

# **Analysis of the Effectiveness of Management Approach in Improving Compliance with International Environmental Agreements**

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## **Abstract**

Since the two global environmental conferences in 1972 and 1992, human beings have recognized the significance of the environmental challenges. Accordingly, states around the world have been reaching plenty of agreements to deal with them. As a number of agreements are concluded, states have turned attention to compliance with the rules.

With regard to compliance, many theories were raised and two approaches have been dominating the debate: enforcement approach and management approach. These two approaches present contending claims about compliance.

Among the two approaches, this paper focuses on the management approach because it is more effective in improving compliance. It can handle capacity limitation of many developing countries and uncertainties of environmental issues more adequately.

So, this paper identifies the effectiveness of the management approach and ineffectiveness of enforcement approach, describing some instruments of the management approach to improve compliance such as reporting, monitoring and verification, and capacity building.

And when it comes to implementing the instruments, the roles of various international actors are important because their behavior has a great influence on the effectiveness of compliance mechanisms. In fact, many international actors have been playing diverse roles. At first, as a main actor in international law, states try to improve compliance mainly by submitting national reports

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and conducting capacity building activities. In addition, non-states actors also have been playing increasing roles, ranging from providing information to monitoring the compliance process.

Thus, in this paper, some cases of these activities are discussed for better understanding and they show good examples that actors effectively improve compliance from the management approach's perspective.

On the basis of these theoretical and practical discussions, this paper concludes that the management approach is more effective in improving compliance, especially in an era of globalization where more multilateral cooperation is needed.

**Keywords :**

International Environmental Agreements, Compliance, Management Approach

# Introduction

Nowadays, environmental challenges are affecting almost every corner of the world and the consequences have led to various kinds of other problems such as poverty intensification, food crisis and refugees. As a means of dealing with these environmental challenges states have been concluding plenty of agreements for more effective collective action.

And as a growing number of environmental agreements have been concluded, more and more scholars in international law and international relations have paid attention to the effectiveness of the agreements and the question of what determines compliance with international agreements has gained an increasingly prominent position on the research agenda through a burgeoning literature on international legal system.<sup>1)</sup>

In response to the question, two perspectives have been dominating the debate: enforcement approach and management approach. Enforcement approach is based on coercive mechanisms which include sanctions to address non-compliance and focuses on strategic incentive. On the other hand, management approach is the one that focuses on a problem-solving approach that includes cooperative mechanisms to tackle non-compliance.

Based on the background, the paper is to determine which approach is more effective in improving compliance. Since this paper regards management approach as a more effective one, it will focus on that approach, identifying why the management approach is more effective than enforcement approach.

To that end, in the second part of this paper, I will describe the main features of enforcement theory and management theory in order to discuss the theoretical backgrounds of the approaches. And, for both of the approaches, it is important to understand the role of international actors such as states or non-state actors because their behaviors have a profound influence on the compliance mechanisms. Thus, I will also discuss the actors and their roles in international environmental regimes because

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1) Jonas Tallberg, "Paths to Compliance : Enforcement, Management and the European Union." International Organizations 56 (3) (2002), p. 609

the focus of this paper is on environmental issues.

In the third part, since this paper focuses on the management approach because of its effectiveness in improving compliance, I will identify the reasons why management approach is more effective along with ineffectiveness of enforcement approach, especially sanctions.

And, in the fourth part, on the basis of the theoretical discussions, the instruments of management approach will be discussed. Among the many instruments suggested by managerial theorists, the paper will address three main instruments. : reporting, monitoring and verification, and capacity building.

In the fifth part, based on the description of the instruments of management approach above, the discussion on how actors including states and non-state actors are implementing the instruments to improve compliance will be followed along with some actual cases. : national reporting requirement under the Convention on Biological Diversity (CBD), Environmental law cooperation between U.S and China ; United Nations Framework Convention on Climate Change (UNFCCC) MRV (Measurement, Reporting, Verification) Mechanism, ; Environmental Law Program (ELP) in International Union for Conservation of Nature (IUCN).

Finally, the sixth part will conclude this study with final remarks and some major findings.

## Literature Review

### *Theories of Compliance*

#### **a. Enforcement Approach (coercive mechanism)**

The enforcement theory or political economy theory is anchored in the political economy tradition of game theory and collective action theory.<sup>2)</sup> This approach has long dominated compliance debates. Its analysis of state behavior focuses on strategic

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2) *Ibid.* p.611

incentives – those faced by rational self-interested governments in light of the expected behavior of others. And the explanation of international behavior relies on a perceived structure of costs and benefits, or payoffs generated by strategic interaction.<sup>3)</sup>

Based on this assumption, the enforcement theorists conceive of states as strategic actors that proceed on the basis of rationally assessed and pursued self-interest. So, participation in a regime or compliance with a norm occurs if the net benefits outweigh those of unilateral action.<sup>4)</sup> And states choose to defect when confronted with an incentive structure in which the benefits of shirking exceed the costs of detection.<sup>5)</sup> In other words, states ‘willfully’ choose to shirk the duty in the agreement when they can get more benefit and pursue self-interest outside the agreement.

And, according to Hanspeter Neuhold, one of the enforcement theorists, when the costs of violation are too high, a party chooses not to defect from the agreement. In that case, he argues decision-makers, when attempting a calculation of the costs of a deliberate breach of international law, are likely to take three variables into account : first, the magnitude and consequences of possible sanctions, second, the probability of those sanctions being imposed on them and third, the likelihood of the detection of the violation.<sup>6)</sup>

Therefore, according to the theory, these non-compliance problems can be best solved or corrected by increasing the costs of defection and the threat of sanctions which are divided by three major categories. Treaty based sanctions – military or economic action authorized by the treaty instrument to punish violations of the norms established by it. Membership sanctions – expulsion or suspension of rights and privileges of a party to the treaty. Unilateral sanctions – coercive action not expressly authorized by the treaty but applied unilaterally or by several states in concert to bring party into compliance.<sup>7)</sup> These sanctions increase the cost and make it less attractive not to comply with agreements, thereby discouraging the parties from violating the

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3) Markus burgstaller, *Theories of Compliance with International Law* (2005), p.96

4) Jutta Brunnée, “Enforcement Mechanisms in International Law and International Environmental Law,” *Environmental Law Network International Review* 1 (2005), p.5

5) Jonas Tallberg, “Paths to Compliance : Enforcement, Management and the European Union.” *International Organizations* 56 (3) (2002), p. 611

6) Markus burgstaller, *Theories of Compliance with International Law* (2005), p.96

7) Abram Chayes and Antonia Handler, *The New Sovereignty – Compliance with International Regulatory Agreements* (1995), p.30

agreements.

In addition, as international agreements get deeper, enforcement theory argues that the incentives for states to violate the agreement also grow, thereby requiring greater punishment to deter non-compliance and sustain the cooperation.<sup>8)</sup>

## **b. Management Approach (cooperative mechanism)**

The management approach presents a perspective at odds with the claims of the enforcement approach. Unlike enforcement theorists, managerial theorists start the discussion under the assumption that most states have the propensity to comply. In other words, according to them, most states enter agreements intending to comply because compliance often serves the state's interests by reducing decision costs.<sup>9)</sup> To explain the assumption of a general propensity to comply, Abram Chayes and Antonia Handler Chayes identified three considerations – efficiency, interests and norms. I will briefly talk about the considerations.

The first factor is efficiency. That is to say, countries have the propensity to comply with the agreements because following the rules is more efficient. And there are two analyses about it, economic analysis and bureaucratic analysis. According to economic analysis, decisions are not free good and governmental resources for policy analysis and decision making are costly. In these circumstances, standard economic analysis argues against the continuous recalculation of costs and benefits and the alternative to recalculation is to follow the established rule.<sup>10)</sup> In other words, following the rule reduces the decision costs, which is more efficient. And under the bureaucratic analysis, bureaucratic organizations are viewed as functioning according to routines and standard operating procedures, often specified by authoritative rules and regulation. So, the adoption of a treaty, like the enactment of any other law, establishes an authoritative rule system and compliance is the normal organizational presumption.<sup>11)</sup> In other

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8) An agreement 'gets deeper' means that the agreement demands greater or bigger changes in the actors' behavior from maintaining status quo.

9) Edith Brown Weiss and Harold K. Jacobson, *Engaging Countries – Strengthening Compliance with International Environmental Accords* (1998), p. 41

10) Abram Chayes and Antonia Handler Chayes, "On compliance", *International Organization*, 47 (2) (1993), p. 178

11) *Ibid.* p. 179

words, following the rules is more efficient under the bureaucratic perspective. Simply put, compliance with agreements is more efficient for governments than calculations.

Second consideration is interest. Treaties, like other legal arrangements, are artifacts of political choice and social existence. The process by which they are formulated and concluded is designed to ensure that the final result will represent, to some degree, an accommodation of the interests of the negotiating states.<sup>12)</sup> Thus, since agreements accommodate states' interests, in most cases, this feature makes states more likely to comply with them.

Last one is norms. Although enforcement theorists argue that national actions are governed entirely by calculation of interests, managerial theorists assert that there are some normative obligations in international affairs. It is often said that the fundamental norm of international law is *pacta sunt servanda* (treaties are to be obeyed) and in the United States and many other countries, they become a part of the law of the land. And the tendency of complying with the norms in many states has been shown in a growing body of empirical study and academic analysis. These norms, and states' tendency to comply with the norms, encourage nations to comply with the agreements. On the basis of these three considerations, they argue that states have the propensity to comply with the agreements.

In addition, in response to sources of non-compliance, unlike enforcement theorists, managerial theorists insist that inability rather than the unwillingness to bear costs causes violation of agreements. They identified three sources of involuntary non-compliance: ambiguous definitions of norms, lacking or insufficient capacities, and inadequate timetables, within which compliance has to be achieved.<sup>13)</sup>

Ambiguous definition of norms means legal languages in the agreements which are often unable to capture meaning with precision. Ambiguity happens because treaty drafters do not foresee many of the possible application and economic, technological, scientific, and even political circumstances change. And a more general formulation of

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12) Ibid. p. 180

13) Tanja A. Börzel, Tobias Hofmann, and Diana Panke, "Caving in or Sitting it Out? Longitudinal Patterns of Non-Compliance in the European Union", *Journal of European Public Policy* (2011), p.10

the obligation causes ambiguity.<sup>14)</sup> It often causes different interpretation of provisions and non-compliance with the agreements.

Also, even actors who perceive compliance beneficial may fail to comply for lack of the necessary resources. In other words, violation of agreements can be due to financial, administrative, or technological incapacities rather than any unwillingness to comply.<sup>15)</sup> For instance, in economic terms, when governments, especially developing countries, do not have sufficient budget to pay for the purpose, they cannot comply with the agreements. Moreover, poor institutions and lack of technologies make it harder for countries, especially developing countries, to comply.

Finally, managerial theorists regard inadequate time table or temporal dimension as one of the barriers to compliance. Some agreements demand significant changes in social and economic systems and these changes require lots of time. Wise treaty drafters recognize at the negotiating stage that there will be a considerable time lag after the treaty is concluded before some or all of the parties can bring themselves into compliance. And some modern treaties have provided for transitional arrangements and made allowances for special circumstance. Nevertheless, whether or not the treaty provides for it, a period of transition will be necessary.<sup>16)</sup>

These are main sources of compliance and non-compliance with agreements under the management approach. In order to improve compliance and prevent non-compliance, they suggest several other instruments instead of sanctions. The three main instruments include reporting, monitoring and verification, and capacity building. I will expound these instruments specifically later in this article.

So far, this article has presented two theoretical approaches on compliance and explained their own sources of compliance and non-compliance. Also, the paper briefly

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14) Abram Chayes and Antonia Handler Chayes, "On compliance", *International Organization*, 47 (2) (1993), p.189 [There are frequently reasons for choosing a more general formulation of the obligation: the political consensus may not support more precision, or, as with certain provisions of the U.S. Constitution, it may be wiser to define a general direction, to try to inform a process, rather than seek to foresee in detail the circumstances in which the words will be brought to bear.]

15) James Cameron and Jacob Werksman, *Improving Compliance with International Environmental Law* (1996) p.13

16) Abram Chayes and Antonia Handler Chayes, "On compliance", *International Organization*, 47 (2) (1993), p.195



talked about the instruments to correct the non-compliance problems. Although there are other theories regarding compliance with international agreements, these two theories have been dominating the debate. Table. 1 briefly summarizes the sources of compliance and non-compliance and the instruments to improve compliance from these two approaches for better understanding.

	Enforcement Approach	Management Approach
Sources of Compliance	benefits of treaty > benefits of unilateral action	propensity to comply (efficiency, interest, norms)
Sources of Non-compliance	benefits of treaty < benefits of unilateral action	ambiguity, lack of capacity, inadequate timetable
Instruments to Improve Compliance	Punishment or Sanction	Reporting, Monitoring, verification, capacity building

[Table. 1 : Enforcement Approach and Management Approach]

In improving compliance from either enforcement approach or management approach, various types of actors play diverse roles. And who participates in the process and how they act have a profound influence on the effectiveness of compliance mechanisms.

Therefore, discussing the actors and their roles in international law making and implementation process must be essential. To that end, this paper will address the actors in the next chapter, especially focusing on the international environmental law making process or regimes, because this paper concentrates on the environmental issues.

# *Actors in International Environmental Regimes*

## **a. States in International Environmental Regimes**

States were traditionally the main actor in international law and are still the most important actor. And states are the primary actors in making international environmental law as well. Their roles in the process is diverse, ranging from negotiating, adopting, signing, ratifying, to implementing international conventions, treaties, protocols, and agreements.

## **b. Non-State Actors in International Environmental Regimes**

Although states are the most important actors in international law, the role of non-state actors is increasing in the international law making implementation process. In this paper, non-state actors are discussed by two types such as international organizations (IOs) and non-governmental organizations (NGOs). In the case of IOs, they are defined as an ‘institutional structure created by an agreement among two or more sovereign states for the conduct of regular political interactions’. And their roles in international environmental regime are diverse from logistical functions to mediating the conflicts to drafting of proposed clauses of the treaty. In the case of NGOs, despite many attempts to define NGOs in many legal instruments, to date no consensus has been reached among legal scholars. In general, while NGOs are traditionally perceived by scholars as non-profit organizations, recent commentary recognizes the growing part of the business sector in global governance. Although participation of NGOs is still limited as treaty parties, their roles have become significant both in shaping the treaty-negotiating process and in stimulating subsequent developments within treaty regimes. : providing information ; publicizing non-compliance.

## ***Concluding Remarks***

So far, I have discussed the main features of two theories on compliance. And recognizing the importance of actors in improving compliance from these approaches, I have defined the actors such as states and non-state actors, and also analyzed their roles.

On the basis of the theoretical discussions, firstly, the paper would like to discuss the effectiveness of the approaches. For some reasons, since the paper regards the management approach as more effective one, I will identify the effectiveness of management approach and ineffectiveness of enforcement approach.

And then, in order to understand how management approach actually improves compliance, what instruments are available to improve compliance from the management approach's perspective and the role of actors including states and non-state actors in implementing the instruments will be followed in the next chapters.

## **Why is the Management Approach more Effective ?**

### ***Ineffectiveness of Enforcement Approach (Sanctions)***

As discussed above, enforcement theorists argue states are governed by national interests when entering into or defecting from agreements and rely on sanctions when non-compliance with the agreements takes place to correct the problem. So, they regard sanctions as a vital instrument to improve compliance.

However, sanctions cause lots of cost and they are often illegitimate. And they are rarely used and limited participation of actors in enforcing sanctions also undermines the effectiveness of sanctions as a mechanism to boost compliance. So, in this chapter, I will focus my discussion on these problems of sanctions to identify why enforcement approach is ineffective.

#### **a. Cost**

Even though sanctions often have impacts on behavior of states, they incur

tremendous costs.

These costs can be mainly divided by military costs and economic costs. The costs of military sanctions are measured in lives, so, people are disinclined to pay except for the most urgent objectives, clearly related to primary national interests. And the costs of economic sanctions are also high not only for the state against which they are directed, especially when they are the weakest and vulnerable, but also for the sanctioning states.

And results of the costs are slow and not particularly conducive to changing behavior.<sup>17)</sup>

But, most important costs are less obvious. Since in international community there is no central enforcement body, this feature requires a lot more efforts to mobilize and systemize the economic or military sanctions, which incurs tremendous political investments and costs.

These enormous costs and time make it harder to pursue sanctions to encourage states to comply with the rules.

## **b. Illegitimacy**

As mentioned above, it demands tremendous costs to mobilize and implement sanctions.

Because the political, economic cost is high, efforts to impose sanctions will be intermittent and ad hoc, responding not to the need for reliable enforcement of treaty obligations, but to political exigencies in the sanction states<sup>18)</sup>. In other words, the efforts designed to encourage violating states to comply with the agreements can be used as an instrument or a foreign policy of the sanctioning states. These systematic features of sanctions severely undermine the legitimacy of sanctions especially when these sanctions are imposed on the weakest to serve powerful countries' interests.

## **c. Impracticality**

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17) Abram Chayes and Antonia Handler, *The New Sovereignty – Compliance with International Regulatory Agreements* (1995), p.2

18) *Ibid.* p.3

The managerial theorists denounce the use of coercive instruments on the grounds of impracticality. They argue that sanctioning authority is rarely granted by treaty, rarely used when granted, and likely to be ineffective when used<sup>19)</sup>. Even when power disparities between the sanctioning state and the target are very great and commonality of interest among potential sanctioning states seems high, effective mobilization of sanctions to influence state behavior has been rare.<sup>20)</sup> In fact, only two treaties, the United Nations Charter and the Organization of American States Charter, authorize the use of concerted military or economic measures and these have been invoked in only a dozen or so cases.<sup>21)</sup> This feature of impracticality also undermines the effectiveness of sanctions.

#### **d. Limited Participation**

Sanctions are made by consent among states and are designed to be imposed on the all parties equally when violation of the agreements takes place. However, in reality, weaker states cannot actively participate in the process mainly because of lack of sources to negotiate and bargaining power. Thus, the sanctions are likely to be made in the powerful countries' favor and it can be used as a foreign policy of the powerful states. However, despite the disadvantages weaker states cannot but join the agreements because they should develop their economy by cooperating with the powerful countries. So, this feature of sanctions limited the role of weak states in the sanction-making process.

In addition, when it comes to enforcing sanctions, another important actor, non-state actors, also cannot actively engage themselves in the process. Although international organizations, one of the two main types of non-state actors, enforce sanctions for implementation, these enforcements are primarily led by parties to an agreement and are often swayed by states', particularly powerful states' political interests. And NGOs also cannot play active roles other than just advocating or opposing the sanctions. So,

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19) Edward C. Luck and Michael W. Doyle, *International Law and Organization* (2004), p.29

20) Abram Chayes and Antonia Handler, *The New Sovereignty – Compliance with International Regulatory Agreements* (1995), p.32

21) Edith Brown Weiss and Harold K. Jacobson, *Engaging Countries – Strengthening Compliance with International Environmental Accords* (1998), p. 41

in many cases, non-state actors also cannot participate in the process.

This limited participation of weak states and non-state actors undermines the effectiveness of sanctions and make the implementation process undemocratic.

## ***Effectiveness of Management Approach***

### **a. Effectiveness in Addressing Incapacity**

In order to properly address environmental issues that don't respect national borders, cooperation among states is important and, in particular, the role of developing countries and their participation in international regimes or institutions is crucial. However, most of these countries lack financial, technological and administrative capacity to comply with the requirements imposed by the international agreements.

In these circumstances, it is inappropriate and illegitimate to impose sanctions on these countries for not complying with the rules. Rather, providing assistances to enable them to abide by the rules is more proper and necessary. Thus, in that sense, capacity building or providing assistances is more desirable to boost compliance than imposing coercive sanctions on them.

### **b. Effectiveness in Addressing Uncertainty and Ambiguity**

In addition, nowadays, many international issues happen and change very dramatically. In other words, international issues are basically unpredictable or uncertain. In that sense, it does not make sense to make proper sanctions dealing with these unforeseeable issues. Also, as mentioned above, international treaties are somewhat general in nature, which causes lots of interpretation problems. So, in this case, since it is hard to determine whether the behavior constitutes violation of the agreements, it is almost impossible to impose proper sanctions.

Therefore, making sanction rules is not desirable and instead it is more effective to improve compliance through rules of dispute settlement such as negotiation, arbitration,

conciliation, mediation and judicial settlement which are suggested by managerial theorists as a means of improving compliance.

### **c. More Participation**

Finally, management approach allows more actors to participate in the implementation process. First, when it comes to reporting, one of the instruments to improve compliance from the management approach's perspective, not just developed countries but developing countries can also contribute to the process by submitting their national reports. And in the process of monitoring and verification, non-state actors can actively participate in the process by providing expertise and information for independent assessment of compliance. In conducting capacity building, they also can play important roles. In the case of weak states, they can not only receive resources needed to comply with the rules but also express their position by joining the capacity building process. In the case of non-state actors, they can make the process more effective, because capacity building activities between countries often can be ineffective due to political interests and bureaucratic interests. Since non-state actors, especially NGOs, are relatively free from political interests and bureaucratic interests, they are able to more actively participate in the implementation process.

As such, management approach allows more actors, especially weak states and non-state actors, to participate in the compliance process. Given the increasing roles of developing countries and non-state actors in the contemporary international law making and implementation process, this feature of ensuring more participation makes management approach more effective mechanism in improving compliance with international environmental agreements.

So far, the paper has identified the ineffectiveness of enforcement approach, focusing on sanctions, and the effectiveness of management approach in improving compliance and concludes that management approach is more effective in that it can address capacity limitations, uncertainties and ambiguity more properly and ensure participation of more actors.

On the basis of the discussions, in the next chapter, I will figure out the instruments suggested by managerial theorists to improve compliance, especially focusing on main three ones.

## **Instruments of Compliance Mechanisms from the Management Approach's Perspective**

As stated above, as a means of improving compliance with agreements, managerial theorists suggest some instruments: Reporting and other data collection, monitoring and verification and capacity building.

First, as a means of reassurance, most international environmental agreements have requirements regarding reporting. Reporting is very important in providing information to assess the compliance. In addition, other methods of data collection are available such as advance notification and active data collection.

Second, monitoring and verification process is also important. Reporting requirements can provide some information about the measures to be taken of parties concerned but, do not necessarily reveal whether parties are in compliance. Thus, managerial theorists also highlight the importance of monitoring and verification process. Monitoring usually means the process of acquiring information used to facilitate decision-making and implementation of an agreement. Although monitoring can be used to assess compliance, monitoring activities do not necessarily reveal when parties are in compliance. But verification is the process of determining whether a party is in compliance. So, they are somewhat similar, but slightly different.

Finally, as mentioned above, according to managerial theorists, one of the most important causes leading countries to failure of compliance with the agreements is limitation of capacities. Thus, capacity building activities are also playing important roles to improve compliance. Capacity building consists of mainly three types: financial assistance, technological assistance and institutional assistance.



# Efforts of Actors to Improve Compliance from the Management Approach's Perspective

## *Efforts of States in Improving Compliance from the Management Approach's Perspective*

### **a. National Reporting Requirement under the Convention on Biological Diversity (CBD)**

The Convention on Biological Diversity (CBD) was one of the main outcomes of the Earth Summit in Rio, 1992 along with UNFCCC and entered into force on 29 December 1993. CBD promotes inter-State cooperation for the conservation and sustainable use of biological diversity, and especially of technical and scientific cooperation. This has facilitated many bilateral and multilateral projects.

In an effort to improve compliance the convention has provisions regarding reporting requirement. Article 26 of the Convention states that the objective of national reporting is to provide information on measures taken for the implementation of the Convention and the effectiveness of these measures.<sup>22)</sup> So far, the national reports have been required 4 times and the fifth report is supposed to be submitted by 2014.

In the case of first national reports, the Conference of the Parties decided that the national reports should focus on the measures taken for the implementation of Article 6 of the Convention<sup>23)</sup>, as well as the information available in national country studies on biological diversity.

And, when it comes to the second national reports, for better implementation, parties considered guidelines for future national reporting and this involves (i)

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22) CBD website. <http://www.cbd.int/reports/intro.shtml>

23) Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

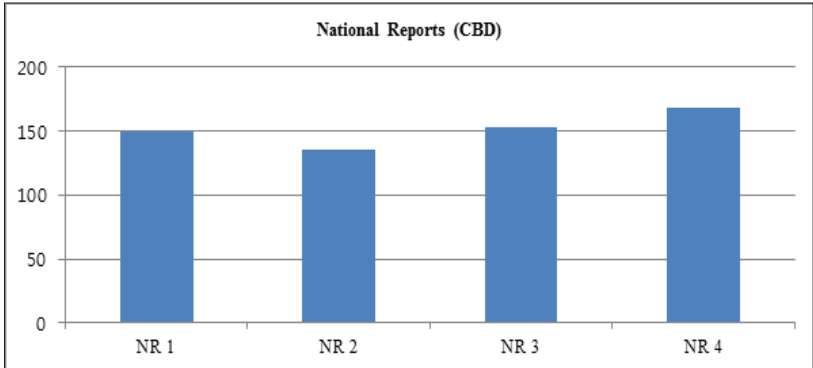
- (a) Develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programs which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned; and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs and policies.

identifying the obligations on Parties deriving from the provisions of the Convention and the decisions of the Conference of the Parties, and (ii) formulating these as questions designed to elicit responses that would reveal the level of implementation. Based on these guidelines, parties were required to submit the second national reports.

For the third national reports, building on the methodology and format used for the second national reports, the format for the third national reports focused on allowing the Parties to provide information on the experience of implementing their national biodiversity strategies and action plans, and facilitate the identification of obstacles and impediments to implementation.

The fourth national report provided an important opportunity to assess progress towards the 2010 Biodiversity Target, drawing upon an analysis of the current status and trends in biodiversity and actions taken to implement the Convention at the national level, as well as to consider what further efforts are needed.

The fifth national reports will be considered by the 12th meeting of the Conference of the Parties in 2014 or early 2015. The format of the fifth national report is the same as that adopted for the fourth national report (i.e. concise narrative substantive reporting complemented by tables, figures or graphics), however Parties are encouraged to emphasize the use of indicators, including the global headline indicators contained in decision VIII/15, to measure progress towards the Aichi Biodiversity Targets.<sup>24)</sup>



[Figure. 1 : National Reports (CBD) ]<sup>25)</sup>

24) CBD website. <http://www.cbd.int/reports/intro.shtml>

25) *Ibid.* (CBD has 193 parties.)

In response to these guidelines and requirements, many parties submit the national reports to contribute to the implementation process. As shown in the Figure. 1, 150 states submitted reports for the first National Reports and 136 states for the second reports, 153 states for the third, 168 states for the fourth one. Although not all the states submitted reports, it shows that the majority of the parties participate in the reporting process. (see Figure. 1)

Although the submission rate of reports varies depending on each agreement, CBD shows a good example that many states contribute to the implementation process by submitting national reports, which is one of the instruments from the management approach's perspective.

## **b. U.S and China Environmental Law Cooperation**

Another effort of states to improve compliance from the management approach's perspective is capacity building. States, usually developed countries, provide assistances to developing countries to build their capacity to meet their obligations. Plenty of Official Development Assistances (ODA) are the examples. These capacity building activities are diverse, ranging from financial, institutional to technological assistances as mentioned above. Among the activities, I will discuss the environmental law cooperation, or environmental legal assistances from U.S to China, to help China meet their obligations imposed by many international environmental agreements.

First, in an effort to enhance China's environmental legal capacity, Vermont Law School (VLS) in collaboration with Sun Yat-sen University (SYSU) along with some institutions and universities launched the Partnership for Environmental Law in 2006 in response to the lack of knowledge, skills, and academic infrastructure needed to address environmental and energy challenges in China through the rule of law.<sup>26)</sup>

Second, like the Partnership discussed above, U.S EPA also launched the EPA – China Environmental Law Initiative in September 2007 in an effort to strengthen the legal framework for environmental protection in China. The initiative has been mainly done between Ministry of Environmental Protection (MEP) of People's Republic

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26) USAID, US-China Partnership for Environmental Law (2010), p.1

of China (PRC) and EPA Office of General Council (OGC) and other collaborating partners.<sup>27)</sup>

## ***Efforts of Non-State Actors in Improving Compliance from the Management Approach's Perspective***

### **a. Efforts of International Organizations (IOs) in Improving Compliance**

#### **1. United Nations Framework Convention on Climate Change : Measurement, Reporting and Verification (MRV) Mechanism**

The case in this chapter is the Measurement, Reporting and Verification (MRV) mechanism in United Nations Framework Convention on Climate Change (UNFCCC). As in the name of the mechanism, this mechanism provides for the two instruments suggested by managerial theorists, reporting and verification.

#### **2. Greenhouse Gas (GHG) Inventories**

Article 12 of the Convention requires both Annex I, developed countries and economies in transition, and non-Annex I parties, developing countries, to prepare and submit national GHG inventories. The frequency and the information required are different each other.

#### **3. Greenhouse Gas (GHG) Mitigation Measures**

Another requirement is about mitigation measures adopted by the parties. Under

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27) Collaborators include the Environmental Committee of the American Chamber of Commerce in Shanghai, the Woodrow Wilson Center China Environment Forum, the University of Maryland Environmental Law Program, and the George Washington University Law School. [EPA news release -<http://yosemite.epa.gov/opa/admpress.nsf/0/200956e8f7aa98b1852573a300682b6a?OpenDocument>]

the Convention and the Protocol, all parties are required to implement measures to mitigate GHG emissions and to submit the description of the measures. As with national inventories, reporting requirements differ substantially for Annex I and non-Annex I parties.

## **b. Efforts of Non-governmental Organizations (NGOs) in Improving Compliance**

### **1. International Union for Conservation of Nature (IUCN) : Environmental Law Program (ELP)**

The origins of the ELP can be traced back to 1958 and the program has made a lot of achievements since then. At first, the program has contributed to the development of international treaties such as Convention on Biological Diversity (CBD) and CITES through the preparation of draft instruments. Secondly, the program also has contributed to international “soft law” most notably with the preparation and promotion of the World Charter for Nature, adopted by the UN General Assembly in 1982. Thirdly, the ELP provides critical technical commentary and proposals for the negotiation process of international treaties such as the Law of the Sea Convention.<sup>28)</sup>

Moreover, the program has provided technical assistances to developing countries : review, diagnosis and preparation of inventories of existing legislation, identifying measures for strengthening national legislation, and assisting in drafting new legal instruments. In addition to technical assistances, the ELP has carried out Local and Regional Capacity Building in Environmental law through seminars, workshops and training courses in an effort to provide information to local communities.<sup>29)</sup> Through these activities, IUCN is conducting diverse kinds of capacity building activities to help developing countries meet their obligations of international environmental agreements.

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28) IUCN ELP Website. [http://www.iucn.org/about/work/programmes/environmental\\_law/elp\\_about/](http://www.iucn.org/about/work/programmes/environmental_law/elp_about/)  
29) Ibid.

## Conclusion

With the emergence of plenty of international environmental agreements, compliance has been one of the most important issues in the contemporary international law and international relations. And to improve compliance and prevent non-compliance, many theories were raised and two approaches that present contending claims have been dominating the debate.

Although two approaches have their own strength and weaknesses, this paper focuses on the management approach because enforcement approach is ineffective for high cost, illegitimacy, impracticability and limited participation of actors and, on the other hand, the management approach can improve compliance more effectively by dealing with capacity limitations and interpretation problems more adequately, and allowing more actors, especially non-state actors, to participate in the process.

And the cases of some states and non-state actors which improve compliance by implementing the instruments suggested by managerial theorists show that these cooperative mechanisms are widely and efficiently implemented.

On the basis of the above discussions, it is evident that in an era of globalization where more international cooperation is required, cooperative mechanisms by management approach contribute to improving compliance more effectively. Therefore, the paper concludes that the management approach suggests better compliance mechanisms.

## References

### Books and Articles

- Abram Chayes and Antonia Handler, "On compliance", *International Organization* 47(2) (1993), pp. 175-205
- \_\_\_\_\_, *The New Sovereignty – Compliance with International Regulatory Agreements* (1995)
- Asher Alkoby, "Non-state Actors and the legitimacy of international environmental law" *Non-State Actors and International Law* 3 (2003), pp. 23-98
- Basak Cali, *International Law for International Relations* (2010)
- Barara Gemmill and Abimbola Bamidele-Izu, "The Role of NGOs and Civil Society in Global Environmental Governance" *Global Environmental Governance Options and Opportunities* (2002) pp. 77-100
- Bukhosi Fuyane and Ferenc Madai, "The Hungary-Slovakia Danube River dispute: implications for sustainable development and equitable utilization of natural resources in international law", *Global Environmental Issues* Vol. 1, Nos. 3/4 (2001)
- Clare Breidenich and Daniel Bodansky, *Measurement, Reporting and Verification in a post-2012 Climate Agreement* (2009)
- Edith Brown Weiss and Harold K. Jacobson, *Engaging Countries – Strengthening Compliance with International Environmental Accords* (1998)
- Edward C. Luck and Michael W. Doyle, *International Law and Organization* (2004)
- Gerhard Loibl, "The role of international organizations in international-law-making international environmental negotiations – an empirical study" *Non-State Actors and International Law* 1 (2001), pp. 41-66
- Gustaaf Geeraerts, "Analyzing Non-state actors in World Politics" *Pole Paper Series* 1(4) (1995), pp. 1-28
- James Cameron and Jacob Werksman, *Improving Compliance with International Environmental Law* (1996)
- Jana von Stein, "International Law: Understanding Compliance and Enforcement" *The International Studies Encyclopedia* (2010)

- J.H. Ausubel and D. G. Victor, “Verification of International Environmental Agreements”, Annual Reviews Inc. (1992)
- Jonas Tallberg, “Paths to Compliance : Enforcement, Management, and the European Union.” International Organization 56 (3) (2002), pp. 609 –643
- Jutta Brunnée, “Enforcement Mechanisms in International Law and International Environmental Law”, Environmental Law Network International Review 1 (2005)
- \_\_\_\_\_, “Compliance control” in Making Treaties Work – Human rights, environment and Arms control. (2007)
- Julia Sommer, Environmental Law-Making by International Organizations. (1996)
- Malcolm D. Evans, International Law 3<sup>rd</sup> Edition, (2010)
- Mark Drumbl, “Actors and Law-Making in International Environmental Law” Washington & Lee Public Legal Studies Research Paper Series (2007)
- Markus burgstaller, Theories of Compliance with International Law, (2005)
- Michael Faure and Jurgen Lefevere, “Compliance with international environmental agreements”. The Global Environment : Institutions, law and policy (1999), pp. 138-156
- Pepe Clarke, Ilona Millar and Kaspar Sollberger, Capacity building for environmental law in the South Pacific, (2008)
- Pierre-Marie Depuy and Luisa Vierucci, NGOs in International Law – Efficiency in Flexibility ?, (2008)
- Suh-Yong Chung, “Global Environmental Governance, Non-State Actors and International Law.”, Seoul International Law Journal, 17(2) (2010), pp. 19-33
- Tanja A. Börzel, Tobias Hofmann, and Diana Panke, “Caving in or Sitting it Out? Longitudinal Patterns of Non-Compliance in the European Union”, Journal of European Public Policy. (2011)
- UNEP, Compliance Mechanisms under selected multilateral environment agreements, (2005)
- \_\_\_\_\_, Training Manual on International Environmental Law, (2006)
- USAID, US-China Partnership for Environmental Law (2010)



## Internet Sources

<http://www.multilateralfund.org/default.aspx> (visited on October 18, 2011)

[http://www.iucn.org/about/work/programmes/environmental\\_law/elp\\_about/](http://www.iucn.org/about/work/programmes/environmental_law/elp_about/)  
(visited on November 8, 2011)

<http://www.iucn.org/> (visited on November 8, 2011)

<http://www.unep.org/dec/onlinemanual/Resources/Guidelines/tabid/70/Default.aspx>  
(visited on September 11, 2011)

<http://www.vermontlaw.edu/x1463.xml> (visited on November 8, 2011)

<http://www.epa.gov/ogc/china/cooperation.htm#sip> (visited on October 5, 2011)

<http://www.cbd.int/reports/intro.shtml> (visited on November 3, 2011)

