (last visited Feb. 18, 2009) (estimating China's 2008 GDP at 4.222 billion USD), with United Nations Framework Convention on Climate Change, *Vanuatu's First Report* (1999), <http://unfccc.int/resource/docs/natc/vanncl.pdf> (last visited Feb. 18, 2009) (reporting fellow developing country Vanuatu's low development status and its extreme vulnerability as a small island nation), and Central Intelligence Agency, *The World Factbook: Vanuatu*, <https://www.cia.gov/library/publications/the-world-factbook/geos/nh.html#Intro> (last visited Mar. 19, 2010) (estimating Vanuatu's 2008 GDP at 560 million USD).

⁷¹ See UNFCCC, *supra* note 7, arts. 3.1, 4.8 (failing to define clearly which countries should be subject to binding commitments and which should receive special consideration).

⁷² See John M. Broder, *Climate Goal is Supported By China and India*, N.Y. TIMES, Mar. 10, 2010, at A9 (citing EU climate commissioner Connie Hedegaard's hope that UNFCCC nations will create an enforceable climate regime by 2011).

⁷³ See Wiener, *supra* note 7, at 1809; see also Sunstein, *The World vs. the United States and China?*, *supra* note 12, at 1681 (noting the U.S. Senate's unanimous conclusion that the United States had more to lose than to gain in ratifying the Kyoto Protocol because developing country GHG emissions were exempted).

⁷⁴ See United Nations Framework Convention on Climate Change, *Compliance Under the Kyoto Protocol*, http://unfccc.int/kyoto_protocol/compliance/items/2875.php (last visited Mar. 19, 2010) (reporting that only Canada, Greece, and Croatia had compliance issues).

⁷⁵ See Wiener, *supra* note 7, at 1808 (explaining that China's actual emissions have continually exceeded predictions; for example, in 1998, the U.S. government projected that China would surpass the United States as the leader in emissions in 2030).

⁷⁶ See PEW CENTER REPORT, *supra* note 51, at 16 (describing the trajectory of climate change and predicting ever stronger impacts resulting from current emission levels).

⁷⁷ See *id.* at 15 (asserting that prospects for a successful new climate change agreement depend largely upon China's actions).

⁷⁸ See Sunstein, *The World vs. the United States and China?*, *supra* note 26, at 1685 (detailing how projections show past major GHG emitters will continue to contribute to climate change, but emerging powers like China and India will

also become significant emitters).

⁷⁹ See UNFCCC, *supra* note 7, pmb. (discussing global GHG emissions in terms of *historical* and current outputs) (emphasis added).

⁸⁰ Cf. Sunstein, *The World vs. the United States and China?*, *supra* note 26, at 1686 (predicting that the highest GHG emitters of the past may not be the high emitters of the future).

⁸¹ Cf. PEW CENTER REPORT, *supra* note 51, at 18 (reporting that the United States is the largest contributor to historic GHG stocks in the atmosphere, accounting for twenty-nine percent of emissions since 1850).

⁸² See Sunstein, *The World vs. the United States and China?*, *supra* note 26, at 1686 (noting projections that developing world nations like China, Indonesia, India, and Brazil are expected to contribute no less than 55 percent of total GHG emissions by 2030).

⁸³ See PEW CENTER REPORT, *supra* note 4, at 14 (arguing that the world cannot meet the climate change challenge without China's full participation).

⁸⁴ See generally Kyoto Protocol, *supra* note 3 (failing to include any reference to the special situation and special capabilities of emerging economies).

⁸⁵ See *id.* pmb. and art. 2 (stating that the parties should fulfill their obligations pursuant to the commitments articulated in Article 4 of the UNFCCC).

⁸⁶ See *id.* art. 2.3; see also UNFCCC, *supra* note 7, art. 4.8.

⁸⁷ Compare WHITE PAPER: CLIMATE CHANGE, *supra* note 41, at Foreword (asserting that China has a fragile eco-environment and is vulnerable to adverse climate change impacts), with Sunstein, *The World vs. the United States and China?*, *supra* note 12, at 1683 (contrasting the projected, comparatively minimal impact on GDP for countries like China, Russia, and the United States with the massive losses in GDP projected for African countries).

⁸⁸ See PEW CENTER REPORT, *supra* note 4, at 14 (calling China's reemergence since 1978 extraordinary, and noting the immense power China has acquired in the last thirty years).

⁸⁹ See United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing Countries, *List of Least Developed Countries*, <http://www.unohrrls.org/en/ldc/related/62/> (last visited Mar. 19, 2010) (defining forty-nine countries as "least developed;" China is not included on the list).

⁹⁰ See Elisabeth Rosenthal, *Booming China Leads the World in Emissions of Carbon Dioxide, a Study Finds*, N.Y. TIMES, June 14, 2008, at A5 (quoting a European report finding that China's 2007 emissions were fourteen percent higher than the United States' emissions).

⁹¹ See Elisabeth Rosenthal and Andrew C. Revkin, *Science Panel Says Global Warming Is "Unequivocal"*, N.Y. TIMES, Feb. 3, 2007, at A1 [hereinafter Rosenthal & Revkin] (citing the Intergovernmental Panel on Climate Change's 2007 report, which concluded that climate change is definitely occurring and that human activity is the primary cause).

⁹² See generally UNFCCC, *supra* note 7 (creating a system that does not regulate major emitters like China).

⁹³ See *id.* at Annex I and Annex II (listing developed countries like the United Kingdom, France, Australia, and the United States); see also Lieberthal, *supra* note 11, at 36 (describing China as a country with problems similar to developing nations, but with many attributes of a developed, industrialized nation).

⁹⁴ See Lieberthal, *supra* note 11, at 35 (stating many non-Chinese do not comprehend that China lacks the institutional and technological capacity of a fully developed nation).

⁹⁵ See *id.* at 34 (describing the difficulties Chinese leaders face in balancing the competing priorities of the developed and the developing areas of the country).

⁹⁶ See Howard W. French, *Grinding Poverty Defies China's Boom*, INT'L HERALD TRIBUNE, Jan. 13, 2008, available at <http://www.ihf.com/articles/2008/01/13/asia/poverty.php> (citing a World Bank report estimating that 300 million people in China still live below poverty levels).

⁹⁷ See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORTS, <http://hdr.undp.org/en/statistics/> (last visited Mar. 19, 2010) (categorizing world nations as having either high, medium, or low human development; China falls into the medium group, ranking 92nd of the 182 nations on the list).

⁹⁸ See Lieberthal, *supra* note 11, at 36 (characterizing China as a country in an uncomfortable transition stage).

⁹⁹ See UNFCCC, *supra* note 7, pmb. (indicating indirectly that developed countries should carry most of the burden when noting that "the largest share of historical and current emissions of [GHGs] has originated in developed countries").

¹⁰⁰ See UNFCCC, *supra* note 7, pmb., art.4(g) (describing the climate change issue as a "common concern of humankind" and setting forth that any party may choose to be bound by the Convention's emissions reduction standards).

¹⁰¹ See Lieberthal, *supra* note 11, at 38 (reporting China's belief that it is unreasonable to demand the nation to commit to GHG reduction targets because they are not sufficiently developed).

¹⁰² See, e.g., Neil MacFarquhar and John M. Broder, *U.N. Climate Chief Quits, Deepening Sense of Disarray*, N.Y. TIMES, Feb. 19, 2010, at A12 (calling the Copenhagen COP "largely unsuccessful" because it failed to produce a binding international treaty "but instead generated mostly acrimony and a series of unenforceable pledges").

¹⁰³ See Wiener, *supra* note 7, at 1805 (explicating that China could be engaged by the international community through several distinct methods).

¹⁰⁴ See, e.g., World Bank, *Statement from World Bank China Country Director on "Cost of Pollution in China" Report*, July 11, 2007, <http://go.worldbank.org/68GG2KJ8Z0> (last visited Mar. 19, 2010) [hereinafter World Bank Statement] (reporting the finding that air pollution contributes to a huge economic cost to China and is also leading to higher incidences of respiratory diseases and cancer among Chinese citizens); see also Wiener, *supra* note 7, at 1805 (warning that climate change impacts could exacerbate pre-existing political and social stresses within China, and positing that as a result, leadership on climate change may soon look more favorable to the government).

¹⁰⁵ See World Bank Statement, *supra* note 104 and accompanying text.

¹⁰⁶ See WORLD BANK, COST OF POLLUTION IN CHINA, 19 (Feb. 2007), available at http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/China_Cost_of_Pollution.pdf [hereinafter WORLD BANK REPORT] (noting epidemiological evidence that outdoor air pollution is a contributing cause of mortality and that a dramatic increase in cancer cases in China is attributable to worsening air and water pollution).

¹⁰⁷ See Wiener, *supra* note 7, at 1817 (observing that a progressive Chinese climate policy could bring simultaneous benefits by controlling local pollution).

¹⁰⁸ See *id.* at 1823-24 (explaining that benefits flowing to China from a successful international climate regime depend upon reaching a cooperative deal with other countries).

¹⁰⁹ See *id.* (arguing that in order to persuade China to join an international climate regime, the structure of the regime itself must offer specific incentives to China and outlining several reasons why China would benefit from actively participating in a climate change regime).

¹¹⁰ See, e.g., Lieberthal, *supra* note 11, at 36 (asserting that China wants to be seen as a constructive player on the international stage, and that this will increase its incentive to participate in an international climate regime).

¹¹¹ E.g., *Officials Responsible for Pollution Accidents*, XINHUA NEWS AGENCY, Apr. 25, 2006, available at <http://www.china.org.cn/english/2006/Apr/166691.htm> (quoting a Chinese Environmental Protection official on the great threat pollution poses to social stability in China).

¹¹² See PEW CENTER REPORT, *supra* note 4, at 20 (cataloguing the harmful air pollutants released into China's atmosphere that present a health threat to Chinese citizens).

¹¹³ See Economy, *supra* note 50, at 46 (noting China's leaders are aware that air pollution causes indirect effects in terms of threats to social stability, public health, and continued economic growth, which together could threaten the authority of the Communist Party).

¹¹⁴ See CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *supra* note 56, at 134-37 (describing recent protests organized against the construction of chemical plants and rail line extensions).

¹¹⁵ See *id.* at 135-37 (calling public protests significant because they represent an unprecedented example of public participation that is at least tacitly allowed by the CCP).

¹¹⁶ See e.g., Lieberthal, *supra* note 11, at 35 (describing how Chinese diplomats are increasingly being asked to explain why the nation is not doing more to reduce its emissions).

¹¹⁷ See, e.g., SMALL ISLAND DEVELOPING STATES NETWORK, VULNERABILITY AND ADAPTATION TO CLIMATE CHANGE IN SMALL ISLAND DEVELOPING STATES 7 (2007), available at http://unfccc.int/files/adaptation/adverse_effects_and_response_measures_art_48/application/pdf/200702_sids_adaptation_bg.pdf (stating that small island developing states are among the most vulnerable countries in the world to climate change and yet produce extremely low levels of GHGs, meaning that they will suffer disproportionately from the damaging impacts of climate change).

¹¹⁸ See Sunstein, *Of Montreal and Kyoto*, *supra* note 19, at 10571 (noting that countries such as India and all of Africa are projected to lose as much as 4.93 percent of their GDP from a 2.5 degree Celsius warming, whereas the United States would only lose 0.45 percent of GDP).

¹¹⁹ See Wiener, *supra* note 7, at 1816, 1825 (arguing that enlightened pragmatism is the best approach for the international community to move both China

and the United States to meaningful participation in a climate change regime).

¹²⁰See Sunstein, *The World vs. the United States and China?*, *supra* note 12, at 1686 (indicating that China, India, and Indonesia have all increased emissions by more than fifty percent in the last fifteen years).

¹²¹See UNFCCC, *supra* note 7, arts. 4.4, 4.5 (stating that only countries in Annex II shall assist in providing financial and technical assistance to developing country parties).

¹²²See Lieberthal, *supra* note 11, at 36 (describing the awkward stage of China's development, where the country has modernized significantly but is not yet fully developed).

¹²³See, e.g., Rosenthal & Revkin, *supra* note 91 (reporting on the widespread consensus that climate change is real and that human activity is causing it).

¹²⁴See Barbara Finamore, *China Officially Associates With the Copenhagen Accord*, Mar. 11, 2010, http://switchboard.nrdc.org/blogs/bfinamore/china_officially_associates_wi.html (last visited Mar. 18, 2010) (noting China and India's official association with the Accord "alleviates some previous concerns about their engagement while breathing new life" into the UNFCCC).

¹²⁵*Cf.* Magraw, *supra* note 20, at 10578 (asserting that many factors weigh enter into a nation's evaluation of its interests in an MEA, and arguing that cost-benefit analysis is only one of those factors).
