The Foundations of International Treaty Regime and the Roles of International Organizations: Compliance Facilitation under the Climate Change Treaty Regime with a Particular Attention to Reporting Obligations

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Abstract

Considering the significance of ‘monitoring’ or, in other words, ‘international control’ in the theories of global environmental governance, the enabling activities for the reporting obligations toward increasing the levels of compliances are of critical importance. The effectiveness of global environmental governance is considered to be enhanced through strengthening the monitoring functions of multilateral environmental agreements, if such agreements provide the international control measures, such as reporting amongst others.

International organizations are functioning to facilitate the compliances with the obligations under the Climate Change Treaty Regime. Particularly, as a remarkable case, in the field of reporting under the Climate Change Treaty Regime, some institutional arrangements were made to institutionally respond to facilitate the compliances with the treaty commitments. For example, the Conference of Parties (COP) established an additional function as the Consultative Group of Experts (CGE) within its body. The Intergovernmental Panel on Climate Change (IPCC) adopted guidelines and guidance for parties’ preparation of their reports. The Global Environmental Facility (GEF), a financial mechanism established by the collaboration among the World Bank, the United Nation Development Programme (UNDP), and the United Nations Environment Programme (UNEP) established 6 year’s National Communication Support Program (NCSP). The roles played by them are becoming essential for the state parties that faced with the difficulties caused by scientific complexities to provide more accurate and reliable data through their reporting, as well as that need assistance for it. Such a process driven by international organizations can be interpreted as contributing to enhancing the stringency of the foundation of international treaty regimes.

In view of that, this study examines the roles of international organizations, with a particular attention to facilitating the parties’ compliances with reporting obligations under the Climate Change Treaty Regime as an empirical contribution to the theories of global environmental governance.
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1. Introduction

The self-reporting is one of the most critical systems to ensure the effectiveness of the international environmental treaty regime. It is seen in major international environmental treaty regimes, including the climate change treaty regime, which obliges state parties to report on their implementation performances periodically. Those reports submitted are reviewed multilaterally, which should contribute, firstly, to mobilize the ‘peer pressure’ on state parties to induce compliances, secondly, to determine the levels of compliances, thirdly, to gather the information on climate change at the regional and national level, fourthly, to increase transparency among state parties to build the confidences among them by showing that they are not free riders in the treaty regimes, and, fifthly, to contribute to the decision-making process by providing certain information. Therefore, regarding the self-reporting is backbone to the international treaty regime as a monitoring tool and an information-gathering tool, state parties’ compliances with the reporting obligations provided under the treaty regime is highly critical.1

The climate change treaty regime requires state parties to report periodically to the international treaty regime. As explained above, also in the climate change treaty regime, self-reporting is playing a vital role for the regime to function. Yet, considering the nature of the climate change issue is theoretical one, which means that the issue is understood based largely on scientific knowledge, it is natural to conclude that the climate change treaty regime requires state parties to submit scientifically complex data through their reporting. The accuracy and the quality for the information is required for such reports, yet, the reality shows that there is a large difficulty for state parties in doing so, particularly for the countries in the South. Even developed countries, as listed in the Annex I to the United Nations Framework Convention on Climate Change (UNFCCC), are also experiencing similar problems. The self-reporting process under the climate change treaty regime is functioning to achieve a sort of governance effect, yet it is considered that such circumstances tell the issue of the result effectiveness, real improvement for the environment. International organizations, including treaty organizations, are playing some roles with this regard. Facilitating state parties to comply with the reporting obligations by international organizations under the climate change treaty regime is seen recently, in a way to prepare institutional infrastructures and to build the capacity of state parties to comply

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with the obligations under the international environmental treaties.

The roles played by the international organizations are becoming essential for the state parties that faced with the difficulties caused by scientific complexities to provide more accurate and reliable data through their reporting, as well as that need assistance for it. Such a process driven by the international organizations can be interpreted as contributing to enhancing the stringency of the foundation of the international treaty regimes.

With such a standpoint, this paper illuminates the institutional process of the compliance facilitations driven by international organizations as an empirical contribution to the theories of global governance.

2. The Institutional Design of Self-Reporting under the Climate Change Treaty Regime

The climate change treaty regime contains the self-reporting system by obliging state parties to report on their implementation performances. Two kinds of reports are generally required to submit. Those are national inventory report (NIR) and national communication (NC). NIR is normally statistical, which requires state parties to report on the amounts of their emissions by data. National communications are the reports on their actual implementations including national institution building amongst others. Both reporting obligations are stipulated under the Article 4 and the Article 12.2

2.1. National Inventory Report and National Communication

2.1.1 National Inventory Report (NIR)

The UNFCCC is generally requires state parties to submit the inventory report, which shows the statistical amount of GHG emissions and sinks. The NIR is prepared together with the Common Reporting Format (CRF), which is also a part of it. Also, the CRF Land Use, Land Use Change and Forestry is submitted since 2005. It must be submitted annually by April 15th to the secretariat. The secretariat discloses the submitted NIR through the treaty webpage as an international communication media.

2 See, UNFCCC Article 4 and Article 12.
2.1.2. National Communications (NC)

State parties generally submit the national communications in a form of report to the Conference of Parties through the secretariat. In submitted national communications, the information on implementation performances such as the policies and measures taken and to be taken by the state parties is contained. The concrete information to be contained in the reports is stipulated under the Article 4 of the Convention. Particularly, those state parties listed in the Annex II (OECD countries) are required to contain the information on the international assistance and technology transfer to developing countries. The timing of submission is normally decided by the COP. Such national communications are also disclosed on the treaty webpage by the secretariat.

2.2. Differentiated Obligations between the North and the South

The UNFCCC are setting the obligations between the North and the South. The state parties in the North, such as the ones listed in the Annex I, generally called as Annex I countries, are required to submit all the kinds of reports to the treaty regime. Yet, the Convention stipulates state parties to submit their reports within their capacities. Therefore, the reporting obligations are differentiated between developed countries (Annex I countries) and developing countries (Non-Annex I countries). Non-Annex I countries are obliged to submit their reports based on the decisions of the COP. Yet, least developing countries (LDCs), can decided on their submissions at their discretion, taking note of their own capacities.

2.3. The State of Reporting Submissions – A Brief Review

2.3.1. Submissions

The state of reporting submissions by state parties is evaluated as ‘generally good’ by the secretariat. As for the Annex I countries, as per 2005 November, 36 state

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3 UNFCCC, Article 12 (1a).
4 Recently, the website of the UNFCCC has become convenient for checking the state of reporting. The number shown in this paper is also based on the website information.
parties out of 41 countries have submitted NIRs successfully. As for both the 2003 and 2004, it is almost similar, the submissions are generally good.

In the case of national communications, the first submissions during the period between 1994 and 1995, all Annex I countries successfully submitted. For the second submissions in 1997-1998, 36 state parties submitted. Belarus, Croatia, Luxemburg, Uruguay and Turkey could not achieve their submissions. For the third submissions in 2001, 35 submissions were seen. Five non-submitted countries mentioned above plus Lithuania were unsuccessful. Now, the regime is welcoming the fourth submissions in 2006.

As for the Non-Annex I countries, such state parties are required to submit the national communications in 2005 for the first time. 126 state parties out of 129 Non-Annex I countries were successful in submitting the national communications. For the second submissions, 3 state parties out of 129 have submitted already earlier than 2006. Others are under preparation to submit in 2006.

3. Regime-enabled compliance: Institutional Responses by International Organizations under the Climate Change Treaty Regime

Under the climate change treaty regime, the state of reporting by state parties, mostly Annex I countries, is generally good, yet it is observed that the international organizations are playing certain roles in terms of compliance facilitation for developing countries and countries that need assistance for it. For such compliance facilitation process, the UNFCCC treaty organization and the United Nations (UN) agencies, non-governmental organizations are involved.

3.1. Institutional Responses by Treaty Organizations

The treaty organization is playing a certain roles by responding institutionally to support state parties to report. Here, the institutional responses are to be explained.

3.1.1. Ensuring the Comparability and the Quality of the Reports for Review

The UNFCCC treaty organization has prepared the guideline and guidance for
reporting to enable the state parties to prepare the reports and to increase the comparability of the submitted reports. The Intergovernmental Panel on Climate Change (IPCC) has elaborated for creating those, guideline, guidance and manuals. For such, guideline, guidance and manuals are: the IPCC guidelines for National Greenhouse Gas Inventories; the Greenhouse Gas Inventory Workbook; Greenhouse Gas Inventory Reference Manual; the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories; and the Good Practice Guidance for Land Use, Land Use Change and Forestry. The UNFCCC treaty organization is functioning to design and supply and revise, upon need, the standard forms for reporting in collaboration with the other related organizations such as the IPCC.

3.1.2. Peer Pressures by the Conference of Parties (COP) and the Secretariat

Peer pressures\textsuperscript{5} are important factor for inducing state parties' compliance. The UNFCCC contains the article on the disclosure of the reports submitted.\textsuperscript{6} According to the article, the secretariat discloses the reports to the public through the international communications media. Any stakeholders, such as state parties interested, non-governmental organizations and business industries amongst others, can access to them freely, which is considered that a sort of peer pressures are mobilized on states submitted. Yet, the verifications of those reports are highly difficult. It requires high expert knowledge on measuring the data to analyze. Generally, such reviews are conducted by the Expert Review Teams (ERTs). Recently, at policy levels, it is required further experts with sufficient expertise for reviewing those reports.\textsuperscript{7} Additionally, the secretariat analyzes those reports through the Compile and Synthesis (C&S) report process for informing the COP on issues and prospects on the implementation of the Convention. Yet, the secretariat is not mandated to review those reports for verification. In general, the disclosure of the national communications and inventories submitted by Annex I countries seem to be promoting state parties to provide the information on their state parties to other stakeholders, and establishing a sort of political belief (or reputation) that they are actually implementing obligations under the convention in good faith. Under the climate change treaty regime, by assuring the transparency, the process is somehow managed by the treaty


\textsuperscript{6} Article 12 (10)

\textsuperscript{7} FCCC/SBI/2001/INF.4
organization to induce compliances.

3.1.3. Capacity Building by Subsidiary Organs - the Consultative Group of Experts

The capacity-building by the subsidiary organs under the climate change treaty regime is undertaken. The COP has established the Consultative Group of Experts on the national communication by Non-Annex I countries with identifying the need to assist the state parties with some difficulties to report, particularly developing countries. The CGE has held a series of workshops at international and regional levels, focusing on the preparation of national communications, and exchanging the views among technical experts on the comparability and transparency of the information in national communications. The CGE instructed how to use the methodological tools such as the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories and the Good Practice Guidance for Land Use, Land Use Change and Forestry. Also, the CGE is promoting to exchange the experiences by state parties as well as good practices among them in such a process. When observing such a process, there seems to be various approaches in methodologies. The CGE is addressing such problems by collecting the different approaches and disclose them through the information media. At the same time, the CGE collaborates with the Expert Group on Technology Transfer (EGTT), the Least Developed Countries Expert Group (LEG), the National Communication Support Programme (NCSP), and the Global Environment Facility (GEF) so that its activities can gain more effectiveness and efficiency.

3.2. Other International Organizations Involved

3.2.1. National Communication Support Programme (NCSP)

The UN families are also involved to assist the state parties under the climate change treaty regime to implement the reporting obligations. The United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) are collaborated to establish the 6 years program for supporting national communication by Non-Annex I countries with identifying the need to assist the state parties with some difficulties to report, particularly developing countries. The CGE has held a series of workshops at international and regional levels, focusing on the preparation of national communications, and exchanging the views among technical experts on the comparability and transparency of the information in national communications. The CGE instructed how to use the methodological tools such as the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories and the Good Practice Guidance for Land Use, Land Use Change and Forestry. Also, the CGE is promoting to exchange the experiences by state parties as well as good practices among them in such a process. When observing such a process, there seems to be various approaches in methodologies. The CGE is addressing such problems by collecting the different approaches and disclose them through the information media. At the same time, the CGE collaborates with the Expert Group on Technology Transfer (EGTT), the Least Developed Countries Expert Group (LEG), the National Communication Support Programme (NCSP), and the Global Environment Facility (GEF) so that its activities can gain more effectiveness and efficiency.

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8 Decision 8/CP.5
9 FCCC/SBI/2005/7
10 Ibid.
communications by developing countries. It also holds the capacity-building workshops as well as information exchange. The Subsidiary Body for Implementation (SBI) under the Climate Change Treaty Regime recognizes the need for the CGE to cooperate closely, which resulted in holding the coordination meeting in June 2004.\footnote{Ibid.} It decided to enhance the cooperation between them and exchange information such as training materials and the inclusion of the Chair of the CGE as an ex officio member of the NCSP Advisory Committee.\footnote{Ibid.} The NCSP also works for guiding state parties in relation to methodologies, such as vulnerability and adaptation assessments and that the training materials on inventories for land-use change and forestry (LUCF) and for agriculture.\footnote{Ibid.} The NCSP is considered to be collaborating with the climate change treaty regime in a coordinated manner recently to keep the coherence among the organizations involved at the policy level.

3.2.2. Non-governmental Organizations

The public involvement for the reporting process under the climate change treaty regime was also discussed, regarding that the non-governmental organizations could be the sources of information for inducing state parties’ compliance, as well as the facilitators for state parties’ reporting. In the realm of the climate change issues, there has not been seen the obvious and active involvement in such reporting process by Non-governmental organizations. Yet, the SBI reported that the 2 representatives from the environmental non-governmental organizations (NGOs) - Climate Action Network International and the Verification, Research, Training and Information Centre, were participating at the workshop held in Dublin, Ireland in October 2004.\footnote{FCCC/SBI/2004/INF.14} Such participations are only seen recently and the examination of the roles of the non-governmental organizations with this regard is to be expected.

3.3. Analysis

Firstly, the state of self-reporting under the climate change treaty regime seems to be generally good. The treaty regime has responded institutionally to mitigate the difficulties facing with the state parties. The multilateral approach
driven by the climate change treaty regime and the international organizations is actually functioning well by making use of the institutional experiences that the international community has done in the past.

Secondly, it is noted that the institutional design of such multilateral approach is state-centered. The compliance facilitation is obviously undertaken based on the presumption that a state is the central unit of the international community. Therefore, the way to facilitate compliances is always indirect. The international organizations, including the treaty organizations, are actually working to facilitate state parties from a side, but their efforts are not followed up domestically. The institutional limitation of such an aspect casts the question how effective multilateral assistances are at domestic level. The workshops are actually necessary for state parties, particularly ones with capacity-related problems to know the process of reporting and how they can use the methods prepared by the treaty organizations, yet, a series of multilateral workshops do not follow them at the domestic level. With this respect, it may be considered that non-governmental organizations or UN organizations which have field offices and domestic operations can possibly take a part for playing a role in such an aspect.

Thirdly, the institutional coordination is also essential for the efficient functioning of the treaty regime. The duplication of the mandates between the CGE and the NCSP is pointed out already. Therefore it is highly imperative that the necessary coordination should be assured. It seems that the treaty regime has already started to address the institutional coordination issues between them by exchanging the personnel. Yet, it is not clear about which bodies’ decisions have institutional superiority. So far, the climate change treaty regime seems to have the superiority over the GEF, observing that the personnel were sent from the climate change treaty regime to the advisory committee of the NCSP.

Fourthly, with respect to compliances with reporting obligations, the information and experiences gained within the climate change treaty regime is considered to be collected with a considerable amount. The international organizations can play a certain role to promote exchange and disseminate institutional experiences and good practice among state parties. Considering that the climate change treaty regime exists for almost ten years, it may be the right time to examine the way to make use of them for enhancing the regime effectiveness.

Fifthly, the international organizations have the superiority in ensuring an equitable spread of assistance resources. Some developed countries are reported for undertaking the bilateral assistance for developing countries in terms of reporting. Considering that the climate change issues covers quite wide range of the issues,
further roles for the international organizations may be more efficient. Bilateral approach is actually effective, yet, which often falls within the particular interests of particular countries. States are entitled to build the relations with the other countries freely in the international community, however, it might be rationale theoretically to support multilateral approach with this regard. Taking into account of the future needs of the Non-Annex I countries’ reporting, the role of the international organizations with this regards should be examined.

4. Conclusion

The roles of international organizations are becoming essential in terms of compliance facilitation of the reporting obligations by state parties. Their roles are played mainly at the international level, supporting and inducing state parties for the direction of full compliance by creating the institutional environment. As is observed, international organizations are influencing largely by responding institutionally to the state parties’ policy needs, particularly methodologies for reporting. They provide the methodological tools for reporting and host inter-governmental workshop for learning how to use them. Additionally, international organizations, particularly the treaty organizations, are disclosing those reports submitted by state parties tactically through international information media. Such a process has driven a sort of peer pressures on state parties for inducing state parties for better performances of implementations. Strengthening the self-reporting in terms of submission, quality of data, transparency and information collection, apparently contributes to the foundations of the climate change treaty regime. It is considered that the efforts to facilitate compliance to be taken by the international organizations will become more essential for the effective climate change governance.
References


