

CHAPTER FIVE

THE POLITICAL ECONOMY OF TAIWAN'S ENVIRONMENT POLICY - ECONOMIC GROWTH AND SUSTAINABLE DEVELOPMENT PERSPECTIVES

Taiwan is a biological microcosm, in that one can travel from a mountain peak to coral reefs within just a day. Taiwan harbours about 4,000 species of vascular plants, 61 species of mammals, 400 species of birds, 92 species of reptiles, 30 species of amphibians, 140 species of freshwater fish, and an estimated 50,000 insect species, including 400 species of butterflies with its beautiful and fertile environment. Six national parks, 18 nature reserves, and 24 protected areas have been designated to safeguard biodiversity – the protected area covers 440,290 hectares, which is 12.2% of the total land area. (Agoramoorthy and Hsu 2007) However, Taiwan's rapid political, economic, and industrial growth has put heavy pressure on the natural environment, especially over the last five decades.

This chapter is composed of two parts: domestic environmental policy and Taiwan's international environmental policy to explain how political and economic factors influence domestic environmental policy and how international environmental law affects Taiwan's international environmental policy including the policy of voluntary compliance with the UNFCCC.

5.1. The development of domestic environmental policy

To comprehend the relationship between environmental degradation, economic growth and the development of environmental policy in Taiwan, this research separates past five decades into three stages to analyze: authoritarian period (1950-1987), political liberalization period (1987-2000), the Democratic Progress Party's ruling period (2000-2007). The lifting of the martial law in 1987 and shifting of power in 2000 are key events to separate these three distinct periods. Each period has its own unique interaction between political change, economic growth and environmental policy.

5.1.1 The authoritarianism period (1950-1987)

In 1949, the Nationalist government, the KMT, KuoMing Teng, withdrew from China and fled to Taiwan. The nationalists claimed sovereignty over the whole of China and the only legitimate government of China, even though they only effectively controlled Taiwan, Penghu, Kinmen and Matsu. Faced with the external threat of a Chinese communist invasion and the internal problems of how to settle the million civilian and military personnel that had just arrived, including how to pacify the local Taiwanese that still distrusted the nationalist government, Taiwan was at a critical juncture between life and death. The nationalist authorities bolstered their legitimacy in both the domestic and international arenas by pledging both to adhere to a mission of national recovery and to stay loyal to the Constitution of 1946. Therefore, establishing an authoritarian state mechanism is necessary to impose tight control and intense consolidation of political power to reach the goal on the one hand. The tools include Martial law, land reform, penetrating into every sector of the Taiwanese society. On the other hand, with the military and economic aid of the United States after the Korean War in 1950 and sound planning of a national strategy by technocrats, Taiwan could be safe from the dangers from Mainland China to commence working on domestic development. In the shadow of political mobilization and power consolidation, economic policy was at most the vehicle for political purpose. The state machine intervened extensively in the market by tightly controlling foreign exchange, imports and exports, as well as instituting state ownership of major industries, including transportation, steel, electricity, oil and sugar industries. Starting in the 1950s, authorities launched a policy of import substitution aimed at achieving economic self-sufficiency. Under this policy, measures such as high tariffs and import controls were adopted to protect a wide range of infant industries. As the market was over supplied by domestic goods due to the import-substituted policy, the Taiwanese government was forced to adopt an export-oriented policy. The government adopted several measures to promote the policy, such as relaxing import controls on raw materials, rebating tariffs for exports, providing preferential export loans, establishing export-processing zones, encouraging direct foreign investment and controlling state enterprises which are monopolistic in nature. Taking advantage of low labor costs as well as relaxed regulation in consumer rights, labor conditions, public health and the environment, labor-intensive industries developed with an increased international competitiveness (Yeh 1996).

The status which the nationalist authority laid claim to- that of being the legitimate government of China has gradually changed due to the People's Republic of China (PRC) gaining international leverage during the Cold War. In 1971, the United Nation voted for PRC membership which resulted in Taiwan's withdrawal from the U.N.. This setback not only triggered a new period of diplomatic isolation for Taiwan, but also domestically frustrated the integrity of national recovery goal. The isolation from the international society also kept Taiwan away from participating in some major international environmental negotiations. The lack in communication with the global environmental movement could not help to improve the domestic environment consciousness. The external legitimacy crisis greatly impacted domestic politics and policies. The nationalist government was forced to reorient the national goal toward economic development and political localization. The authorities decided to shift from the long-standing policy of political mobilization to the goal of economic prosperity through intensive investments in infrastructure establishments and extended international trade. "Ten Major Constructions"⁶⁴ were launched to improve the infrastructures for an economic take-off. All these projects and constructions marked a fundamental change in the perception of national development. The export promotion policy instituted during the early 1960s resulted in high economic growth rate with high foreign exchange reserves. The policy served at least two important political functions. First, the continuous economic prosperity strengthened public support for the ruling regime. Second, through international trade, this internationally isolated nation retained close ties with the international community (Yeh 1996).

In spite of the success of the export promotion policy, Taiwan began to face some negative impacts brought by the economic success, such as an unfair tendency in the ratio of income distribution and environmental degradation⁶⁵. Popular dissatisfaction with environment degradation emerged in Taiwan in the early 1980s. Critics⁶⁶ began to appear and

⁶⁴ These included development of an island-wide highway, hydraulic and nuclear power plants, heavy industrial complexes, new or expanded harbors, tax-free industrial parks, and other projects related to the development of infrastructures necessary for an economic take-off.

⁶⁵ Development resulted in catastrophic environmental problems, such as serious air-pollution problems, loss of ground cover, deforestation, poor water distribution systems, low sewage coverage, as well as lack of green and open spaces in most urban areas.

⁶⁶ Chi argued that Taiwan has achieved "growth with pollution" that will not increase but decrease the welfare of the people in the long run. See Chun-Chieh Chi (1994), "Growth with Pollution: Unsustainable Development in Taiwan and Its Consequences", *Studies in Comparative International Development*. Summer 1994. Vol. 29. No.2,

challenge the wisdom of growth-driven economic development.

In domestic development, Taiwan has been regarded as an authoritarian state⁶⁷ which the nationalist government exercised uncontested political control over the whole society during these period. Voices from civil society were rarely heard. Public policy-making was top-down rather than interactive (Gold 1986). The characteristics of the authoritarian regime are: (1) strong and powerful leader or ruling organization; (2) expansion of the limited citizen participation in the political arena; (3) dominant power in the control and allocation of social resources. In the authoritarian state, government would use national power to control and dominate the society. In political aspect, it will limit and deprive citizens of basic human rights; in economic aspect, it will control and manipulate economic activities and market; in society, it will oppress and compel non-government organization and social mobilization (Liao 1998)⁶⁸. The authoritarian control at the sacrifice of the local autonomy, community solidarity, and citizen participation which would oppose and go against those environmentally destructive policies now appears crucial to the following development of modern environmentalism.

In changing the periphery and colonial status in the international world after World War II, Taiwan adopted nationalism as the national development strategy to industrialization. The “Economic development priority” mandate was used to serve as the national development strategy during these early periods. Through the trade protection policy and suitable industrial policy, Taiwan successfully achieved outstanding economic growth by ranking the fastest growth in the world between 1960 and 1990, with an annual average growth rate of 9.5% and GDP per capita rising from US\$196 in 1952 to US\$5,291 in 1987⁶⁹. Under the mandate, the environmental degradation was the inevitable outcome of the industrialization and income increase process followed by economic development (Chi 1994, Lyons 2005, Agoramoorthy

23-47.

⁶⁷ Authoritarianism describes a form of social control characterized by strict obedience to the authority of a state or organization, often maintaining and enforcing control through the use of oppressive measures. In an authoritarian form of government, citizens are subject to state authority in many aspects of their lives. Usually, an authoritarian government is undemocratic and has the power to govern without consent of those being governed. Refer to http://en.wikipedia.org/wiki/Authoritarianism#Authoritarianism_and_the_Economy. (accessed on May 10th of 2008)

⁶⁸ Ibid 22.

⁶⁹ See Taiwan Statistical Data Book for various years, <http://www.dgbas.gov.tw/public/Attachment/7112216382771.xls> (accessed on May 10th of 2008)

and Hsu 2007).

In the authoritarian state, what would be done to address the environmental problems depends on the decision of regime's elites. Considering the industrial development goal underlying the state's nationalism drive, those bureaucrats in the decision-making level wouldn't choose strict environmental protection policy to restrain industrial development even though those industries are high-polluted. That is why some scholars argued that the development of Taiwan's environmental policy more or less would be constrained under the growth-oriented economic policy (Zen 2001, Yeh 1999). There clearly exists an interest conflict between economic growth and environmental protection. In this stage, the nationalist government naturally placed more stress on "economic performance and outcome" than "environmental protection". The environment degradation became more serious during this period and there was very little sign that the government wanted to solve those environmental issues (Liao 1998, Lyons 2005).

The Executive Yuan approved the "Taiwan Environmental Protection Project" in April 1979, and the Environmental Protection Bureau (EPB) was also established in January 1982. Although Taiwan also had some advanced environmental regulation such as Water Pollution Control Law, Waster Disposal Act and Air Pollution Control Law in 1970s, however, the bad implementation and lack of a clear emission standard did not make those regulations to be the policy tools to protect the environment. Yet, those loose restrictions on pollution and poor implementation made Taiwan's exports internationally competitive before the 1980s, because Taiwan's main trading partners - the United States, Japan, Canada, and many Western European countries - all had stricter environmental laws in effect (Chi 1994).

5.1.2 Political liberalization period (1987-2000)

The impact of continuous economic growth not only resulted in economic prosperity, but also created further pressure for political liberalization. International enlightenment, economic prosperity; in addition, gradual sophistication of the society created increasing pressure for political reform. The result was the lifting of the forty-year long marshal law in 1987. It gave new freedom to the press, sparked the formation of political parties and associations of voluntary groups, as well as encouraged the Taiwanese to gather and demonstrate.

Nationalism still dominated the national development during this period, but in the climate of political liberalization, government began to be influenced by social and economic interest groups in the policy making. It was not until the 1986-1987 period that environmentalism emerged as a national issue, and environmental groups became a significant political force in Taiwan. With the formation of the Democratic Progress Party (DPP) in 1986 and its focus on environmental issues, environmentalism became an essential ingredient in the pro-democracy movement in the transitional and later stages of Taiwanese democratization. The development of a broad-based grassroots environmental movement and its solid alliance with the militant opposition party have been the biggest challenge to the nationalist's authoritarian political order and growth-oriented industrialization strategy (Kim 2000).

At the same time, there was an international dismantling of the social ideological barrier between the East and West, so the Taiwanese government was forced to focus less on adherence to ideological doctrine, such as the Recovery of Mainland China, but more on addressing substantive issues, such as global environmental concerns and development of free trade. In 1991, President Lee Ten-huei declared the termination of the Period for Mobilization Against a Communist Rebellion and abolished the Temporary Provisions Effective During the Period of Communist Rebellion. This declaration was followed by a series of constitutional revision⁷⁰ to reform the political system which made interest groups and public gain more access to governmental decision-making process. However, it had some negative side effects, such as the encouraging of money politics⁷¹ (Yeh 1996).

In the transition of political democratization, lack of policy transparency and an administrative procedural law provided capitalists with an influencing channel to affect government policy-making through the central and local legislative systems. Taiwan has been regarded as one of the "Newly Industrialized Countries" (NICS), thus pursuing and attaining high level industrialization and economic growth, as well as international inclusion still remain priority among national goals under the nationalism ideology in this stage. In addition,

⁷⁰ The result of the constitutional revision was the replacement of the Temporary Provisions for National Mobilization with ten additional articles to the Constitution.

⁷¹ Some land-related policies that have strong environmental impact are easy to be politically manipulated by interest groups or elected politicians. Pressure of development increased, so the politician will promote development-oriented policies no matter how they will destroy the environment.

state-owned and party-owned enterprises are often the biggest polluters; no surprise the government is lacking keen interest in curbing environmental problems in Taiwan. To the least extent, social conflicts about resource allocation are still intensified which has created a constitutional mechanism that could balance competing interests between pro-environment and pro economic growth. In the second round of constitutional revision in 1993, both environmental and industrial groups mobilized for their respective interests. A compromise was reached in an amendment to the Constitution that proclaims that scientific, technological and economic development should go in tandem with environmental protection and ecological conservation in the cause of national development⁷². The institutional capacity building for environmental protection at the Constitution level has more or less revealed the determination that government seeks to bring environmental consciousness into the government policy-making principle. As for the implementation, it is another story to figure out in the following analysis.

Political liberalization was critical to environmental awareness, especially for a regime in international isolation. Due to strict political control in the first stage, the nationalist government agenda did not reflect the public dissatisfaction with pollution and environmental disruption which threatened public health and induced economic losses. Only after political liberalization and later international pressure⁷³ was the necessity of environmental protection recognized.

Due to the absence of a single ministry overseeing environmental concerns, pollution control and other environmental matters were left to a number of disparate ministries which often disagree on their duties regarding environmental protection. With the demand for a single responsible ministry, the Environmental Protection Administration (EPA) was established as a cabinet level in the Executive Yuan on August 22, 1987, and its authorities of control evaluation, disputes settlements and promotion of nature resources conservation were also added. However, many nature conservation activities were still handled by different agencies in the central government in accordance with their own regulations. With increasing budget on environment protection, promulgating more comprehensive pollution control laws

⁷² Now in the Constitution Republic of China article 10 (2).

⁷³ Taiwan has never signed a regional or international environmental treaty, but has been subject to their provisions, such as United States used the Convention on International Trade and Endangered Species "CITES" to sanction Taiwan in its failure to curb the smuggling of rhino horns and tigers.

and regulations, and adopting more precautionary measures such as mandatory environmental impact assessment, the nationalist authorities began to take environmental affairs more seriously during this stage. Citizen demands for environmental protection and involvement in the decision-making process began to be voiced and implemented in central and local governments.

After about twenty years of isolation and with limited access to the world through international trade, internationalization has become the main focus of Taiwan's policies since the 1990s, such as the international campaign of seeking entry to international organizations: GATT (WTO), APEC, WHO and U.N.... One effort to gain international recognition is by participating in the development of different international environmental regimes. Although Taiwan has never signed a regional or international environmental treaty, the experience has proved that it could be subject to those international environmental laws⁷⁴. Another achievement of the internationalization policy was the establishment of the Policy Guidance Task Force for Global Change in the Executive Yuan in 1994 which was a departmental committee composed of relevant ministers and environmental scholars to help implement global environmental agreements such as the 1987 Montreal Protocol, the Convention on International Trade in Endangered Species (CITES), and the 1992 Biodiversity Convention. The committee was set up to handle Taiwan's response toward resolution of the 1992 World Summit in Rio and other international environmental laws (Yeh 1996). Taiwan's advanced addressing those international environmental obligations is necessary to maintain national interest in the economy and international trade aspect⁷⁵. The Task Force was later elevated to the "National Council for Sustainable Development (NCSD)" in August 1997 to demonstrate the determination to international world that Taiwan was committed to the human being's objectives toward sustainable development that was outlined in Brundtland report in 1987. Initially the NCSD was chaired by a Minister-Without-Portfolio, but the chair passed to the Vice Premier in 1999 and to the premier in 2002. In the same year 2002, the Basic Environment Act gives the NCSD legal position⁷⁶.

⁷⁴ Ibid 73.

⁷⁵ The World Trade Organization (WTO) set up a Trade and Environmental Committee to work on issues involving trade and environment. Environmental measures in multilateral trade agreements are still in the process of development, so the impact of all those environmental measures is always the concerns in Taiwan.

⁷⁶ Refer to article 21, "Basic Environment Act. The Executive Yuan shall establish a national sustainable development commission to be responsible for relevant strategies and policies on national sustainable

Recently, major international declarations, including the Rio Declaration and Agenda 21, have also reiterated the concepts of broader participation, consensus-building, and a sense of partnership. Therefore, the achievement of sustainable development should be preconditioned on an accountable political structure which values citizen participation, procedural rationality, social justice, market function, and technological innovation. The trend of political liberalization in Taiwan has created a better institutional environment to construct a sound institution for sustainable decision-making from both public and private sectors so as it can balance development and the environment for national future development.

5.1.3 The DPP ruling period (2000-2007)

During the time of political liberalization, the strongest opposition to the nationalist government came from the environmental and democratization movements. For example, the DPP was a strong political advocate of environmental and anti-corruption movement in Taiwan (Lee and So, 1999). Once the DPP became the ruling party in 2000, observers expected it to enact its long-standing party policy of environmental protection. However, these hopes failed to be realized. As the DPP transformed from a mass party into a ruling party, vote-maximizing became its prime concern. It needed to form alliances with business communities at the central and local levels in order to finance campaigns to win re-election (McBeath and Leng 2006). Its national development policy turned into localization and failed to properly address environmental issues. Although the DPP used to place importance on environmental issues and have closely relationship with environmental groups, once it was the ruling party there seemed to be no big differences to the nationalist government on the environmental policy.

Taiwan does have advanced environmental laws. In addition to the Constitution of the ROC, the Basic Environment Act was passed in 2002 to further reaffirm the priority of environmental protection policies through article 3: “Economic, technological and social development shall equally emphasize environmental protection based on long-term national interests. However, in the event that economic, technological or social development has a

development matters. Said strategies and policies shall be conferred to relevant cabinet-level agencies for execution. Said commission shall be comprised of one third each government representatives, scholars and experts, and civic groups.”

seriously negative impact on the environment or there is concern of endangering the environment, the protection of the environment shall prevail.” Although the DPP’s political campaign slogan have included “Green Silicon Island”, “Environmental Justice” and “Sustainable Development”, DPP’s policy makers forgot their promise to people in Taiwan to guard the environment after coming into power. Regarding economic policy, the DPP has usually accepted advise from nationalist technocrats and continually maintained the exploitation development ideology left by the previous nationalist government. Some would say that since there has been a globally economic recession, the DPP had to turn its focus on economic issues (to improve the domestic economic situation) instead of implementing environment-friendly projects. However the truth is that the DPP failed to undertake even one major environmental project and also did very little toward environmental protection. The DPP government continued the economic policy left by nationalist government and loosened environmental policies to please capitalists. One example is the construction of “the 4th nuclear power plant” which the DPP had previously voiced strong opposition. However, The DPP failed to implement its most important environmental campaign promise during the 2000 Presidential election to halt construction⁷⁷. It seems that many instances of the construction of heavily polluting industrial sites have continued with support from the ruling DPP party, such as environmental damaging projects such as Formosa Plastics Group’s new steel mill building plan, and CPC’s petrochemical park plan in Yunlin. In the recent National Macro-development Strategy- “Big Investment, Big Warmth” approved by the Executive Yuan in 2005, the Industrial Development Package with the strategy to implement its first-Stage Three-Year Sprint Program still focuses more on economic growth considerations.

Regarding institution-building for sustainable development, the DPP government tried to adjust its role in promoting balanced goals for national development. One measure in May 2002 was to push for the chairman position of the NCSD to be held by the Premier to increase the enforcement of NCSD resolutions. According to a survey done by the secretariat of the NCSD in 2002, of 136 nations which have sustainable development promotion organizations,

⁷⁷ The opposition raised the issue of sustainable development to attack the plan of halting the nuclear power plant. If Taiwan substitutes the nuclear power plant with fossil fuel-based power plants, the opposition camp argued, the amount of CO₂ emissions from Taiwan would increase and this high amount is arguably not acceptable to international society. The nuclear plant controversy later escalated into political turmoil, causing a possible recall of the president. Consequently, in February 2001 the Premier yielded to opposition pressure to revive the project in order to save the Cabinet and Chen’s presidency (Leng 2005).

only 11 nations with sustainable development promotion organizations are chaired by the Premier. Related documents, such as the Taiwan Agenda 21, the Taiwan Declaration on Sustainable development, the Sustainable Development Action plan and the Taiwan Agenda 21-National Sustainable Development Vision and Strategy Guideline, were drawn up by the NCSD between 2000 and 2004 as the supreme principles guiding national development. Due to the special relationship between DPP political elites, the environment movement and the traditional party color being green, the DPP claimed to be a “Green” ruling party that planned to bring green perspectives into national policy-making process to achieve national sustainable development. After the DPP came into power, some environmentalists and scholars entered into the policy-making system, such as the NCSD and the Nuclear Power Free Homeland Promotion Committee, all at the cabinet level. In fact, their role in environmental-friendly policy-making process did not work very well, as they served more to enhance the legitimacy of these committees than affecting the results. The committees only reviewed projects proposed by government agencies or made vogue policy guidelines, so the government still could control the final decisions. Therefore, many environmentalists and environmental groups were dissatisfied with DPP government’s performance on environmental protection. The fact that DPP environmental policy is ambiguous or changeable has attributed to its fragile structure in controlling the government machine. The reasons for this can be separated into two parts. First, the environmental sector is still less powerful than economic sectors within the bureaucracy. Second, their anti-capitalist record makes the DPP struggle with whether their policy axis should be focused on environment protection or on economic growth. Faced with the global economic recession, the DPP has been forced to move toward a pro-economic development policy to attract capital investment. Evidence of compromises made by the DPP government can be found in the debates about the electronic motorcycle policy, plastic bag limitation policy and government approval of big investment plan in high-polluted industries.

What are government officers’ opinions about the DPP government’s policy priority (Refer to interview question 1)? From five government interviewees, three interviewees from the EPA and NSDC believed that environment protection is given less priority. Two interviewees from the MOEA agreed that economic growth went in tandem with environmental protection in national development policy-making. These interview results

reveal that different opinions exist between the MOEA and EPA officers. A growth-oriented national development strategy is still debatable among different government agencies.

5.1.4 Summary

Taiwan's success in achieving economic prosperity and a level of democracy which is sufficient to support environmental awareness provides insight into constructing a model of sustainable development for countries in transition. The institutional improvements following political liberalization created a constitutional mechanism to balance the competing interests of the environment and development. The 1993 amendment of the Constitution proclaims that scientific technological and economic development should go in tandem with environmental protection and ecological conservation in the cause of national development. The Basic Environmental Act passed in 2002 further clearly proclaims the principles that economic, social and technology development should make environment concerns their priority.

It is time for Taiwan to develop strategies to sustain economic growth and protect the environment for future generations. However, the ruling party and opposition party only focus on their political consideration and neglect environment protection. Taiwan is not a state lacking good institution capacity-building for environmental protection. In addition to the Constitution and the Basic Environmental Act, expert review mechanisms have been brought into the policy-making process from the mid-1990s. In major construction, environmental impact assessments must be done to assess possible environment damage.

Sound management of the environment cannot be achieved through one-time deals or decisions, but rather is a continuous challenge requiring diverse groups to work together despite different views and values. What Taiwan is lacking is the determination to thoroughly implement the principles of "environment first" or at least "sustainable development" in the state's national development policy. The goals of sustainable development may involve conflicting interests within the state and society; thus the consensus process is deliberately directed at devising 'doable' actions and clearly identifying how agreements are to be fulfilled (Leng 2005). If every political party could put Taiwan's "environment first" or "sustainable development" in their mind and abandon the party's pro - conglomerate thinking, then, it does not matter which party comes to power. The previously implemented institution, such as the Constitution, regulations and Taiwan Agenda 21, can integrate different interests and push

Taiwan into the direction of sustainable development in the future.

5.2 Taiwan's International Environmental Policy

The development and establishment of international environmental institutions and multilateral environmental agreements began to increase rapidly after the 1970s due to the wake of environmental consciousness. Since the Stockholm Conference held in 1972, a lot of treaties, agreements and non-binding documents under the guidance of the U.N. have been negotiated and then agreed to deal with various international environmental problems, such as ocean, ozone layer, climate change, biodiversity, and natural resources (Ni 2002)⁷⁸.

5.2.1. The Legal Status of Taiwan in the International Environmental Institutions and Agreements

Taiwan withdrew from the U.N. and international society since his seat was replaced by People's Republic of China (PRC) in 1971 under the United Nations General Assembly Resolution 2758. Since then, the status of Taiwan under international law has been disputed. Under the UN system, including its specialized agencies, and in countries that have official diplomatic ties with the PRC, Taiwan is regarded as a province of China. In addition, the PRC has been consistently and rather successfully so far, blocking Taiwan's participation in various intentional forums in its own right. Most multinational environmental agreements were concluded under the auspices of the United Nations Environment Programme (UNEP). Because UNEP functioned after the Taiwan's withdrawal from the UN, Taiwan, being non-member in the system of the U.N., cannot participate negotiation and being Party and/or member of related international environmental institutions and international environmental agreements within the U.N. system. The reason that Taiwan is not permitted to enter into any Multilateral Environmental Agreements (MEAs) within the U.N. system is that "ratification to these treaties is mainly limited to sovereign states and regional organizations.... **【T】** he United Nations recognizes the Government of China as the sole representative of the People's Republic of China, including Taiwan."⁷⁹ In short, Taiwan has been officially considered as

⁷⁸ Ibid.43.

⁷⁹ Letter from A. Timoshenko, Officer-in Charge, Environmental Law and Institution, UNEP, to Dennis T.C. Tang, Director of the Law Section, Institute of Social Sciences and Philosophy, Academia Sinica, and Professor

part of China by the UN system (Ni 2002). Under the circumstances, it is extremely difficult for Taiwan to join the relevant UN environmental agreements. Taiwan was inevitably unaware of and unfamiliar with the newly developing international environmental law before 1990.

5.2.2. Taiwan's International Environmental Policy after 1990

Under unfavorable situation, Taiwan begins with bilateral environmental relationships with industrialized countries that have no diplomatic relationship with Taiwan but maintain close economic interaction with it (Leng2005). Except some regional fishery organizations and conventions, Taiwan has never signed a regional or international environmental treaty (Shih 2005a). However, the absence of substantial linkage between Taiwan and modern international environmental institution cannot exempt Taiwan from being bound by any such norms. The 1992 rhinoceros horn events⁸⁰ which almost resulted in trade sanction and almost compelled Taiwan to comply with the Convention on International Trade in Endangered Species (CITES) was Taiwan's first direct contact with the international environment law. Finally, sensitive to pressure coming from the international media, Taiwan took measures, including revising the 1984 Wildlife Conservation Act in 1994 to bring it into compliance with the CITES, thereby avoiding trade sanctions or restrictions as a result of the CITES. Another incident involved the 1987 Montreal Protocol⁸¹. As certain chemicals used in Taiwan's computer manufacturing industries were identified as having an ozone-depleting effect by the Protocol, the government was extremely worried that the Montreal Protocol might authorize its parties to restrict or prohibit trade with Taiwan. The Ministry of Economic Affairs of the Executive Yuan adopted a series of administration regulations between 1989 and 1995 to be in line with the regulatory schedules of the Montreal Protocol and its later amendments so as to keep Taiwan from being subject to trade restrictions under the Protocol (Shih 2005a). These events taught Taiwan that it could be subject to international

Daniel C.K. Chow, The Ohio State University College of Law (Mar.23,1993). See also Chow, "Recognizing the Environmental Costs of the Recognition Problem: The Advantage of Taiwan's Direct Participation in International Environmental Law Treaties" 14Stan. Envtl. L.J.(1995) at 276-277,n.125.

⁸⁰ Taiwan used to illegal smuggle rhinoceros horn and used rhinoceros horn as traditional Chinese medicine. These behavior violated the regulations of CITES.

⁸¹ The Montreal Protocol specifically sets down trade-restrictive provisions between parties and non-parties concerning international trade in ozone-depleting substances, unless the Conference of the Parties (COP) has certified that such non- parties have adopted measures comparable to those in the protocol.

environmental laws which it neither signed nor participated in drafting (Yeh 1996). These events also gave the government and public in Taiwan deep impressions that the international environmental law would bring either negative image for Taiwan in international world or great impact on Taiwan's international trade (Shih 2001, Shih 2005a).

There is no unity policy in Taiwan toward international environmental law. The main reason is that Taiwan is not Party of most international environmental conventions. Taiwan's special status under international law or under the UN system only aggravated environmental problems because the government was unable to deal with them via diplomatic means. Under international law, Taiwan is not required to comply with those conventions and have no obligations to internalize them into domestic law. With aforementioned experiences, the government of Taiwan began to adopt the strategy of voluntary compliance with some international environmental convention during the early 1990s. The government, through various occasions, has stated that Taiwan will voluntarily comply with regulations under MEAs and other international bodies with environmental mandates. By establishing the Policy Guidance Task Force of Global Change in 1994, the Executive Yuan began to implement global environmental agreements such as the 1987 Montreal Protocol, the CITES, the 1992 UNFCCC and the 1992 Biodiversity Convention. The Task Force later upgraded to be National Council for Sustainable Development (NCSD) by the Executive Yuan in 1997. The NCSD is designed to coordinate global environment related activities in all government branches and make all these activities implement efficiently. The international environment protection working group is one of the eight working groups under the NCSD. Its tasks include participation in the activities of the international environmental conventions, compliance with obligation set by those international environmental conventions and promotion complementary regulation systems. These measures show that now Taiwan is voluntarily, unilateral and selective to comply with some international environmental conventions. The UNFCCC is among the list⁸².

5.2.3. The Compliance with the UNFCCC of Taiwan

5.2.3.1. Reasons for Voluntary Compliance

⁸² see website of National Council of Sustainable Development (<http://sta.epa.gov.tw/NSDN/en/introduction/introduction.htm>)

The possible reasons that Taiwan adopted the policy of voluntary compliance with the UNFCCC and the Kyoto Protocol could be from two aspects: political and economic.

In political aspect, as a non-Party of the U.N. and most MEAs, Taiwan is not required, under international law, to comply with the UNFCCC and the Kyoto Protocol. With special international legal status, voluntary compliance just can show Taiwan's determination to integrate international society and share its obligations for global environment which will promote Taiwan's image in the international world - that is also using environmental diplomacy to extend Taiwan's diplomacy space. In domestic consideration, first, Taiwan is a densely populated island state- especially surrounding coastal area. The possible sea-level rise resulted from climate change is a potential, serious threat to the coastal area of Taiwan. Besides, the changing pattern of rainfall will also have great impact both on the water resources⁸³ and on the forests (Liu et al. 1996). As a preventive measure against possible threat from climate change, Taiwan has no choice but to co-operate with the international community to deal with global warming problem to build national adaptation ability as soon as possible. Second, the government already declared that sustainable development should be the national development policy. The government has to undertake policy reform to ensure that sustainable development can be achieved in any case. The energy policy is a determinant factor to tackle the reduction of GHG emissions, because GHG emissions mainly come from fossil fuel consumption. Most of Taiwan's energy resources depend on import and its demand for energy is still increasing along with economic growth. Thus, the government should adjust its energy policy to meet energy demand without exacerbating the GHG emissions in the same time to reach sustainable development. These issues can be addressed under the UNFCCC, so it is necessary that Taiwan conducts a policy-reform according to the principles set out in the UNFCCC (Shih 2002).

In economic aspect, as a non-Party and a trade-dependent country, Taiwan has always been quite cautious of provisions that would restrict trade with or impose trade sanction on non-Parties in MEAs after early 1990s. Especially after suffering actual threat of Montreal Protocol and the CITES (Shih 2001)⁸⁴, the government firmly decided to prevent any possible

⁸³ Due to Taiwan's geographic characteristic, Taiwan's water resource heavily depends on rainfall (see website <http://www.wra.gov.tw/ct.asp?xItem=11733&ctNode=2314&comefrom=lp>).

⁸⁴ See 施文真(2001)。臺灣於環境保護 v.s.自由貿易之國際辯論中的定位。臺大法學論叢第三十一卷第一期。

trade restriction and trade sanction happening again to impact Taiwan's economy from those MEAs. Although there are not obvious provisions concerning trade sanction to be described in the UNFCCC or the Kyoto Protocol, It cannot exclude the possibility that similar provisions related to trade sanction or trade restriction toward non-Parties might be incorporated in future protocols or amendments⁸⁵. So, voluntary compliance could minimize the chances of Taiwan to be trade-sanctioned. The second consideration is relating to the fact that Taiwan is one of the newly industrialized countries (NICs), which are very likely to be required to take more obligations to reduce their GHG emissions in the near future (Young 1995). After the reduction timetable of GHG emissions for Annex I country Parties concluded in the Kyoto Protocol, voluntary commitment by developing countries were raised and debated within COPs⁸⁶ (Shih 2002). With the increase emission followed with economic growth, non-Annex I Parties that are more advanced NICs, such as South Korea, are expected to start negotiating to make substantial commitments. Under the keen competition between those NICs, those who are Parties to the UNFCCC will regard Taiwan as gaining an unfair advantage in the economic competition. Inevitably, those countries will push hard to force same commitments to be made by Taiwan. In a word, the pressure coming from the international community is likely to grow stronger to make sure that the obligation imposed by the UNFCCC to its Parties whose stage is similar to Taiwan will also be put on Taiwan as well (Shih 2002). The third economic consideration is that earlier voluntary compliance would give the government enough time to design an appropriate energy-conservation strategy⁸⁷ and develop adaptation strategy to combat the climate change. Those advance measures can diminish possible economic impact and promote national competitiveness.

5.2.3.2 The Status Taiwan adopted under the Convention

Since Taiwan has decided to voluntarily comply with the Convention, the first thing Taiwan has to do is to define its proper status under the UNFCCC, because it will affect how to implement the Convention and the obligations Taiwan need to take in the future. The

⁸⁵ Other trade restrictive measures, such as applying duties or taxes on various categories of imports from non-Parties have also been predicted by commentators (Brack et al.2000:134)

⁸⁶ In the negotiation of the Kyoto Protocol, some developed countries openly called for "meaningful participation" by developing countries in an attempt to persuade the latter to undertake binding obligation regarding the control of GHG emission.

⁸⁷ Such as import related technology from advanced countries to make energy utilization more efficient.

Convention has listed Annex I and Annex II Parties in its Annexes, and it has been assumed that Parties not so listed are non-Annex I Parties. This categorization is related to the timing to submit and the content of the National Communication, the rights and obligations relating to financial assistance and technology transfer, as well as substantive obligations of targets and timetable for GHG emissions reduction (Shih 2002). It's hard to categorize Taiwan, but at least there already have consensus among the academics that Taiwan will not be included in Annex II countries because most Annex II Parties are the OECD members and have the obligations to give developing countries financial assistance and technology transfer. Then, whether Taiwan is an Annex I country or non-Annex I country left to be debated among domestic academics and governments (Huang et al. 1994).

The reasons favoring Taiwan to adopt the Annex I Party status can be summarized as follows. Politically, more commitments are needed by Annex I parties, so more positive public image will be created in the international society for Taiwan. Economically, Taiwan is more like a developed country in terms of its economic performance (Shih 2002).

The arguments supporting Taiwan to adopt a non-Annex I Party status are as follows. Politically, it would be unreasonable to compel the government to be bound by the obligations since Taiwan did not participate in any formal process of negotiation leading to the adoption of the UNFCCC and Kyoto Protocol. The experience in applying for accession to the WTO will not be applicable in the case of the UNFCCC accession⁸⁸. Economically, the impact on industrial structure, energy supply will be too severe if Taiwan implements the obligations imposed by Annex I Parties. Taiwan will not achieve the target to reduce its CO₂ emission to the 1990 emission level by 2000.

Finally, the government decided to define itself as a “NIC (newly industrialized country) non-Annex I Party” in the 1998 National Energy Conference and reiterated in the draft of 2001 National Communication which was compiled according to the article 12.1 of the UNFCCC.

⁸⁸ The membership requirement under the climate change regime remains open only to “States”, but the WTO does not require statehood for their membership (Article XII, WTO Agreement).