

Multilateral Environmental Agreements (MEAs) and Interest Approach from Environmental Law and Governance Perspectives

Yusri Munaf¹, Syafrinaldi², Muhammad Rizal Razman³, Radin Zulhazmi Radin Abdul Halim³, Sharifah Zarina Syed Zakaria⁴ and Nuriah Abd. Majid⁴

¹*Faculty of Social and Political Sciences, Universitas Islam Riau, Jalan Kaharuddin Nasution, No. 113, Simpang Tiga Marpoyan, 28284 Pekanbaru, Riau, Indonesia*

²*Faculty of Law, Universitas Islam Riau, Jalan Kaharuddin Nasution, No. 113, Simpang Tiga Marpoyan, 28284 Pekanbaru, Riau, Indonesia*

³*Research Centre for Sustainability Science & Governance (SGK), Institute for Environment & Development (LESTARI), Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia*

⁴*Research Centre for Environment, Economic and Social Sustainability (KASES), Institute for Environment & Development (LESTARI), Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia*

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ABSTRACT

Multilateral Environmental Agreements (MEAs) are the global environmental laws that are being used in governing global environment by taking precautionary measures to control world emissions of pollution. In order for the MEAs to become a reality as the global environmental laws, MEAs need to seek global environmental cooperation among all states around the world. The global environmental governance scholars suggested that global financial mechanisms through interest approach might influence in the negotiation of creating MEAs. Moreover, the existence of the interest approach, which concerns with global financial mechanisms would lead to international environmental co-operations. This would influence in the negotiations of creating MEAs, that managed to secured environmental cooperation among almost all the states in the globe. Therefore, the primary purpose of this study is to explain the influence of interest approach which the global environmental law and governance.

Keywords: Multilateral Environmental Agreements (MEAs), Environmental law and governance

Introduction

International environmental governance scholars suggested that costs and benefits approach which derived from interest approach might influence in the negotiation of creating Multilateral Environmental Agreements (MEAs) (Hasenclever *et al.*, 1997; Barrett, 2003; Nik Ahmad Kamal and Abdul Ghafur,

2007). Moreover the existence of the interest approach, which concerns with costs and benefits would lead to international environmental co-operations. This would influence in the negotiations of creating MEAs (Hasenclever *et al.*, 1997; Barrett 2003; Nik Ahmad Kamal and Abdul Ghafur, 2007). Therefore, the primary purpose of this study is to explain the influence of the interest on the costs and

benefits approach, in the international environmental law and governance with regards of the MEAs and the relations of the interstates participation response. When taking into consideration what position the scheming of costs and benefits in decision to become a member state of the MEAs, an outline of what prospective costs and benefits might have been perceived to take place as a result of becoming a member state is helpful. According to Harris (2002) and Nik Ahmad Kamal and Abdul Ghafur (2007), environmental and financial concerns were motivating the negotiating countries leading up to the MEAs' early negotiation meetings when the said MEAs were first adopted.

A potential benefit of the adoption of the MEAs are the possibility of a member state gaining financial and technical incentives (Seaver, 1997; Breitmeier, 2000; Breitmeier *et al.*, 2006). Another benefit is the likelihood of sharing the burden of costs relative to the regulatory process among governments (Breitmeier, 2000; Breitmeier *et al.*, 2006). Besides that perceived costs by adopting the MEAs are the increasing prices due to the involvement of increasing costs in implementing the MEAs and likelihood of trade conflicts with the international trade laws (Breitmeier, 2000; Breitmeier *et al.*, 2006, Nik Ahmad Kamal and Abdul Ghafur, 2007). In explaining the adoption of the MEAs as an international environmental legislation, costs and benefits play an essential position as envisaged by interest-based approach to the international environmental governance. Therefore, this interest-based approach emerges to be the explanation for the better understanding among countries in the international environmental governance, especially in the MEAs' early negotiations and the relations of the interstates participation response.

Interest Approach from Environmental Law and Governance Perspectives

According to Barrett (2003), Hasenclever *et al.* (1997) and Haggard and Simmons (1987) the interest approach is one of the essential elements that influence in the negotiations of the MEAs. These scholars also argue that this approach helps states around the globe to realise the common interests during the MEAs negotiations. This interest approach can be divided into two groups (Barrett, 2003; Hasenclever *et al.*, 1997; Haggard and Simmons, 1987), namely; the first group that emphasises on the international institutions and the second group which is less using

the international institutions.

Interest Approach: The First Group

The first group emphasises on the international institutions effort to bring together states around the globe to realise the common interests that balance with benefits and costs involvement in creating international environmental co-operations, which include in creating MEAs (Hasenclever *et al.*, 1997). The international institutions always ensure that all states will be benefited with the co-operation that being created in order to achieve joint gains and to reduce potential costs expenditure. Nevertheless, the international institutions are capable of making all states that are involved to notice the common interest in that particular international environmental co-operations even when the elements that brought them in the first place being no longer effective (Hasenclever *et al.*, 1997). As for Hasenclever *et al.* (1997) this situation as "co-operation under the umbrella of anarchy" or "utilitarian" approach. In addition, Hasenclever *et al.* (1997) also regarded this approach as a game theory. Meanwhile Keohane (1984, 1988) and Oye (1986) argued that the international institutions will not be able to fulfill the optimal outcomes of every member state, for instance, in the position of the prisoner's dilemma game. However, the international institutions may facilitate and smooth the progress of gaining common benefits by heartening reciprocity in the negotiation, which treated others as you would like to be treated with upgrading level of communication and information. Therefore, the international institutions will able to persuade state response in order to maneuver results in the international environmental co-operations.

Interest Approach: The Second Group

According to Haggard and Simmons (1987), the second group is less using international institutions and the game-theory as vehicles to gain from the interest approach in the international environmental co-operations, which include creating of MEAs. As for Barrett (2003), interest in creating MEAs under the umbrella of the international environmental co-operations must be derived from individual state needs and capacity. Each individual state will calculate its own benefits and perceived costs that will be incurred. Interest of a state begins, when a particular issue that is being raised has shown a lot of benefits to the said state (Barrett, 2003; Haggard and

Simmons, 1987). Finally, it is very important to bring in the interest approach in the negotiations of creating of the MEAs in order to achieve the international environmental co-operations, regardless, if the interest approach is using the first group theory or the second group ideas. The main purpose to build up the international environmental co-operations is to tackle global environmental problems (Snidal, 1991; Barrett, 2003).

Multilateral Environmental Agreements (MEAs) and Interest Approach from Montreal Protocol Experiences

Based on the documents analysis on the influence of interest approach in the early negotiations of the Montreal Protocol, two main themes and eight sub-themes have been identified (refer to Table 1). The themes are costs and benefits, while the sub-themes are implementation costs, market competitiveness, international trade conflict, increasing prices, flexibility, justice, incentives (technical and financial assistance) and cost-effectiveness.

Costs

When referring to the influence of interest approach in the negotiation of the Montreal Protocol, it is clear that the costs have played essential roles on this matter. This has been highlighted in document no. (ii) indicates the subject matter.

“Another expert drew attention to the problems faced by small countries which might suffer increased costs or reduced availability of chemicals if producing nations restricted exports in favour of continued domestic consumption under regulatory measures” [Para 177, Document No. (ii)]

Implementation Costs

This study has shown that implementation costs were also being considered as factors that influence states to participate in international environmental cooperation of the Montreal Protocol. This has been highlighted in document no. (vi).

“Incremental costs that might be covered by the international financial mechanism” [Para 103,

Document No. (vi)]

Market Competitiveness

Beside the implementation costs, which has been highlighted above, market competitiveness has also been mentioned for consideration in order to influence the negotiation of the the Montreal Protocol. This has been highlighted in document no. (i) indicating the said matter.

“The delegates warned that a freeze at the 1986 production level as contained in one draft protocol before the Group would lead to a production monopoly for current producers” [Para 116, Document No. (i)]

International Trade Conflict

In the early negotiation of the Montreal Protocol, all of the states around the globe were looking forward that controlling trade measures in the Montreal Protocol should be consistent with the international trade laws in order to avoid international trade conflict that might cause international trade problems. This has been highlighted in document no. (ii) that indicates the subject matter.

“The Sub-Group on Trade Issues considered the compatibility of measures for controlling trade between parties to the Protocol, and trade between parties and non-parties, with the rules of international trade, especially the GATT” [Para 301, Document No. (ii)]

Increasing Prices

In addition to the discussion under the main theme ‘costs’, which are based on document no. (vi), member states during the negotiation always ensure that the Montreal Protocol must take into consideration on the increasing prices due to the involvement of increasing costs in implementing the Montreal Protocol.

“He outlined the elements of the cost as follows: (a) the costs of using or manufacturing high price CFC substitutes; (b) the costs of amortization; (c) the cost of adjustments in industries using CFCs and halons as inputs; and ‘the higher costs of importation of equipment and goods using the substitutes” [Para 91, Document No. (vi)]

Table 1. Themes and Sub-Themes of Documents Analysis of the Interest Approach which included Global Financial Mechanisms in the Montreal Protocol

Themes	Sub Themes
Costs Benefits	Implementation costs, market competitiveness, international trade conflict, increasing prices Flexibility, justice, incentives (technical and financial assistance), cost-effectiveness

Benefits

The second main theme that influence the negotiation of the Montreal Protocol from the interest approach perspective, is also clear that the benefits have played essential roles on this matter. This has been highlighted in document no. (vi), which indicates the subject matter.

He first identified the needs of developing countries; their reticence to ratify the Montreal Protocol was due to lack of the resources necessary to met its requirements without serious disruption of their development efforts; what they needed was concessional funding and outright grants additional to existing aid programmes [Para 18, Document No.(vi)]

Flexibility

These benefits are also including the aspect of flexibility. This aspect of flexibility really helps to influence states around the globe to join in and ratify the Montreal Protocol. During the negotiation of the Montreal Protocol many developing states have requested for the flexibility in implementing the Montreal Protocol. This has been highlighted in document no. (ii), which indicates the said matter.

“Special clauses must be drafted for the developing countries that take into account their particular situation and that, at a minimum, permit them to continue their production and emission at current levels, since these countries are not in a position to replace these substances, in addition to which they are experiencing a very difficult economic situation” [Para 96, Document No. (ii)]

Justice

This study has shown in document no. (i) that justice also bring benefits to states around the world during the negotiation of the Montreal Protocol because with the application of the principle of fairness in the Montreal Protocol, the Montreal Protocol will become international law that would be accepted through out the world.

“He said, however, in doing so it was important to apply the principle of fairness so that the regulations would be acceptable to all” [Para 85 Document No. (i)]

Incentives (Technical and Financial Assistance)

Incentives on technical and financial assistance bring benefits to member states especially to the developing nations in accepting the Montreal Protocol as one of the international environmental laws. This has been highlighted in document no. (vi) that indi-

cates the subject matter.

“Two main purposes for financial or other support: first, compensation for the incremental costs of transition to substitutes of the ozone depleting substances, and, second, support which would serve as an incentive to ensure adherence to the Protocol” [Para 178, Document No. (vi)]

Cost-Effectiveness

Cost-effectiveness, which bring benefits to member states by sharing the burden of costs relative to the regulatory process among governments. This has been highlighted in document no. (ii).

“Mr. Mansfield enumerated some of these issues; on the substances that should be regulated; on the levels of limitations to be chosen; on the cost-effectiveness of regulations and on how the burden of costs relative to the regulatory process would be shared among governments”

[Para 32, Document No. (ii)]

Conclusion

In conclusion, this study suggests that costs and benefits rather an important feature to encourage and influence states around the globe to participate in the MEAs. After series of negotiations, most of the negotiating countries felt that the MEAs such as Montreal Protocol would be able to supply market for substitutes of CFCs and would not be exaggeratedly upsetting the global cost-effectively. Meanwhile, the developing nations have tried to seek justice by promoting the principle of fairness and the principle of common but differentiated responsibility. Based on these two principles, the developing nations managed to obtain flexibility in implementing the Montreal Protocol. Moreover, the developing nations which regarded as Article 5 states in the Montreal Protocol are also received incentives on technical and financial assistance through Multilateral Fund in order to help them in implementing the Montreal Protocol.

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