

Comments on
Environment and Statecraft: The strategy of Environmental Treaty-making
Oxford University Press, 2003

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As a matter of principle, it is always beneficial to learn from others' experiences and knowledge and try to avoid repeating the previous mistakes. At the same time, not all the experiences may be relevant and appropriate for everyone or every process to follow. Especially in the case of treaties, it has to bear in mind that each treaty has its own dynamic and depending on its nature and the scope, proper steps should be taken for its preparation, development, formulation and implementation. While the book is remarkably rich in analyzing many treaties and agreements, the lesson learned from those agreements do not necessarily fit with the negotiation of climate change and the Kyoto Protocol. The book also does not adequately reflect the difficulties of developing countries, the differences among them and their differences with the industrialized countries in different conventions and protocols mainly FCCC and KP.

All of the examples of treaties in the book are simply not of the same weight of the KP. Even making a comparison of the KP and the MP which both deal with reduction of GHGs, is not right and therefore, the conclusion that for the KP to be successful it has to follow the same approach of MP models on the compliance and incentives, is wrong. These instruments are quite varying in their substance, audiences, and implications. KP deals with such an important issue, which for many countries, is the matter of death and life. It addresses the heart of the economic development and the questions involved in that discussion, are politically sensitive and economically vital. It deals with the fossil fuel combustion and the energy- related issues. That is the reason that the KP negotiation, unlike the MP negotiation, is diplomat dominated negotiation. In addition, the domain of the MP's commitment is limited to parts of the national economy for which, the economies of countries, even developing countries' economy, have the capacity to absorb its impacts. Besides, the MP was relatively successful, since the response of developed countries to the needs of developing countries was relatively positive. The access of the South to the financial resources and technical assistance was easy and the project cycle was simple. As is stated in page 268, MP was successful since there was a political will in industrialized countries, for phasing out the ODS since the cost of this action was limited and the infrastructure of these countries did allow to follow that pattern. Moreover, the nature and the scope of disputes between EU and USA and the disputes between North and South, in the MP negotiation, were not at all as the same as in the KP negotiation. In the MP negotiation, there were no major differences among the family of developing countries vis a vis the main issue of the Protocol, while there were quite conflicting interests in the discussion of climate change among the members of the G77(AOSIS, OPEC...). Furthermore, the alternatives for the ODS, as is referred to in page 392, were cost-effective, accessible and affordable for the developing countries.

While the alternatives for the GHGs in KP mean inter alia, an alternative source of energy and these are not cost-effective, affordable and even accessible everywhere. Therefore, the issues are completely different.

In disagreeing with the impression that the book gives on the failure of the KP, it should be stated that the adoption of the text of KP in 1997, in itself was a success. It was a success since it succeeded to make a very delicate balance of many divergent and sometime, contradictory interests. This instrument as a first concrete step in achieving the ultimate objective of FCCC, established a series of mechanisms in which both developed and developing countries are working in the same direction towards the common goal, though with different set of obligations. The argument in page 305 which says KP is not a complete treaty since it does not enjoy full participation, a concrete compliance mechanism and necessary incentives, does not seem correct. First of all, even MP differentiates the developed and developing countries situations in regard to the technical commitments (article 5 and non article 5 countries). Second, lack of success in many MEAs is derived from the fact that some major polluters do not fulfill their obligations, and that is the reason that they always insists on having a non-confrontational, non judiciary and non punitive compliance mechanisms and in general, oppose to the establishment of the concrete compliance mechanisms in Basel convention, KP. Third, developed countries have already received incentives through the flexible mechanisms. These mechanisms in the KP mainly created as incentives to let the big economies like the US, to comply with their responsibilities. Of course, some developed countries are looking for the reduction commitments for developing countries; however, incentives cannot be given contrary to the principles that the convention and the KP are founded on them. Furthermore, developing countries have already taken part in the reduction activities through the CDM. Having said that, KP is a success since it is in the verge of entering into the force by this summer, even though US is not a part of that treaty.

In response to the question on how to encourage developing countries to do more? The response is very simple. Developing countries are seeking a just solution based on the historic contribution of countries to the degradation of the environment. Therefore, fulfillment of the technical, technological and financial of developed countries is the major encouragement for them. Moreover, in the FCCC and KP, there is a need for specific consideration (funding, insurance and transfer of technology) be given to categories of countries named in Article 4.8 of the Convention and 3.14 of the KP, while the developed countries are reluctant to accept it.

Each country may have its own concern about a treaty, but that should not lead to a situation that the result of six years global negotiation (1995-2001) be considered as a failure.