



Global Environmental Governance and the North-South Dimension: Regime formation on Hazardous Waste Trade

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Abstract

The North-South dimension is the central political context of global environmental politics. It is embedded in all the issue areas of global environment. The regime formation for global environmental governance on environmental issues brings to the fore the North-South conflict. There are multiple actors which influence the substantive outcomes of negotiations for regime formation. In the case of regime formation on Trade in Hazardous Wastes, states, coalition of states, environmental social movements, and business interests influenced the outcomes at different stages of the negotiations. In the first phase of diplomacy for regime formation lasting until 1992, the Northern countries dominated the negotiations and were able to protect their interests in the Basel Convention. In the second phase of diplomacy beginning in 1992, the Southern countries were able to influence the negotiations which led to reversal of the policies of the Northern countries. In this process, the cohesiveness of the Third World coalition (NAM and Group of 77) and the support that it received from the environmental groups played an important role.

Keywords: global environmental governance and the north-south dimension, ozone regime formation and the north-south conflict, third world coalition and the ozone regime, actors in ozone regime formation

Introduction

Global environment has been increasing in salience as an issue area in global politics since the early 1960s. In contemporary global politics, it is considered as the third most important issue alongside security and economic issues. There are interlinkages between these three issues. Global environmental degradation has been intricately linked to the processes of economic growth and development since the industrial revolution in the eighteenth century. The contemporary models of economic growth and development have accelerated the process of global environmental degradation, and international efforts are on to anchor the paradigm of sustainable development in these models of economic growth. The linkages of global environmental degradation to security, military security as well as human security, are becoming more apparent as inter-state disputes on sharing of fresh water supplies are increasing. These disputes have the potential to develop into major conflicts in the context of increasing fresh water stress that the world is facing, primarily due to climate change and the rising population. Of all the environmental issues, climate change is the most serious challenge that the humanity is facing. It adversely impacts four critical aspects of human security: water security, food security, poverty alleviation, and health. During the period when global environmental degradation was occurring due to industrialization in the developed/Northern countries in the eighteenth, nineteenth, and most of the twentieth century, the Southern countries were under the colonial rule and experiencing deindustrialization. The process of industrialization in the Southern countries picked up only in the second half of the twentieth century after these countries achieved political independence. The scientific evidence suggests that most of the global environmental degradation had already occurred by then due to intensive

industrialization in the Northern countries. Therefore, the onus of environmental degradation lay with the industrialised countries. Although the origins of North-South conflict lie in the creation of the contemporary international economic order in the post-World War II period in the 1940s by the Northern countries to take care of mainly their economic interests when most of the Southern countries were still under the colonial rule and had no role to play in its making, global environmental politics provided political space for the South to demand equity and justice in global environmental governance. The perceived realization by the South that they have a veto power on environmental issues as no global environmental regime can be successful without their cooperation, they linked their long-standing demand for new international economic order (NIEO) with the global environmental issues. The demand for NIEO was a strategy in the context of their perceived veto power. The global environment is one of the rare issues in global politics whereby the North has tacitly accepted the historical responsibility for environmental degradation. There were two reasons for this acceptance: first, the scientific evidence had clearly established that the main cause for global environmental degradation was the industrialization process since the industrial revolution in the eighteenth century, and second, the pressure generated by the Third World coalition, the Group of 77. The coalition has since aggregated and articulated the Southern position for global environmental negotiations as 'common but differentiated responsibilities and respective capabilities.' This position of the South explicitly recognizes that the global environment is a common resource and responsibility but there are differences between the developed and developing countries in terms of the past and present contribution to the problems and respective capabilities of finance and technology to respond to it. In sum, the Northern countries have been the

biggest emitters of carbon dioxide and other green-house gases and also have the green technology and financial resources to reduce their emissions. This collective position of the South evolved in the 1980s and continued in the 1990s and the new millennium. The Montreal Protocol on Substances that Deplete the Ozone Layer of 1987 and the subsequent London Amendment explicitly reflected the Third World collective position on the issue. There were three specific demands made by the South during the multilateral negotiation process ^[1]. First, since the onus of ozone depletion lay with the developed countries, they should cut their emissions. Second, the developed countries should develop alternative environmentally-safe technologies and provide the developing countries with non-commercial access to such technologies. Third, the developed countries should provide additional resources to the developing countries for environmental cooperation. The unity displayed by the South led the developed countries to establish the first Multilateral Fund to help the developing countries make a transition to alternatives to CFCs. The Paris Agreement on Climate Change of 2015 clearly incorporated the Southern position of 'common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.' ^[2]

Global Environmental Governance

There has been a steady transition from 'international cooperation' in the international system to 'global governance' in the global system. This transition signifies a systemic change from the international system to the global system. In the international system, the only actor of consequence for international cooperation was the nation-state within the framework of multilateralism in international organisations. The global system has multiplicity of actors such as nation-states, global social movements and transnational corporations. Though nation-states are the most important actors but nonstate actors are also perceived as of some consequence in the global system. With this systemic change, there has been a transformation of multilateralism to complex multilateralism. Five distinguishing characteristics of complex multilateralism have been identified by analysts. First, multilateral organisations are modifying in response to pressure from social movements, non-governmental organisations, and business actors. However, institutional modifications in response to civil society pressures vary across institutions. Second, there are conflicting interests between major participants in the multilateral process. The goal of the institutions is to sustain the existing policy direction and while that of social movements is to change the policy direction of the institutions. Third, institutions as well as social movements have had limited success in achieving their goals. Fourth, complex multilateralism has had differential impact on the role of the state. It has reinforced the role of the powerful states and weakened the role of many developing/Southern countries. Fifth, complex multilateralism has broadened the policy agenda in multilateral institutions to include social issues. The multilateral economic institutions are being compelled to take into account the social implications of their policies ^[3]. The complex multilateralism has been evolving since the early 1980s when the United Nations admitted NGOs as observers. Multilateral Economic Institutions have been late comers to the process of complex multilateralism, and are

far less open to civil society actors than the United Nations system. The salience of nonstate actors may vary across issue areas of global governance; it appears to be more, for example, on issues areas such as global environmental governance, global economic governance, human rights and women and child rights. This increasing salience of non-state actors in global politics and the intensification of the processes of globalization led to conceptualisation of global governance. The 1995 report of the Commission on Global Governance defined global governance as "the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken." ^[4]

The global environment is one of the central themes in global politics and efforts have been on since the United Nations Conference on Human Environment (UNCHE) was held in 1972 to evolve global environmental governance. The conference marked the beginning of the contemporary phase of environmental cooperation as well as environmental governance in global politics, and made it a part of official agenda of the United Nation. Importantly, United Nations Environmental Programme (UNEP) was created for ensuring continued multilateral cooperation based on scientific evidence, and coordinated by international organisations. It was attended by more than hundred countries and set the goals and priorities for the global community. The conference adopted the Declaration of Twenty-Six Principles, and an Action Plan along with a list of more specific actions ^[5]. One of the substantive aspects of global environmental governance is the creation of regimes on environmental issues. Regimes are "set of implicit or explicit principles, norms, rules and decision-making procedures around which actor expectations converge in a given area of international relation. Principles are belief of facts, causation and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are standard prescriptions or proscriptions for action. Decision-making procedure are prevailing practices for making and implementing collective choice." ^[6] 'Most of the global governance takes place through formal treaties and the institutions created to implement them. Environmental treaties are referred to as multilateral environmental agreements (MEA). MEA includes treaties, conventions and protocols.' ^[7]

North-South dimension in regime formation on hazardous waste trade

The focus of global environmental politics has been on global commons issues, such as ozone depletion and climate change. Trade in hazardous waste has been conceived as a trans-boundary issue and therefore it lacks the salience of the global commons issues. Transboundary environmental problems refer to those that cross from one country to another. Economists explain these problems through transboundary externalities. Externalities take place when the social costs in economic terms exceeds private costs to a firm. The examples of transboundary environmental externalities include river pollution, international trade in hazardous waste or in endangered species. The transfer of pollution may be unintentional, such as acid rain, or international like shipping of wastes from one country to another ^[8]. The hazardous waste trade from the developed countries to the developing countries falls in the

'intentional' category of transboundary pollution. International trade in hazardous wastes occurred due lack of international law and global environmental regime on the issue. The issue of trade in hazardous waste, including chemicals wastes, began to receive attention in the 1980s, primarily because of many infamous cases of illegal shipments to the developing countries. According to the United Nations Environment Program, about 300 to 500 million tons of hazardous waste are generated every year. The developed countries generate most of the hazardous wastes, and about ten percent of these wastes are shipped across international boundaries, mostly between OECD countries ^[9]. As more scientific evidence grew relating to harmful effects of hazardous wastes on human health and the environment, the OECD countries starting enacting domestic laws to regulate the disposal of hazardous waste. These laws made disposal of hazardous waste by firms more expensive and pressed them to look for cheaper disposal sites. This marked the onset of substantial increase in North-South hazardous waste shipments. The poorer countries of the South, particularly those located in Africa, Latin America and the Caribbean, were tempted by offers of substantial economic gains by accepting the shipments of hazardous wastes originating in the North. These countries of the South neither had the administrative capacity nor the technology to dispose of the hazardous wastes safely. Importantly, most of the trade was through illegal channels, such as bribing the customs officials. The issue was taken up by the United Nations Environment Program in 1983 and a working group of legal and technical experts was set up. On the basis of the findings and recommendations of the working group, the governing council of the UNEP adopted in 1987 the voluntary Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous wastes. The guidelines focused on the principle of prior notification and consent of the receiving states before the export or transit of hazardous wastes. The guidelines also specified that the exporting state was to verify that the importing state had the disposal mechanism at least as stringent as the exporting state. In order to strengthen the Cairo guidelines, the UNEP recommended global negotiations for a binding legal agreement. The major stake holders, the African countries which received most of the illegal hazardous waste exports, were dissatisfied with the Cairo 'soft law' ^[10]. They asked for a complete banning of international trade in hazardous wastes rather than regulating it. Such a trade was perceived by them as exploitation of the poor and weak states by the industrialized countries and their businesses. The demand of the African countries was supported by the Third World coalition, the Non-aligned Movement. The soft law did not have any impact on shipment of hazardous waste trade from the North to the South. The shipments of hazardous wastes continued to increase from the industrialized countries to the developing countries and included many publicized incidents of illegal dumping ^[11]. One of the most infamous cases of shipment of hazardous waste, the case involving the cargo ship *Kbian Sea*, received wide publicity across the world. The ship left the port in in 1986 with 14,000 tons of hazardous waste looking for a disposal site. The ship was at sea for almost two years and during the course changed its name twice. It dumped bulk of the cargo on a beach in Hatti and the rest somewhere between the Suez Canal and Singapore ^[12].

There were many reasons for the upswing in legal and illegal North-South shipments of hazardous wastes. First, generation of hazardous wastes was increasing in the industrialized countries. Second, domestic laws and regulations regarding disposal of hazardous wastes in industrialized countries were becoming more rigorous. As a consequence, the old disposal sites were closed and the opening of new sites was getting difficult because of local pressure. Third, the economic costs of proper disposal of hazardous wastes in the industrialized countries grew substantially. The high and growing economic costs of disposal in the industrialized countries acted as an incentive to export the hazardous wastes to developing countries. Fourth, similar economic incentives were available for hazardous wastes that could be recycled and had commercial value as a secondary raw material. In this category, metals and decommissioned ships were sold to the developing countries. In the context of increasing North-South trade in hazardous wastes, the UNEP initiated negotiations for a global convention to control trade in hazardous wastes by constituting a working group in 1987. The protracted negotiations revealed that the negotiating states were divided into two groups: the African countries, and the industrialized countries led by United States. The African countries, supported by Greenpeace, demanded a total ban on trade in hazardous wastes, and in case of illegal trade, the exporting state should bear the liability because the developing countries lacked the capabilities to dispose of the wastes. The exporting countries insisted on a convention that permitted trade in hazardous wastes with the condition that the importing country was notified and gave consent to accept it. In other words, exporting countries wanted an informed-consent regime. The final round of negotiations began in Basel, Switzerland in 1989. The deadlocked in negotiations continued between the two groups of countries. During the negotiations, the collective position of the African countries articulated by the Organization of African Unity (OAU) was put forward in the form of amendments to ensure that the hazardous wastes were not exported to those countries which did not have the same level of facilities for disposal as the exporting countries. In addition, they also demanded inspection of the disposal site by the United Nations inspectors ^[13]. The amendments were rejected by the exporting countries led by the United States. The final outcome of the negotiations was the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The convention merely formalized the Cairo guidelines. In sum, the position of the North of the informed-consent regime prevailed. The Basel Convention represented a weak regime as it was not ratified by the major exporting countries. It came into effect in May 1992. The efforts for a stronger regime on trade in hazardous wastes continued. These efforts continued at two levels: first, within the framework of Basel Convention Conference of the Parties (COP), and second, parallel to COPs. The Non-aligned Movement (NAM) raised the political profile of the issue of trade in hazardous wastes by making it a top priority on its agenda and for the first time articulated the collected collective position of the Third World on it in 1989. The NAM expressed 'grave concern at the growing incidence of the dumping of toxic and other hazardous wastes in African and other developing countries' and pointed out to the blatant violation of the Principle 2 of the 1972 Declaration of the

United Nations Conference on Human Environment adopted at Stockholm, which states that all states are responsible for ensuring that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond their limits of their own national jurisdiction ^[14]. The NAM raised the political profile of the issue and the Group of 77 initiated the process of evolving collective Third World position and strategies to be pursued in the negotiations on the issue. The Greenpeace supported the NAM's position by highlighting the report of their seven-year study that examined fifty recycling operations in the non-OECD and revealed on the basis of evidence that wide scale dumping of hazardous wastes was taking place in the developing countries. The consignments had been falsely labelled as recyclables and shipped to the developing countries. (FFOTNOTE) Thirty countries (without the United States) along with EC decided in 1989 to dispose of hazardous wastes at home and to ban the export of hazardous wastes to countries that did not have the technological capabilities to handle them. Later in the year, this was followed by the agreement between the EC and Africa, Caribbean, and the Pacific (ACP) countries to ban shipment of hazardous wastes to sixty-eight countries of ACP. This agreement was the outcome of the unity displayed by ACP countries although the protracted negotiations. In the early part of the negotiations, the ACP countries had rejected the proposal of the EC to exempt those countries that had adequate technical capabilities to dispose of hazardous trade. Yet another parallel development that took place was the Bamako Convention in 1991 of twelve African countries that banned all imports of hazardous wastes in their countries. All these parallel developments outside the framework of the Basel Convention contributed to the creation of a stronger regime for trade in hazardous wastes. It was the interplay of three important factors which led to all these parallel developments: first, the pressure generated by the Third World coalition, the NAM as well as the Group of 77; second unity displayed by the ACP countries, and third, the continued support of the Greenpeace and other environmental groups. These developments had strong implications for the review process of the Basel Convention in the COPs that followed. The first Conference of Parties (COP-1) was held in December, 1992 ^[15]. The informal alliance of the Nordic countries and the developing countries successfully pushed for a voluntary decision on the part of the industrialized countries to refrain from exporting hazardous wastes to developing countries. However, the pressure of Third World coalition and the Nordic countries continued for a mandatory ban on export of hazardous wastes to developing countries for disposal. The delegates at COP-2 agreed to ban the export of all hazardous wastes from OECD countries to non-OECD countries for final disposal, and also decided to ban the export of hazardous waste for recycling by the end of 1997. However, the decision was part of the COP-2 only and was not incorporated as a formal amendment to Basel Convention. Some of the developing countries were apprehensive about the binding nature of the decision, and therefore continued the pressure to make it part of the amended Basel Convention. This led the COP-3 to pass the Ban Amendment which formally prohibited the export of hazardous wastes for final disposal and recycling from industrialized countries to all other countries.

The COP-4 held in 1998 identified the priority areas of the Convention. The COP-5 held in 1999 adopted the Basel Protocol on Liability and Compensation which the developing countries had been insisting on. The context was provided by the developing countries' lack of funds and technology to deal with the consequences of illegal dumping and accidental spills. The protocol took care of the Southern demand for liability and compensation for damage resulting from the transnational movement of hazardous wastes and also included incidents that could arise from illegal traffic and accidental spills. The COP-5 held in 2002 was significant to the extent that the delegates agreed on a prioritized strategy for implementing the Basel Convention over the next ten years. The COP authorized a Technical Working Group to draw lists of banned and exempted wastes. Guidelines were laid down for sixteen different types of hazardous wastes and included hazardous wastes such as decommissioned ships and biomedical and health care wastes. The COP-6 expanded the organizational infrastructure to include 'Compliance Mechanism' to review and assist in the implementation of the provisions of the convention. In addition, it confirmed the role of the Basel Convention Regional Centers (BCRCs) to facilitate implementation in the developing countries through capacity building; data collection, public education, promotion of environmentally sound waste management, facilitating the transfer environmentally sound technologies, and training of customs officials. There are thirteen BCRCs functioning across Africa, Asia, Latin America, and Eastern Europe. Various measures have been adopted either to expand or implement the regime through COP-7 in 2005 to COP-11 in 2012. However, the main constraint continues to be the availability of financial resources to implement the regime. The North has to make serious efforts to allocate resources to overcome regime-financial-deficit in implementation. Otherwise, the contentious North-South dimension may reappear.

Conclusion

The formation of a regime in global environmental governance reveals that there is multiplicity of actors which influence the substantive outcomes of negotiations. In the formation of regime on trade in hazardous wastes, four actors can be identified; states, coalition of states, environmental social movements, and business interests. It is the complex interplay of the influence of these four actors that determines the formation and nature of a regime. The central political context of the regime formation on trade in hazardous has been the North-South dimension. In the first phase of diplomacy over regime formation on trade in hazardous lasting until the Basel Convention came into effect in 1992, the North dominated the negotiations and the outcomes validated their position. In the second phase beginning in 1992, the South dominated the proceedings. There were two important factors that enabled the South to incorporate their concerns in the regime formation. First, the unity displayed by the Third World coalition in generating pressure on the industrialized countries to incorporate their concerns; and second, the synergy created by the alliance of the environmental social movements, particularly the Greenpeace, and the Third World coalition generated pressure for the reversal of the position of the North in regime formation.

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