

走向气候文明

后京都时代气候保护 国际法律新秩序的构建

李静云 著



中国环境科学出版社

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序 言

气候变化问题的全球性、广泛性、无国界性，其影响的长期性、综合性和不可逆性，决定了任何国家都不能一厢情愿地置身于全球气候变化的影响之外，任何单一的解决途径或某一个国家的单一行动，也都不能从根本上解决气候变化问题。应对气候变化挑战，谁也不能独善其身，解决气候变化问题，谁也不能单打独斗。

人类共同的问题，只有共同合作才能解决，以缔结国际法律条约的方式共同合作保护气候将是唯一的出路。随着 2012 年《京都议定书》第一承诺期到期之日的临近，尽快达成一份具有实质意义的后京都时代国际法律新秩序，是当前国际社会共同应对气候变化的迫切需要。

发达国家与发展中国家在气候谈判立场上的严重分歧，是造成后京都时代国际法律新秩序迟迟难以出台的根本原因。国际气候谈判之所以复杂，主要在于气候变化问题早已不仅仅是一个环境问题，而且是一个同国际政治、经济、外交利益以及国家安全等紧密联系的影响国际格局演变的重大国际战略性问题。如今，国际气候谈判已经成为继 WTO 之后世界各国之间最复杂、最高级别的综合较量。

当前，无论是发达国家还是发展中国家，在应对气候变化的紧迫性上看法是基本一致的，但在温室气体排放空间的分配这一关键

问题上,还存在较大争议。在很大程度上,温室气体排放空间实质上就是一个国家未来的发展空间,温室气体排放空间分配的争议实质上是各个国家关于未来发展权的较量。对于任何一个国家而言,这都是一个涉及其根本利益和长远利益的重大问题,这也正是气候变化问题成为国际环境外交热点和国际谈判焦点问题的原因。

众所周知,全球气候危机的直接原因是温室气体的大量排放,根源却在于西方非正义的发展模式。在“碳排放”空间没有限制的近现代,发达国家通过“殖民地”在全世界划分势力范围圈占资源和能源,支撑其国内的重工业发展,甚至不惜爆发世界大战以掠夺资源。在“碳排放”空间成为瓶颈的当代,不公平的国际经济二元结构使发达国家的经济政治优势以不合理的方式转化为能源和资源优势。同时,发达国家通过“生态殖民”完成产业转移和升级,自己发展高附加值、低能耗、低污染的信息、生物等高科技产业和金融服务等第三产业,把高污染、高能耗的传统制造业向发展中国家转移。发达国家还凭借其在经济、技术和环境标准方面的优势,对发展中国家的出口产品设置“绿色壁垒”,增加其生产成本而打压发展中国家产品的市场竞争力。

欧盟环境专员玛戈特·沃斯通说过,“我们可以相互之间谈判,但是我们不能和气候谈判。”尽快弥合发达国家与发展中国家在气候谈判立场上的严重分歧,仅仅通过技术层面的修补是难以实现的,需要各方回到环境正义的视野中去思考。

本书作者就是以环境正义的视野,对国际社会如何共同应对气候变化的议题进行了深入研究,在综合分析后京都时代国际气候谈判主体间的关系、谈判的格局特征、影响谈判的利益根源和后京都时代国际气候谈判中主要国家的立场,以及比较研究欧盟、美国、英国、日本、瑞典、澳大利亚等国家应对气候变化的法律与政策的基础上,探索性地提出了一个彰显环境正义的后京都时代气候保护国际法律新秩序的理想模式,并为后京都时代中国如何构建气候保护法律秩序提出了对策建议。

全书资料翔实、分析透彻、观点鲜明,对于应对气候变化领域

的科研和教学工作具有较高的学术价值，对于希望了解应对气候变化动态的政府官员、企业管理人员、新闻媒体和非政府组织也有重要参考价值。

本书力图以一个全新的视角为读者全景式展示应对气候变化所涉及的各种问题的渊源、进展和未来发展方向，将会引起关心人类文明如何应对气候变化挑战的所有人的重视。

是为序。

包如柏

中文摘要

气候孕育并影响着人类文明发展的进程，人类文明的发展也成为影响气候的重要因素。自进入工业文明时代以来，人类活动对气候影响的广度和深度日益增加，尤其是发达国家在工业化过程中大量消耗能源资源，导致大气中温室气体浓度增加，引起近 50 年来以全球变暖为主要特征的显著的气候变化，对自然生态系统产生了明显影响，给人类社会的生存和发展带来严重挑战。

气候变化问题的全球性、广泛性、无国界性，其影响的长期性、综合性和不可逆性，与其他生态环境问题的关联性等特点，决定了任何国家都不能一厢情愿地置身于全球气候变化的影响之外，任何单一的解决途径或某一个国家的单一行动，也都不能从根本上解决气候变化问题。应对气候变化挑战，谁也不能独善其身，解决气候变化问题，谁也不能单打独斗。人类共同的问题，只有共同合作才能解决。应对气候变化挑战呼唤国际合作，国际社会共同合作采取行动，是人类迎接气候变化挑战的必然选择。

气候保护国际法律秩序是国际社会共同合作应对气候变化的法律保障。京都时代气候保护国际法律秩序对促进国际社会共同合作应对气候变化问题发挥了重要的作用。但是，京都时代气候保护国际法律秩序也存在着温室气体定量减排总体目标与国别目标过低、灵活履约机制过粗、资金技术机制过虚的缺陷，使得大部分附件一国家都未能实现其承诺的减排目标。温室气体排放量位居世界第一的美国的退出，使得京都时代气候保护国际法律秩序的效果更是大打折扣。并且，《京都议定书》即将于 2012 年失效，后京都时代气候保护国际法律新秩序亟待早日建立。

由于气候变化问题早已不仅仅是一个环境问题，而且是一个同国际政治、经济、外交利益以及国家安全等紧密联系的影响国际格局演变的重大国际战略性问题。构建后京都时代气候保护国际法律新秩序不仅事关各国国内的政治、经济、社会发展，而且已经成为各国争夺未来发展主导权、抢占国际格局制高点、掌握塑造国际治理规则话语权的主战场。

在“碳排放”空间没有限制的近现代，发达国家通过“殖民地”在全世界划分势力范围圈占资源和能源，支撑其国内的重工业发展，甚至不惜爆发世界大战以掠夺资源。

在“碳排放”空间成为瓶颈的当代，发达国家通过“生态殖民”完成产业转移和升级，自己发展高附加值、低能耗、低污染的信息、生物等高科技产业和金融服务等第三产业，把高污染、高能耗的传统制造业向发展中国家转移。发达国家还凭借其在经济、技术和环境标准方面的优势，对发展中国家的出口产品设置“绿色壁垒”，增加其生产成本而打压发展中国家产品的市场竞争力。

在不公平的国际二元政治经济体系下，发达国家消费了全世界的绝大部分商品，而生产这些商品的温室气体的排放责任却要发展中国家承担；发展中国家由于生态系统和基础设施脆弱，在没有享受现代社会富裕生活的情况下，却受到气候变化的更大影响。因此，在京都时代气候保护国际法律秩序造成气候保护成本与利益的分担、温室气体减排责任与义务的分配不公平的背景下，后京都时代环境正义的诉求呼之欲出。“‘正义’始终是良法的最高价值形态”，彰显环境正义是后京都时代气候保护国际法律新秩序的核心价值。

在后京都时代，温室气体排放空间资源日益稀缺，如何公平分配温室气体排放空间，是后京都时代环境正义的首要诉求。气候变化影响的不可逆性也不容人类有丝毫怠慢和等待，应对气候变化的共同行动越早越好、越快越好，如何以较高的效率减少温室气体排放，是后京都时代环境正义的基本诉求。后京都时代环境正义的诉求就是公平和效率。后京都时代彰显环境正义的良法，就是能够实现公平和效率目标的气候保护国际法律新秩序。后京都时代，公平

是气候保护国际法律新秩序的本质要求，效率是气候保护国际法律新秩序的应有之义。实现公平和效率目标的气候保护国际法律新秩序也是实现后京都时代环境正义的保证。

本书综合分析了二元强度目标方案、人均排放权方案、延伸巴西案文方案、升级与深化方案、基于人文发展的承诺方案等实现后京都时代气候保护国际法律新秩序公平目标的方案，以及简单延续京都模式方案、SD-PAM 方案、拓展 CDM 方案、条约与市场扩张相连接方案、条约合奏方案等实现后京都时代气候保护国际法律新秩序效率目标的方案，并设定了评价标准对这些方案逐一进行评述。在此基础上，提出了一个实现公平和效率目标的后京都时代气候保护国际法律新秩序的理想模式，同时还详细论述了后京都时代气候保护国际法律新秩序的六个关键要素。

中国是一个正处于经济快速发展阶段的发展中国家，面临着消除贫困、发展经济和减少温室气体排放的多重压力。生存和发展是中国所面临的最重要的问题。要生存，满足人类生存的基本需要，必须为不断增加的人口提供基本的能源供应，生存性排放的增长是不可避免的；要发展，提高人民的生活水平，必须增加在各个方面的投入，能源需求的快速增长是必然的，发展性排放的增长也是不可避免的。

在未来相当长时期内，中国经济仍将保持快速增长，能源需求将不可避免地增长，这使得中国温室气体排放不仅总量大，而且增长的潜力大。当前不仅是发达国家，即使是在发展中国家内部，要求中国在后京都时代承担量化的减排责任的呼声越来越高，中国承受的压力日益增大，当前面临的形势非常严峻。

全球气候变化问题给中国带来巨大挑战的同时，也给中国带来了新的发展机遇。实际上，应对气候变化并解决好能源与环境问题也是中国自身发展的需要，即使没有国际压力，应对气候变化也是中国实现全面协调可持续发展而绕不开又必须慎重解决好的大问题。

本书深入分析了后京都时代中国面临的挑战和机遇，在综合分

析后京都时代国际气候谈判主体间的关系、谈判的格局特征、影响谈判的利益根源以及后京都时代国际气候谈判中主要国家的立场的基础上，为中国在构建后京都时代国际气候谈判中的立场和对策提出了建议；在比较研究欧盟、美国、英国、日本、瑞典、澳大利亚等国家应对气候变化的法律与政策的基础上，提出了后京都时代中国应对气候变化立法的对策建议。

关键词：气候变化 气候保护 法律秩序

Abstracts

Climate has cultivated and influenced the progress of human civilization development, and the development of human civilization has also become the important factor affecting the climate. Since the era of Industrial Civilization, the extent and depth of human activities' impact on the climate has been accelerating, in particular, the increasing concentration of greenhouse gases (GHG) in the air caused by the large amount consumption of energies and resources by developed countries in the process of industrialization has resulted in the significant climate change dominated by global warming in the past five decades, which has brought significant impact on the ecological system and great challenges to the survival and development of human society.

The globalized and non-boundary extensiveness of the issue of climate change, its long-term and irreversible comprehensiveness, as well as its relevance with other environmental issues, have determined that no single country may wishfully protect itself from the impact of global climate change, and the climate change can not be fundamentally solved in a simplex way or through unilateral action conducted by any country. Fighting climate change is not a task to be fulfilled by any single party, and the solution of climate change is a cause involving efforts by all parties. Such common concerns of human being can only be solved through cooperation by all human beings. Combating climate change appeals for international cooperation, and the concerted efforts made by the international community is the necessary choice for human

being to meet the challenge of climate change.

International legal system on climate protection is the legal guarantee for fighting climate change by the international community. In the Kyoto Protocol times, the international legal system on climate protection has played an important role in promoting concerted efforts for addressing climate change by the international community. However, there have also been some disadvantages in international legal system on climate protection in Kyoto times, such as the low level of standard for the overall goal (including national goal) of total amount reduction of greenhouse gases emission, the non-flexible implementation mechanism and the ineffective fund and technology mechanism, which have resulted in most Annex I countries' failure of fulfilling the targets of emission reduction. The withdrawal of U.S—the No. 1 emitter of greenhouse gas, has significantly affected the effects of international legal system on climate protection in the Kyoto Protocol times. Moreover, the Kyoto Protocol will be invalid after 2012. Therefore, a post-Kyoto international legal system on climate protection demands to be established.

The issue of climate change has been transcending the status of an environmental issue. It has become a major internationally strategic issue affecting the trend of international situation and in close connection with international political, economic and diplomatic benefits as well as national security. The negotiations on establishing post-Kyoto international legal system on climate protection not only concern each country's political, economic and social development, but also have become the main battlefield where all countries are striving for the future development dominance and high point in international pattern and the right of saying in reconstructing international treatment rules.

In modern times where there is no limit on space for “carbon emission”, developed countries competed for their own sphere of

influence by announcing “colonies”, aiming at the possession of resources and energies to support their domestic development of heavy industry, even at the cost of world wars for plundering resources.

In the present age where the “carbon emission” space has become the bottleneck, developed countries have finished industrial transfer and upgrading through “ecological colonization”. They pay much attention to the development of hi-tech industries (such as information, biology) and tertiary industry (such as financial service) with high added-value and low level of energy consumption and pollution, at the same time transferring traditional manufacturing industries with heavy pollution and high level of energy consumption to developing countries. In addition, with the advantages in economy, technology and environmental standard, developed countries have set up “green barriers” for the export of products from developing countries, which has increased their production cost and suppressed their products’ market competence.

Under the inequitable international binary system of politics and economy, developed countries have consumed the largest proportion of commodities in the world, while the responsibility for emitting greenhouse gases for producing these goods is laid on developing countries; and due to fragile ecological system and infrastructure, developing countries are under the impact of climate change to a larger extent without having enjoyed the wealthy life of modern society. Therefore, under the context of unfair sharing of climate protection costs and benefits and inappropriate distribution of responsibilities and duties for reducing greenhouse gases emission caused by the international legal system on climate protection in Kyoto times, the appeal for post-Kyoto environmental justice is on the brink. “‘Justice’ has always been the top form of value for sound legislation”, and the signification of environmental justice is the core value for the international legal system

on climate protection in post-Kyoto times.

In post-Kyoto times when there is increasingly depletion of space resources for greenhouse gases emission, fair distribution of space for greenhouse gases emission would be the primary appeal for environmental justice in post-Kyoto times. The irreversible impact of climate change will not allow any negligence or delay by human beings, the most effective concerted efforts for addressing climate change would be the earliest and the soonest actions adopted by us, and the efficient reduction of greenhouse gases emission would be the basic appeal for environmental justice in post-Kyoto times. Fairness and efficiency is exactly the appeal for environmental justice in post-Kyoto times. And the international legal system on climate protection for realizing the goal of fairness and efficiency is the sound legislation signifying environmental justice in post-Kyoto times. In post-Kyoto times, fairness is the basic demand for international legal system on climate protection, and efficiency is the due responsibility of international legal system on climate protection. The international legal system on climate protection having realized the goal of fairness and efficiency is also the guarantee for realizing environmental justice in post-Kyoto times.

The Paper conducted comprehensive analysis on a number of programs for achieving the goal of fairness in post-Kyoto international legal system on climate protection (Binary Strength Target Program, Per Capita Discharge Right Program, Extended Brazil Text Program, Upgrading and Advancement Program and Human-Development-Based Commitment Program, etc.) and a number of programs for achieving the goal of efficiency in post-Kyoto international legal system on climate protection (Simplistic Continuing Kyoto Mode Program, SD-PAM Program, Extended CDM Program, Treaty and Market Expansion Linking Program and Treaty Ensemble Program, etc.), as well as

establishing evaluation standards for conducting assessment on these programs one by one, based on which the ideal mode for realizing the goal of fairness and efficiency in post-Kyoto international legal system on climate protection has been proposed, in addition to the detailed description of six key elements of the international legal system on climate protection in post-Kyoto times.

China is a developing country in the phase of accelerating economic development and faced with multiple pressures of the tasks of eliminating poverty, developing economy and reducing greenhouse gases emission. Survival and development is the most important issue faced by China. As to survival, to meet the basic demand of human survival, basic energy supply for the increasing population will inevitably result in the increase of survival-related emission. As to development, to improve the people's living standard, investment in various sectors must be increased. Therefore, the rapid increase of energy demand is inevitable, and the increase of development-related emission is also inevitable. In the long future, China's economy will remain the rapid speed of growth, so the energy demand will inevitably increase, which will contribute to the large amount of actual greenhouse gases emission as well as the potential to increase. At present, the appeal for China to undertake quantitative responsibility for emission reduction in post-Kyoto times, uttered not only by developed countries but also by developing countries, has been more and more imminent. As a result, China has been bearing increasingly heavier pressure, and the current situation is extremely severe.

While bringing tremendous challenges to China, the issue of global climate change has also brought along with it new development opportunities. In fact, to fight climate change and solve the problem of energy and environment is also the demand for China's self development. Even if there is no international pressure, fighting climate change would

still be the big issue for China to realize all-round, harmonious and sustainable development, an issue which is inevitable and requires prudent and effective solution.

This Dissertation conducted profound analysis on the challenges and opportunities faced by China in the post-Kyoto times. On the basis of comprehensive analysis on the relationship between negotiating bodies as well as the features of negotiation pattern, the profit-driving sources affecting the negotiations and the positions of main negotiating countries, it has proposed recommendations for China to establish its position and strategies in negotiations for establishing post-Kyoto international legal system on climate protection. And on the basis of comparative analysis on laws and policies for addressing climate change formulated by EU, U.S., U.K., Japan, Sweden and Australia, etc., this dissertation has proposed policy recommendations for China to establish national legal system on climate protection in the post-Kyoto times.

Key Words: Climate Change Climate Protection Legal System

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