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硕 士 学 位 论 文

气候变化领域共同但有区别的责任原则研究

On the Principle of Common but Differentiated Responsibility in the Field of Climate Change

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内容摘要

共同但有区别的责任原则是一项发展中的国际环境法基本原则,其核心价值 在于指导全球环境责任的公平分配。全球气候变化问题作为共同但有区别的责任 原则最为重要的实践领域,对该原则的发展已然并将继续产生深远影响。

本文除前言和结语外, 共分为四章:

第一章为共同但有区别的责任原则综述。本章首先对共同但有区别的责任原则的发展历史进行简要梳理,继而提出该原则在气候变化领域中的定义并对其具体内容进行分析,最后归纳了关于该原则法律地位的三种不同观点,赞同将其定位为从"软法"向"习惯国际法"过渡中的国际环境法基本原则。

第二章分析共同但有区别的责任原则适用于气候变化领域的基础。本章首先 从气候变化成因、国家能力和内涵能源三个角度分析了共同但有区别的责任原则 可以适用的现实基础。接下来着重阐述适用该原则的法理基础,认为国际环境正 义、可持续发展和国际合作理论从不同侧面支撑了共同但有区别的责任原则在气 候变化问题上的适用,可以作为该原则的理论依据。

第三章阐述共同但有区别的责任原则所面临的困境与挑战。本章考察了《联合国气候变化框架公约》及其派生法律文件,以及实践中减排目标、资金和技术援助的兑现情况,指出该原则在实践中未被充分尊重与贯彻,并且在未来的气候谈判中可能遭遇效力被弱化和性质被混同等挑战。

第四章从中国立场审视共同但有区别的责任原则的发展。本章就中国如何适应、影响和借鉴共同但有区别的责任原则的发展提出建议:国际层面,中国应继续坚持和维护共同但有区别的责任原则,并重视对其与风险预防原则关系的研究;国内法上,我国气候变化法治建设应吸收共同但有区别的责任原则,以完善我国气候变化法律体系,促进公众参与应对气候变化。

关键词:共同但有区别的责任原则;气候变化;发展

ABSTRACT

The principle of common but differentiated responsibility (hereinafter referred to as CDR principle) is still at development stage as a basic principle of international environmental law. The core value of this principle is to guide the equitable distribution of global environmental responsibilities. As the most important practice field, global climate change has a profound impact on the development of CDR principle.

Besides preface and conclusion, this dissertation is divided into four chapters:

Chapter one is about the summarization on CDR principle. This chapter firstly cards the history of CDR principle. Secondly, it defines the concept of CDR principle in climate change and then makes some analysis on its content. At last, it summarizes the different views of legal status about CDR principle, and endorses that the CDR principle is on the way from soft law to customary international law.

Chapter two deals with the basis of CDR principle applied to climate change field. This chapter firstly analyzes the realistic basis from causes of climate change, national capacity and embodied energy problem, and then focused on the study of legal basis. It finds out that the theories of international environmental justice, sustainable development and international cooperation can support CDR principle applied to climate change.

Chapter three reveals the difficulties and challenges of CDR principle. After examining the United Nations Framework Convention on Climate Change with derivative instruments and the completion of the emission reduction, financial and technical assistance targets, it notes that CDR principle has not been fully respected and implemented by developed countries. Moreover, CDR principle may be weakened or confused in future international climate negotiations.

Chapter four reflects on the development of CDR principle from china's position. The chapter makes some recommendations on how China adapts to, influences and learns from the development of CDR principle. At the international level, China should continue upholding and safeguarding CDR principle, and attach more

importance to the study of relationship between CDR principle and precautionary principle. In domestic law, China's climate change legal system should absorb CDR principle so as to improve the relevant legal system and promote public participation in addressing climate change.

Key Words: CDR Principle; Climate Change; Development

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