

ANALYSIS OF MULTILATERAL ENVIRONMENT AGREEMENTS IN RELATION TO SRI LANKA

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1. Introduction

Many global environmental problems such as global warming, depletion of ozone layer, loss of biodiversity, pollution of ocean and marine ecosystems cannot be solved by one country or by one region without global partnership. The causes of these problems spread across many political and geographical boundaries. Therefore Multilateral Environmental Agreements (MEAs) have been used by global community as vital instruments for ensuring global environmental sustainability through cohesive and collaborative approaches. Depending on the nature and magnitude of the problem different types of MEA are used. These include declarations, principles, conventions, protocols, and bilateral agreements.

The earliest MEA related to the environment dates back to 1868. Since then, the number has risen to at least 504 international treaties and other agreements related to the environment, of which 323 are regional. The period from year 1972 to the present witnesses an accelerated increase in MEAs and over 300 agreements were negotiated during this period. Many of the earlier multilateral environmental agreements (MEAs) were restricted in scope to specific subject areas and were regional in focus (www.unep.org).

The relationship between economic development and environmental degradation was first placed on the international agenda in 1972, at the **United Nations Conference on the Human Environment (UNCHE)** in Stockholm. As an outcome of the Conference, Governments set up the **United Nations Environment Programme (UNEP)**, which today continues to act as a global catalyst for action to protect the environment.

By 1983, when the UN setup the **World Commission on Environment and Development (WCED)**, environmental degradation which had been seen as a side effect of industrial wealth with only a limited impact, was understood to be a matter of survival for developing nations.

In 1992 in Rio de Janeiro with the participation of the 178 heads of states, **United Nations Conference on Environment and Development (UNCED)** was held for the first time. It is commonly known as the Earth Summit. At this Summit world leaders discussed about the adverse impacts of the development to the environment and at the end of the summit they adopted many important Conventions and Principles related environment.

The World Summit on Sustainable Development held in 2002 in Johannesburg South Africa was another land mark even in the global treaty making. This summit recognizes importance of sustainable development and adopted a Declaration on Sustainable Development.

Sri Lanka has acceded or ratified around 40 Multilateral Environmental Agreements (Conventions- 25, Protocol- 3, Treaty -2, Agreements-5 and Amendments-4). Ministry of Environment & Natural Resources and its line agencies such as Marine Protection Authority, Forest Department, Central Environmental Authority, and Department of Wild Life Conservation function as the National Focal Points for 12 of these MEAs.

The question is whether the country is really benefited from being a member of these MEAs and whether the country has capacity to implement them.

2. Thematic Clustering of Multilateral Environmental Agreements (MEAs)

The core environmental conventions and related international agreements can be divided into five clusters: the biodiversity-related conventions, the atmosphere conventions, the land conventions, the chemicals and hazardous wastes conventions, and the regional seas conventions and related agreements. However, the objectives and priorities of MEAs can vary significantly from one

agreement to another, even within a cluster. However, there are common threads that link them together. While the sustainable development focus of the three Rio Conventions (CBD, UNCCD and UNFCCC) are well known, most other multilateral environmental agreements address the sustainable use of natural resources and the environment or the protection of the environment in such a way as to ensure its sustainable use.

2.1. Biodiversity-Related Conventions

The scope of the biodiversity-related conventions ranges from one convention to another. The conservation of individual species is the focus Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973) (CITES) convention while conservation of species, their migration routes and their habitats are the focus of the Convention on the conservation of Migratory Species (CMS). The Convention on Biological Diversity (CBD), the Ramsar Convention, the World Heritage Convention and the International Coral Reef Initiative (ICRI) focus on the protection of ecosystems is the major focus of. The Cartagena Protocol of the CBD convention specifically aims at protecting both species and ecosystems by promoting the safe transfer, handling and use of living modified organisms resulting from modern biotechnology. Five regional seas conventions (the Mediterranean, the North-East Atlantic, East Africa, the Wider Caribbean and the South-East Pacific) have

protocols or annexes on specially protected areas and wildlife (SPAWs) that cover both individual species and ecosystems. While all of these agreements aim at conserving species and/or ecosystems, several also promote their sustainable use (CBD, CITES, Ramsar and ICRI). The Cartagena Protocol promotes measures related to safeguarding the sustainable use of biodiversity against adverse effects that could be caused by living modified organisms. Likewise, the SPAWs, which are closely linked to CBD, CITES, Ramsar and ICRI, support the sustainable use of marine and coastal species and ecosystems.

2.2. Atmosphere Related Conventions

The Vienna Convention on the Protection of the Ozone Layer and its Montreal Protocol and the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol are closely associated in protecting the environment by eliminating or stabilizing anthropogenic emissions of substances that threaten to interfere with the atmosphere.

2.3. Land Related Conventions

This cluster is comprised of only one major global convention, the United Nations Convention on Combat Desertification (UNCCD) which aims to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa. Given the sustainable

development focus and the strong substantive linkages between climate change, desertification and drought and loss of biodiversity, the UNCCD is very much associated with the UNFCCC and the CBD.

2.4. Chemicals Related Conventions

The overarching objective of the chemicals conventions is the protection of human health and the environment from pollution by specific chemicals and hazardous substances by aiming to control trade of selected dangerous chemicals through prior informed consent (Rotterdam Convention), phase out, restricting and reducing the production and use of certain chemicals (The Stockholm Convention), and reducing production of hazardous wastes and their trans-boundary movements (Basel Convention).

2.5. Regional Seas Conventions and Related agreements

Seventeen regional seas conventions and action plans are a global mosaic of agreements with one over-arching objective: the protection and sustainable use of marine and coastal resources. These have evolved over the years into multi-sectoral agreements addressing integrated coastal area management, including in several cases links to the management of contiguous freshwater basins; land-based sources of pollution; conservation and sustainable use of living marine resources; and impacts of offshore exploration and

exploitation of oil and gas. Also included in this cluster are the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA) and the International Coral Reef Initiative (ICRI), for both of which the regional seas conventions and action plans are regional building blocks and vehicles for their implementation.

3. Declarations

Major declarations in the field of environments include the Stockholm Declaration; Nairobi Declarations; the Rio-Declarations and the Washington Declaration on Protection of the Marine Environment from Land based Activities.

The **Stockholm Declaration** followed the UN Conference on Human Environment from 5th to 16th June 1972 set the foundation for the international activities protect the global environment. It proclaims twenty-six principles “to inspire and guide the peoples of the world in the preservation and enhancement of the human environment”

The 1982 **World Charter for Nature** proclaimed principles of conservation, the first of which is that “nature shall be respected and its essential processes shall not be impaired. The 1982 **Nairobi Declaration** reaffirmed the world community's commitment to the Stockholm Declaration and support for strengthening UNEP as the major catalytic instrument for global environmental corporation.

The **Rio Declaration** on Environment and Development adopted at United Nations Conference on Environment and Development (UNCED), contains twenty seven principles which build upon and consolidate the Stockholm Declaration.

On 1st November 1995 **Washington Declaration** on Protection of the Marine Environment From Land-based Activities was adopted to and Global Programme of Action for the Protection of the Marine Environment from Land-based Activities.

4. Other legal instruments and International Law relevant to Mes

In addition to above declarations and treaties there are soft law instruments related to environmental MEAs. London Guidelines for the Exchange of Information on Chemicals in International Trade which provides a mechanism for importing countries to formally record and disseminate their decisions regarding the future importation of chemicals which have been banned or severely restricted in the exporting countries. The mechanism, known as the “prior informed consent” (PIC) procedure requires that exporting states notify importing states of an impending

export of a banned or severely restricted chemical to enable the importing state to make informed decisions as to whether the import should proceed.

The Code of Ethics on the International trade in Chemicals sets out principles and guidance governing standards of conducts for the promotion of environmentally sound management of chemicals in international trade.

The Forest Principles were adopted at the UNCED conference in Rio de Janeiro in June 1992. They are “non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests”. These are considered as soft law instrument applicable to environment.

The Charter of the United Nations establishes the United Nations Organization, and forms the bedrock of the contemporary international system. The Statute of the International Court of Justice (ICJ) which forms an integrated part of the Charter stipulates the provisions under which the ICJ, the principle judicial organ of the UN shall function. It makes provision for the organization of the court, its competence and its procedures. The ICJ has recently established a chamber for environmental disputes.

The 1969 Vienna Convention on the Law of Treaties may be described as the “treaty of treaties.” The rapid development of international environmental law through the conclusion of treaties in the aftermath of the Stockholm and Rio Conference make this Convention of great significance for international environmental law.

Finally, UN resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations declares a series of basics principles of international law by which state shall be guided in their international conduct.

5. Capacity of MEAs Implementation in Sri Lanka

Sri Lanka also has adopted major declarations in the field of environment that include the Stockholm Declaration; Nairobi Declaration; the Rio-Declarations; and the Washington Declaration on Protection of the Marine Environment from Land-based Activities. Sri Lanka also recognizes the Charter of the United Nations, the Statute of the International Court of Justice (ICJ), The 1969 Vienna Convention on the Law of Treaties, the UN resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations. Sri Lanka is an active member of the South Asian Co-operative Environment Programme (SACEP), and South Asia Association of Regional Cooperation (SAARC), South Asia Regional Seas Programme.

The Government gives top priority for implementation of international legal instruments in the country.

5.1 National measures taken to Implement MEAs

Several policies, action plans and strategies have been developed to implement MEAs in Sri Lanka. The policies are National Environment Policy; Rural Renewable Energy policy; National Clean Development Mechanism Policy; National Forestry policy; National Policy on wild

Life Conservation; Draft National Land Use policy; National Policy on Urban Air Quality Management.

Strategies/Action Plans

adopted to implement MEAs are A Framework for Action 1999 for Biodiversity Conservation; Coastal 2000 Action Plan; Clean Air 2000 Action Plan; Forestry Sector Master Plan 1995; Five Year development Plan of the Department of Wild Life 1993-1998; National Strategy for Solid Waste Management; Guidelines on safety measures to be adopted in handling hazardous waste; Guidelines for the establishment of hazardous waste disposal sites; Code of ethics for Biodiversity research; National Biosafety Guidelines; Biodiversity Legislation (draft stage); Invasive Plants Action Plan (draft stage); National Agriculture, Food and Nutrition strategy; National Conservation Strategy; First National Communication on Climate Change; National Climate Change Action Plan; National Action Plan for the Protection of Marine Environment from Land Based Activities; Sri Lanka Clean Development Mechanism Strategy.

5.2 Legislative Measures

Although Sri Lanka has not developed much legislation to implement MEAs, the country has developed a strong legal framework which backs the country's national sustainable development strategies. More than 90 separate environment-related statutes have been enacted over the last 100 years directly or indirectly for environmental

protection and natural resource management. The pledge given in the 1978 Constitution to safeguard the environment was formally institutionalized with the enactment of the National Environmental Act No.47 of 1980. Under this Act the Central Environmental Authority (CEA) was established in 1981 as the premier state agency responsible for the "formulation and implementation of policies and strategies for the protection and management of the environment in Sri Lanka" (Batagoda 2003)

Environmental policy in Sri Lanka has traditionally focused on government regulations that aim at controlling environmentally harmful activities. This is reflected in the National Environmental Act (1980 and 1988) the Forest Ordinance (Amended 1988), the Coast Conservation Act (1988) and the Mine and Minerals Act (1992), regulations (2000) gazetted under the section 32 of National Environment Act No.47 of 1980 for Air Emission, Fuel, and Vehicle Importation standards, and other laws. In the mid nineties, emphasis was given to participatory environmental management. For example, the Forest Ordinance revision of 1998 contained provision for participatory forestry. Revisions in 1996 to the Fisheries and Aquatic Resource Act looked into the setting up of fishery management

committees. In 1988 revision to the Irrigation Ordinance mandated farmer organizations. Public participation was also introduced to the Environmental Impact Assessment process by the National Environmental Amendment Act 1998.

This focus has now moved to a wide range of comprehensive framework for sustainable development. The new draft environmental bill presents a framework for national environmental policy, involving both the public and private sector. Section two of this draft bill states that

"every person shall make every practicable effort to follow the path to sustainable development". However, this draft bill has not been finalized yet.

Under the Thirteenth Amendment to the Constitution each Provincial Council has the authority to enact and implement any statute related to their responsibilities. On the basis of these provisions the North Western Provincial Council passed its own environmental statute and created its own environmental Authority, the "Vayamba Environmental Authority". Other provincial councils so far have not enacted any such statute.

The decentralization process has helped with the integration of different interests at sub-national levels with the central government. A decentralized administration, which creates more opportunities for the active participation of stakeholders at grass-root level, is more conducive to the pursuit of sustainable development (Batagoda 2003).

5.3 Institutional Measures:

Most common strategy that has been used for the implementation MEAs is the establishment of National Co-coordinating Committees and National Expert Committees in order to advice and monitor the implementation of the respective international convention. Some of these committees include: National Co-ordinating Committee for the implementation of MEAs; National Co-ordination Committee for Climate Change; National Expert Committee on Biodiversity; CDM Expert Committee; Expert Committee on Land Degradation and Desertification; National Co-ordination Committee on Implementation of Montreal Protocol; Co-ordination Committee on Basal Convention; GEF Steering Committee; and GEF Advisory Committee

Establishment of a separate division named "Global Affairs Division", attached to the Ministry of Environment and Natural resources is an important measure taken by the government to implement MEAs. This Division is the focal point for major environment and sustainable development related international conventions and treaties for the co-ordination and implementation of MEAs in the Country. This Division has been given necessary resources including human and financial to make sure that the MEAs are effectively implemented.

Other institutional measures adopted are Establishment of a Biodiversity Secretariat which will coordinate the implementation of convention of bio diversity of Sri Lanka;

Establishment of Climate Change Secretariat for the Implementation of convention of climate change in Sri Lanka; Establishment of National Designated Authority for CDM to address issues related to Clean Development Mechanism projects; Establishment of Ozone Secretariat to coordinate and implement Montreal protocol; Establishment of GEF network to build the partnership for GEF project implementation; and Develop Institutional arrangement to adopt synergistic approach to implement CBD, UNFCCC and UNCCD.

5.4 International Cooperation

The country should continue its traditional high level of contribution to global sustainability by participating in international policy development at its maximum potential. The Government should give high priority to keep national commitments to international legal instruments ratified by the country. National development goals should be guided by the underline principles of the international legal instruments so that the development can be more meaningful. Following are some of the achievements and potentials available in this regard.

Sri Lanka has made every attempt to meet the commitments to international community under the Rio declaration. However, Country has to develop mechanism to benefit from the declaration, such as right to development, provision of basic need, technology transfer, and common but differentiated responsibility situation, protection from liability and compensation provisions etc.

Sri Lanka contributes to its maximum potential to produce global public goods such as protecting the climate system, protecting the ozone layer, promoting bio-diversity conservation, protection of international waters, avoiding irresponsible transport of hazardous waste while meeting the national commitment to international conventions related to global sustainable development

5.5 Problems of MEAs Implementation in Sri Lanka

Several problems have been identified as major reasons for weak implementation of MEAs (Batagoda) (2004). Some of these are No accepted ratification procedure for MEAs; Inadequate co-ordination between focal points; No new or updated domestic legislation to implement MEAs; No

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6. Recommendations

- Develop institutional and legal framework relevant for maximizing benefits from MEAs recognizing that MEAs can influence other socio-economic and political problems.

- Building the capacity of the country for participating international law making processes and providing more financial and technical assistance since MEAs are effective global fora for Sri Lanka to present its

political and socio-economic positions. The participation should be nationally lead by Foreign ministry and presidential secretariat level not only by the Environment Ministry

- Creating awareness among local political leadership on the importance of effective participation at the international negotiations and law making and the opportunity to present our case to the global community.

- Developing a system to maintain the same continuity of attending delegations in the same negotiation process. Since international law making processes are so complicated, unless same team attends continuously, new delegations find it difficult get into the process effectively. Such participation should not be ad hoc but should be linked to a national agenda.

- Establishment of a coordination mechanism with the Ministry of Foreign Affairs and other relevant focal points for all international conventions

- Development of a system to involve the civil society, NGOs and Private sector in the international law making

- Formulate strategy/ policy measures and establish national and regional bodies to respond to any negative impacts on country's natural resources and economy from international involvement