

4. COMPLIANCE AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

I. Introduction

Multilateral Environmental Agreements (MEAs) are a result of international action by governments to develop standards through treaties or through non-binding instruments, that come from intergovernmental fora and influential international declarations, resolutions, and conference documents. These treaties or non-binding instruments provide obligations for Governments to undertake either individual or joint action to implement international legal instruments. This chapter focuses on MEAs in the form of treaties, which follow the process of ratification, accession, or accession by governments who then assume the obligations as soon as the treaty enters into force. The ratification, accession or adherence of a treaty by a state is the beginning of the process of implementation of its provisions at the national level.

The process and required actions for implementation of MEAs normally depend upon the provisions of the treaty but in most cases the actions range from implementing national measures provided for in the environmental treaty such as adopting policies, developing and/or strengthening national legislation and institutions, and/or taking up administrative action to implement MEAs. Since parties to most MEAs are required to report on measures taken to implement treaties, a review process is vital as well as early determination of which entity, at national level, will handle reporting, or the focal point of the particular treaty.

For many years, issues of compliance with and enforcement of MEAs were considered as matters for a state to address when implementing any international environmental legal instrument. More recently, the negotiation of MEAs, decisions of the Conference of the Parties ("COP"), and the work of Convention Secretariats have established and/or provided for mechanisms to monitor compliance which have included, inter alia, reporting mechanisms and the development and implementation of non-compliance procedures for some core MEAs. MEAs are normally negotiated under the framework of international organizations that parties also work with to facilitate the implementation of the conventions and intervene by providing technical

assistance to governments in the implementation process. Institutional mechanisms established by MEAs such as Convention Secretariats and the main governing bodies of treaties (COP) also play a role in facilitating and overseeing implementation of MEAs. Compliance mechanisms are tools that have also been established by MEAs to ensure efficacy of environmental treaties and to keep track of the implementation of MEAs.

Under the auspices of the United Nations Environment Programme (“UNEP”), governments recently adopted global guidelines to assist and guide the process of implementation of MEAs. These guidelines were adopted in February 2002 by UNEP Governing Council decision SSVII/4 for the purpose of enhancing compliance with, and enforcement of environmental law, and are referred to as Guidelines for Compliance with and Enforcement of Multilateral Environmental Agreements.

Compliance efforts can take a wide variety of forms, including education, technical assistance, voluntary compliance programmes, subsidies and other forms of financial assistance, or incentives, administrative enforcement, civil judicial enforcement and criminal enforcement. This chapter focuses on implementation of MEAs and explores some of the issues and challenges that led governments to address issues of compliance and enforcement of MEAs at the international level in the past few years. This chapter also analyzes existing mechanisms developed to ensure compliance with and enforcement of MEAs as well as the opportunities brought by the adoption of the UNEP’s Compliance and Enforcement Guidelines to enhance the implementation of MEAs.

II. International Framework

“Compliance” means the conformity with obligations, imposed by a state, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements, permits, licenses and authorizations, in implementing MEAs. Compliance also means the fulfilment by the contracting parties of their obligations under a MEA.

“Environmental law violation” means the contravention of national environmental laws and regulations implementing MEAs. “Environmental crime” means the violations or breaches of national environmental laws and regulations that a state determines to be subject to criminal penalties under its national laws and regulations.

“Enforcement” means the range of procedures and actions employed by a

state, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations implementing MEAs, can be brought or returned compliance and/or punished through civil, administrative or criminal action.

1. The Importance of Compliance and Enforcement

The need to ensure implementation of MEAs, the proliferation of MEAs as well as the emergence of environmental violations or offenses (at times loosely referred to as crimes), crimes emanating from violations of existing environmental conventions are said to be the reason for the emphasis at the international level on issues relating to compliance and enforcement of environmental law.

With more than 500, or according to some almost 1000, MEAs in place around the globe and the realization that there is a need for the implementation of these MEAs, the attention is shifting from treaty-making which preoccupied the international community since the 1970s to compliance and enforcement and implementation of existing treaties.

Another issue of great concern, which also caused governments to focus on issues of compliance and enforcement was the emergence of criminal activity involving violations of existing MEAs (dealing with trade, chemicals, wastes) including illegal traffic and trade in banned products.

In response to concerns by governments on the increase of environmental crimes with transboundary effects, UNEP organized a workshop on MEAs Compliance and Enforcement, held in 1999 in Geneva, Switzerland. The workshop examined the implementation of three major MEAs, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), the Montreal Protocol on Substances that deplete the Ozone Layer ("Montreal Protocol"), and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ("Basel Convention"). This workshop indicated there was

a significant increase in environmental crimes, including illegal traffic in banned chlorofluorocarbons and hazardous wastes, as well as illegal trade in wildlife species which were undermining the objectives of the three treaties. The serious global problem of environmental crimes was underscored, as well as the need to enhance the capacity of different actors who have a role in ensuring compliance with and enforcement of MEAs.

The participants and experts attending this workshop were drawn from different types of enforcement agencies from both developed and developing countries including the Convention Secretariats and other enforcement organizations like INTERPOL, the World Customs Organization, the International Network for Environmental Compliance and Enforcement (“INECE”), the European Union Network for the Implementation and Enforcement of Environmental Law (“IMPEL”), and the Commonwealth Secretariat.

CITES, the Montreal Protocol, and the Basel Convention have some form of compliance mechanisms. In comparing the reports and statistics on violations of the MEAs and the cost of the environmental damages caused by these violations, it was clear that there was a need to find ways to prevent environmental crimes by enhancing compliance with and enforcement of MEAs.

In assuming obligations in a MEA to be implemented at the national level, a state party to a treaty is expected to take measures to implement the MEA and to make use of the facilities provided for by environmental treaties that are aimed at facilitating the process of implementation at the national level, including *inter alia*:

- Provision of technical assistance in development and strengthening of legislation;
- Adoption of compliance and enforcement policies;
- Undertaking administrative action; • Planning (action plans, inventories, strategies); • Capacity building; • Financial assistance; and • Technology transfer.

In identifying some of the challenges parties face in the process of implementation, it is important to note, for example, that compliance requires identifying roles and responsibilities of the key players (depending on the MEA, the lead organization should be identified). It also requires effective coordination in the government structure

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because, in almost all cases, implementation requires a multi-sectoral approach and must be organized to ensure that those responsible for implementation are involved and do take action. In ensuring compliance competency, expertise or equipment may also be required because some items that are being protected by MEAs are technical. Another challenge that state parties face is to promote, encourage and to monitor compliance. Most of these measures involve costs and require each party's ability and willingness to invest resources in these areas or to use facilities developed under the MEA to facilitate its implementation.

For the purpose of facilitating implementation, most MEAs establish institutions such as Secretariats, COPs and other technical bodies to oversee the implementation of the Convention, and to provide policy guidance. Other innovative ways to ensure the effectiveness of MEAs include a financial mechanism (project development) and reporting requirements aimed at verifying the implementation of the Convention. A number of international organizations responsible for overseeing the implementation of these international environmental legal instruments, however, have been providing some form of technical assistance, including capacity-building programmes to assist governments to implement or meet their international obligations. **2. Institutional Arrangements for the Implementation of MEAs**

Apart from establishing various institutions such as the Conference of the Parties also referred to as the Meeting of the Parties, Convention Secretariats, and Advisory bodies, other innovative ways to ensure the effectiveness of MEAs include a reporting mechanism with monitoring facilities that are aimed at verifying the implementation of the convention and a financial mechanism that is intended to provide financial facilities to cover costs for implementation of activities. Compliance mechanisms have been equally developed to address issues of non-compliance with environmental conventions, including liability and compensation regimes.

a) Conferences/Meetings of the Parties of a MEA

Regarding compliance considerations in MEAs, the competent body of a MEA such as the COP could, where authorized to do so by the convention, regularly review the overall implementation of obligations under the MEA and examine specific difficulties of compliance and consider measures aimed at improving it. This is not a model for all MEAs but parties through the MEA or the COP are best placed to choose the approaches and modalities that are useful and appropriate for enhancing compliance with

MEAs. It is to be noted that older treaties did not provide for such approaches or modalities while recent environmental treaties do in almost all cases. A recent such treaty is the African Convention for Nature Protection, Algiers 1968 which was revised and adopted by the African Union in 2003; the new instrument has established a COP and regular mechanism for review.

b) Convention Secretariats

MEAs also establish or designate Convention Secretariats to carry out a number of functions such as to prepare and convene COPs and to undertake Secretariat functions on behalf of the parties. The Secretariat is also expected to transmit to the parties information, as well as to consider enquiries by, and information from, the parties and, among other functions, to consult with them on questions relating to the convention and its protocols, to coordinate the implementation of cooperative activities agreed upon by the Meetings of the Parties (“MOPs”), and to ensure the necessary coordination with other regional and international bodies that the parties consider competent. Parties are also expected to designate focal points or a relevant national authority to act as channels of communication with the Convention Secretariat.

c) Advisory bodies

Scientific advisory panels, technical groups, working groups, or various committees including implementation committees, are normally established for specific purposes. Scientific advisory panels are set up when the convention is dealing with technical matters that only a group of scientists can advise parties on managing the problem that the convention wishes to address. The COP is empowered by most MEAs to establish technical groups and working groups on an ad hoc basis, when need arises to address certain issues and to report back to the parties. A number of conventions have established financial mechanisms that have designated bodies to deal with financial aspects such as trust funds, multilateral funds or the Global Environmental Facility (“GEF”). Most MEAs also provide that the parties would establish compliance procedures where these procedures set up implementation committees comprising of various parties which look into claims of violations of the MEA.

d) Reporting Mechanisms to track Progress in the Implementation of Treaties

Most environmental conventions provide for contracting parties to transmit

regularly to the Secretariat information on the measures adopted by them in the implementation of the convention to which they are parties. This information is transmitted in such form and at such intervals as the meetings of the contracting parties shall determine. The intention of this reporting is a way of monitoring implementation and a way of verifying if the MEA is being implemented. With the proliferation of MEAs there has been a concern raised by parties of the many requirements for reporting, and attempts are made to streamline the reporting process which, hitherto, has not been successful because different MEAs require different types of information.

MEAs often include provisions for reporting, monitoring and verification of the information obtained on compliance. These provisions can help promote compliance by, *inter alia*, potentially increasing public awareness. When data collection and reporting requirements are too onerous and are not coordinated or do not take into account synergies with similar MEAs, they can discourage and burden parties in complying with reporting requirements. MEAs can and do include such requirements as the following:

- Provisions in treaties that call for regular and timely reports on compliance, using an appropriate common format that is sent out by the Secretariat. Simple and brief formats could be designed to ensure consistency, efficiency and convenience in order to enable reporting on specific obligations. MEAs Secretariats can consolidate responses received to assist in the assessment of compliance. Reporting on non-compliance can also be considered, and the parties can provide for timely review of such reports;
- Provisions on monitoring requirements that involve the collection of data and in accordance with a MEA can be used to assess compliance with an agreement. As a country collects data, it is easy to identify compliance problems and indicate solutions. States that are negotiating provisions regarding monitoring in MEAs could consider the provisions in other MEAs related to monitoring; and
- Provisions on verification requirements that include checking the accuracy of data and technical information in order to assist in ascertaining whether a party is in compliance and, in the event of non-compliance, the degree, type and frequency of non-compliance. The principal source of verification might be national reports. Consistent with the provisions in the MEAs and in accordance with any modalities that might be set by the COP, technical verification could involve independent sources for corroborating

national data and information.

24. At the receipt of such reports the Secretariats in most MEAs examine the national reports to determine if they have been presented in the right format, and circulate them to other parties. The Secretariats also bring to the attention of the parties any request for assistance in the implementation of the particular MEA.

e) Financial Mechanisms

A financial mechanism is important not only to support implementation efforts of the contracting parties but also to undertake projects that can enhance the implementation of MEAs. The realization over the years that some implementing measures can be costly and hence difficult for developing country contracting parties to undertake, resulted in parties including provisions of a financial mechanism within MEAs. Parties of some MEAs have also established financial rules by outlining rules that govern the different financial mechanisms. The financial mechanisms so far developed by MEAs have taken different forms, including the following:

- Trust Funds developed under the framework of Regional Seas Conventions that were negotiated under the auspices of UNEP, whose contribution comes from parties to those conventions. UNEP which provides Secretariat services for Regional Seas Conventions under its auspices, provides seed money to implement the work programme of the Regional Seas Programme with activities that are intended to enhance capacity of the parties to implement their Convention.
- The Convention on Biological Diversity (“CBD”) and the United Nations Framework Convention on Climate Change (“UNFCCC”) ,among other MEAs, designate the GEF as their financial mechanism. (See Chapter 6). Through GEF, parties from developing countries have received financial support to cover incremental costs that they would otherwise have incurred in the implementation of the pertinent MEA. GEF also supports projects in a number of focal areas, namely, ozone depletion, climate change, biodiversity, shared water resources, desertification and chemicals to cover the incremental costs of member states in implementing these conventions at the national level and at the trans-boundary level.
- The parties to the UNFCCC also agreed to establish three new funds to promote compliance by developing countries. Two of these funds are under the UNFCCC and one under the Kyoto Protocol. The new funds, in addition

to the GEF funding that is available to the parties, are also managed by GEF. COP-7 decided to create “a special climate change fund” complementary to GEF funding to provide finances for the adaptation to technology transfer, and the mitigation of greenhouse gases. In addition, countries that are heavily dependent on the export of fossil fuels are encouraged and assisted in diversifying their economies. The second fund, reserved for the Least Developed Countries (“LDC”), is intended to assist financially in the preparation of national programmes. The third is an adaptation fund under the Kyoto Protocol to be financed by voluntary contributions and by 2% of proceeds from certified emissions reductions generated by the Clean Development Mechanism (“CDM”) under article 12 of the Kyoto Protocol. It marks the first time that a levy is anticipated on business transactions to finance environmental and developmental activities.

- The Multilateral Environment Fund of the Montreal Protocol, along with GEF funding which is also available to the parties of the United Nations’ ozone conventions, was established to support implementation of the Vienna Convention on the Protection of the Ozone Layer and in particular to enable developing countries to meet the requirements of the Montreal Protocol, thereby addressing ozone depletion and related problems. The fund was also established to implement articles 5, paragraphs 2 and 3, in conjunction with articles 9 and 10 of the Montreal Protocol. A number of parties and organisations such as United Nations Development Programme (“UNDP”), United Nations Environment Programme (“UNEP”), World Bank, or other appropriate agencies depending on their respective areas of expertise are part of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol. The role of the Executive Committee is to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources for the purpose of achieving the objectives of the Multilateral Fund. The COP reviews the work of the

Multilateral Fund. For further information on the Multilateral Environment Fund of the Ozone Convention including its terms of reference, source of contributions, functions, and criteria for disbursing funds for incremental costs of implementation of the ozone conventions and the countries that have so far benefited from this facility, read the latest edition of the Handbook for the International Treaties for the Protection of the Ozone Layer.

f) Non-Compliance Procedures/Mechanisms

In the non-compliance procedure of the Montreal Protocol, a party that cannot meet its obligations may report its compliance problems to the Implementation Committee. In addition, any party or parties that have concerns about another party's implementation of its obligations under the Montreal Protocol may communicate the concerns in writing, supported by corroborating information, to the Secretariat. The Implementation Committee can request further information upon the invitation of the party concerned and can gather information. At the end of the procedure, the Implementation Committee reports to the meeting parties. Any recommendation it considers appropriate can be included in the report, which is made available to the parties six weeks before the meeting. The MOP may decide upon steps to bring about compliance with the Montreal Protocol. Any state involved in a matter under consideration by the Implementation Committee cannot take part in the elaboration and adoption of any recommendations concerning it. The parties subject to the procedure must subsequently inform the MOP of the measures they have taken in response to the report.

Annex V of Decision IV/18 contains an indicative list of measures that might be taken by the MOP in respect of non-compliance with the Montreal Protocol. The first consists of providing assistance, for example, the collection and reporting of data, technology transfer, financing, information transfer and training. At the second level, "cautions" are issued. The third level involves the suspension of specific rights and privileges under the Montreal Protocol. Such rights and privileges can concern industrial rationalization, production, consumption, trade, transfer of technology, financial mechanisms and industrial arrangements. A number of countries have been considered under the Montreal Protocol's non-compliance procedure.

The Kyoto Protocol compliance regime was developed pursuant to Article 17 of the Climate Change Convention by the Conference of the Parties serving as the MOP to the Kyoto Protocol.

A joint working group elaborated a draft regime on compliance that COP 7 approved in 2001 as part of the Marrakech Accords. The objective of the regime is to "facilitate, promote and enforce compliance with the commitments under the Protocol." The Marrakech Accords contain an innovative, unprecedented compliance mechanism. It foresees a compliance committee with two branches, a facilitative branch and an enforcement branch. The facilitative branch supports efforts by parties to comply. The enforcement branch monitors compliance with the most important

obligations. The enforcement branch has several tools available to bring about compliance: a party may be prohibited from selling under the emissions trading regime and for every ton of emissions by which a party exceeds its target, 1.3 tons will be deducted from its assigned amount for the subsequent commitment period. The party will be required to submit a compliance action plan for review by the committee. An appeals procedure provides for a review of decisions by the UNFCCC COP serving as the Kyoto Protocol's MOP. During the procedure, the decisions by the Compliance Committee remain in force. Overturning the decision requires a three-fourth's majority of the COP/MOP. Both branches of the committee are composed of ten members, one each from the five regions, one Small Island Developing State and two from Annex I and two from non-Annex I countries. A double majority vote is required for decisions: three-fourths of all members including a simple majority of Annex I and non-Annex I countries.

The compliance procedure was not adopted as an amendment to the Kyoto Protocol and thus is not legally binding as part of the treaty. However, upon adoption, it has the advantage of being applicable to all parties to the Kyoto Protocol.

3. Effectiveness of the Non-Compliance Procedure

Although a number of MEAs have adopted some form of non-compliance procedures, other procedures are still being developed. The compliance procedures are characterized by their cooperative, non-confrontational and non-judicial nature and in their aim of seeking amicable solutions to problems arising in connection with the application and implementation of environmental agreements. The trend is to move from the traditional confrontational mechanisms for enforcing MEAs to new mechanisms that can help parties better comply with their contractual obligations. Most procedures do not aim at compelling a party to comply with the obligations and requirements of the treaty but rather a party is assisted in its problems of compliance. The status of these procedures is between dispute avoidance and dispute settlement. The very purpose of the non-compliance procedures is to encourage or enable states to avoid resorting to formal dispute settlement procedures that are also usually provided by international environmental agreements but, outside the WTO, are hardly used.

In fact, many compliance procedures combine elements of three distinct processes: (1) processes designed to clarify norms and standards employed by a treaty; (2) processes designed to further the evolution of these norms and standards; and (3) processes designed to resolve problems among parties.

The effect on states or a proceeding before formally constituted bodies under a MEA such as the Implementation Committee or Compliance committee is mainly to provide assistance to the defaulting state and to assist parties having compliance problems and addressing individual cases of non-compliance. It does not have the effect of compelling the state to act as such. The long-standing procedure is the one that has been elaborated under article 8 of the Montreal Protocol.

To strengthen the effectiveness of implementation mechanisms developed by the convention, parties should place particular emphasis on the following aspects:

- Encourage parties to MEAs to develop and apply effective mechanisms for implementation of and compliance with those agreements;
- Promote the development and effective application of economic, legal and other incentives to enhance parties' implementation and compliance of their international obligations; and
- Promote greater use of civil liability approaches at the national level to enhance implementation of environmental law.

In principle, provisions for settlement of disputes complement the provisions aimed at compliance with MEAs. The appropriate form of dispute settlement mechanism can depend upon the specific provisions contained in a MEA and the nature of the dispute. A range of procedures could be considered, including good offices, mediation, conciliation, fact-finding commissions, dispute resolution panels, arbitration and other possible judicial arrangements that might be reached between parties to the dispute.

Developing effective national legal regimes should be considered including considering development of any further regulations if required as provided in chapter 8 of Agenda 21, and paragraphs 162 through 167 of the Plan of Implementation of the World Summit on Sustainable Development ("WSSD"). The "Polluter Pays Principle", the "Common but Differentiated Responsibility Principle" and other principles and concepts should be taken into account by decision-makers when considering measures and the timing for implementation of MEAs. The use of economic instruments is important in implementation of environmental law including in compliance and enforcement, not only for the purpose of financing environmental management, but particularly for encouraging environmentally responsible behaviour through the use of incentives or disincentives in environmental

management. This can be a very effective choice in measures to be considered in implementation of MEAs.

Enforcement capacity and strengthening of compliance institutions are important if the enforcement is to be undertaken in an informed manner by the responsible authorities, especially when some of the environmental problems are very technical and sometimes hard for some people to understand. This situation points out the importance of training, public awareness and sensitization of all who are responsible for enforcement and compliance of MEAs. This capacity building can be undertaken in government as part of human resource development or in collaboration with Convention Secretariats. Access to information as well as access to justice, public awareness and participation are important in implementing MEAs. Consideration should also be given to liability issues.

Cooperation in trans-boundary matters to address issues that have a bearing in one country but are caused by issues beyond one country's jurisdiction is also important in implementation of MEAs. The Lusaka Agreement on Cooperative Enforcement of Wildlife is a good example of countries coming together to enhance enforcement efforts in a cooperative manner. **4.**

Capacity Building Programmes: The Role of International Organizations and Compliance and Enforcement Networks

Depending on the subject or issue, MEAs are normally negotiated under the framework of international organizations: global, regional and subregional. There are MEAs that are negotiated under the framework of different organizations, including, *inter alia*, the International Maritime Organization conventions, International Labour Organization conventions, World Health Organization conventions, United Nations conventions and United Nations Environment Programme conventions. At regional level regional economic commissions of the United Nations; regional intergovernmental organizations e.g. in Europe, the European Union; Council of Europe; in Africa, the Organization of Africa Unity now African Union; Southern Africa Development Community and similar regional bodies in Asia and Latin America. The role of these organizations is to facilitate the work of the Convention Secretariat and other bodies that are established by the MEA as well as to support their work especially as it relates to capacity building in the form of technical assistance for implementation related activities of the MEA.

Several specialized organizations, regional and international groups exist to

support compliance and enforcement such as the European Union Network for the Implementation and Enforcement of Environmental Law (“IMPEL”), International Network for Environmental Compliance and Enforcement (“INECE”), the Commission for Environmental Cooperation under the North America Free Trade Area (“NAFTA”), INTERPOL, and the World Conservation Union/IUCN Specialist Group on Environmental Compliance.

IMPEL is an informal network of the environmental authorities of Norway, and the member states, future member states and candidate countries of the European Union. The network is commonly known as the IMPEL Network. The European Commission is also a member of IMPEL and shares the chairmanship of meetings. The IMPEL Cluster on Training and Exchange groups projects and activities on environmental inspection with a particular focus on training and exchange of experience, comparison and evaluation of different practices, and development of minimum criteria.

The IMPEL Cluster usually meets twice a year to discuss new project ideas and to review the progress of projects.

IMPEL-TFS is a network of representatives from enforcement authorities of the member states and some other European countries dealing with matters on Transfrontier Shipments of Waste. It is also a cluster of projects within IMPEL. The IMPEL- TFS network was established in 1992 in order to harmonize the enforcement of EU Regulation 259/93 (replacing EC Directive 84/631) on Transfrontier Shipments of Waste with regard to the supervision and control of waste shipments into, out of and through the European Union.

The aim of the IMPEL Cluster is to:

- Promote compliance with the EU Regulation 259/93 through enforcement;
- Carry out joint enforcement projects; and
- Promote exchange of knowledge and experience with the enforcement of the EU Regulation 259/93.

Every year, the IMPEL-TFS Network has a plenary conference where the working programme for this cluster is discussed. The IMPEL Cluster group’s projects and activities are tailored to the specific needs of the future member states and the candidate countries. Through consultants, the IMPEL Cluster

undertakes the following activities:

- Conducts studies, specific to the acceding/candidate countries, on enforcement of key directives are elaborated and discussed in workshops, including recommendations for follow-up;
- Trains the trainers, seminars are held in the PHARE country inspectorates;
- Carries out peer reviews of enforcement bodies (“PEEPs”); and
- Organizes study tours and carries out comparative analysis of administrative, implementation and enforcement capacity in selected countries.

NAFTA has a citizen enforcement submission process under its Environmental Side Agreement. The “citizen submissions on enforcement matters” mechanism enables the public to play an active whistle-blower role when a government appears to be failing to enforce its environmental laws effectively. Members of the public trigger the process by submitting claims alleging such a failure on the part of any of the NAFTA partners to NAFTA’s Citizen Enforcement Commission (“CEC”). Following a review of the submission, the CEC may investigate the matter and publish a factual record of its findings, subject to approval by the CEC.

INECE is a network of government and non- government enforcement and compliance practitioners from over 100 countries. INECE’s goals are to raise awareness of compliance and enforcement, to develop networks for enforcement cooperation, and to strengthen capacity to implement and enforce environmental requirements. The Principles of Environmental Enforcement were developed under the auspices of INECE.

In 1993, INTERPOL established a working party on environmental crime, it now has subgroups on wildlife crime and hazardous waste, which recently has been extended to cover other forms of pollution such as ozone depleting substances.

IUCN’s Commission on Environmental Law formed a Special Group on Enforcement and Compliance to assist IUCN member organizations and IUCN programs strengthen efforts in this area.

To further develop the area of implementation of environmental law as well

as compliance with and enforcement of MEAs, it is important for UNEP, under the Montevideo Programme III, to find ways to further develop environmental law in this area. UNEP works with parties of different MEAs to enhance compliance and enforcement of MEAs through advisory services and technical assistance to governments, training programmes, promoting the UNEP Guidelines for Compliance with and Enforcement of MEAs, undertaking studies of the existing mechanisms and enforcement problems in different sectors of the environment, and through preparation and dissemination of information in both print and electronic format.

5. Compliance and Enforcement Opportunities

The UNEP Guidelines for Compliance with and Enforcement of MEAs are in the form of a non-binding legal instrument which was developed by governments through an inter-governmental consultative process organized under the auspices of UNEP and adopted by consensus. The guidelines have two parts: one on Compliance with and Enforcement of MEAs and the second for National Enforcement, and International Cooperation in Combating Violations of Laws that are implementing MEAs. The Guidelines, although not specific to any convention, are provided as a “tool box” of proposals, suggestions and potential measures that governments and stakeholders may consider taking to improve compliance with and enforcement of MEAs.

The Global Guidelines recognize the need for national enforcement of laws to implement MEAs. Enforcement is essential to secure the benefits of these laws, protect the environment, public health and safety, deter violations, and encourage improved performance. The Guidelines also recognize the need for international cooperation and coordination to facilitate and assist enforcement that arises from the implementation of MEAs, and to help establish an international level playing field.

III. National Implementation

The purpose of these Guidelines is to outline actions, initiatives and measures for states to consider in strengthening national enforcement and international cooperation to combat violations of laws implementing MEAs. The Guidelines can assist governments, their competent authorities, enforcement agencies, Secretariats of MEAs, where appropriate, and other relevant international and regional organizations in developing tools, mechanisms and techniques in this regard.

The scope of the Guidelines is to address enforcement of national laws and regulations implementing MEAs in a broad context, under which states, consistent with their obligations under such agreements, develop laws and institutions that support effective enforcement and pursue actions that deter and respond to environmental law violations and crimes. Approaches include the promotion of effective laws and regulations for responding appropriately to environmental law violations and crimes. The Guidelines accord significance to the development of institutional capacities through cooperation and coordination among international organizations for increasing the effectiveness of enforcement.

As a follow up to the adoption of the Guidelines and to facilitate the implementation thereof, a Draft Manual on Compliance with and Enforcement of MEAs was prepared. The Guidelines and the Manual were promoted and tested in five regional workshops in 2003 to 2005. Thereafter, further work on implementation and enforcement of MEAs is being undertaken at national levels with a few selected countries to ensure that, where necessary, countries develop national enforcement programmes in defined areas of the environment to enhance compliance with and enforcement of environmental law.

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Internet Materials

Resources

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INTERNATIONAL NETWORK FOR ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT (“INECE”) available at <http://www.inece.org/>

UNITED NATIONS ENVIRONMENT PROGRAMME, COMPLIANCE AND ENFORCEMENT available at http://www.unep.org/DPDL/law/Compliance_enforcement/index.asp

WORLD CONSERVATION UNION (“IUCN”), COMMISSION ON ENVIRONMENTAL LAW, SPECIALIST GROUP ON ENFORCEMENT AND COMPLIANCE available at <http://www.iucn.org/themes/law/cel03A.html>

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