



Implementation, Compliance and Enforcement of MEAs

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Structure

1. Definitions

2. Means of Implementation

traditional and novel

3. Non-Compliance Mechanisms and
Enforcement

e.g. Kyoto Protocol

4. Discussion



Definitions: Implementation

1. Adoption of national measures in order to fulfil the obligations deriving from MEAs (e.g. regulation, procedural measures, economic measures)
2. Ensuring that these national measures are complied with by national subjects



Definitions: Compliance

Continuing fulfilment of international legal obligations

(e.g., substantive norms, procedural requirements, institutional obligations)



Definitions: Enforcement

Right to take measures to ensure the fulfilment of an international legal obligation.

Usually requires a ruling by a court or tribunal that an obligation has not been fulfilled.



Means of Implementation:

1. Regulatory Measures:

a) Standard Setting:

Process, Product, Emission, Quality

b) Prohibitions and Restrictions:

Limits and Bans, Taking restrictions,
Trade Measures (export and import
restrictions), Land use regulation

2. Environmental Impact Assessment

3. Environmental Information – PIC

4. Economic Measures



UNFCCC, Art. 4 (i)(f):

States shall...take climate change consideration into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, *for example impact assessments*, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.



1982 UNCLOS, Art. 206 :

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant harmful changes to the marine environment, they shall, as far as practicable, *assess the potential effects of such activities on the marine environment* and shall communicate reports of the results of such assessments at appropriate intervals to the competent organisations, which should make them available to all states."



Environmental Impact Assessment

1. description of the proposed activity
2. a statement of the reasonable alternatives, including no-action alternatives
3. information on the environment of the likely affected sites and site-alternatives
4. potential environmental impact and estimation of its significance
5. description of the mitigation measures to keep environmental impacts at a minimum
6. explanation of predictive methods and underlying assumptions and all environmental data used
7. identification of gaps of knowledge and uncertainties in compiling the required information
8. an outline for monitoring and management programs
9. a –non-technical summary and a visual presentation



Non-Compliance Measures in MEAs

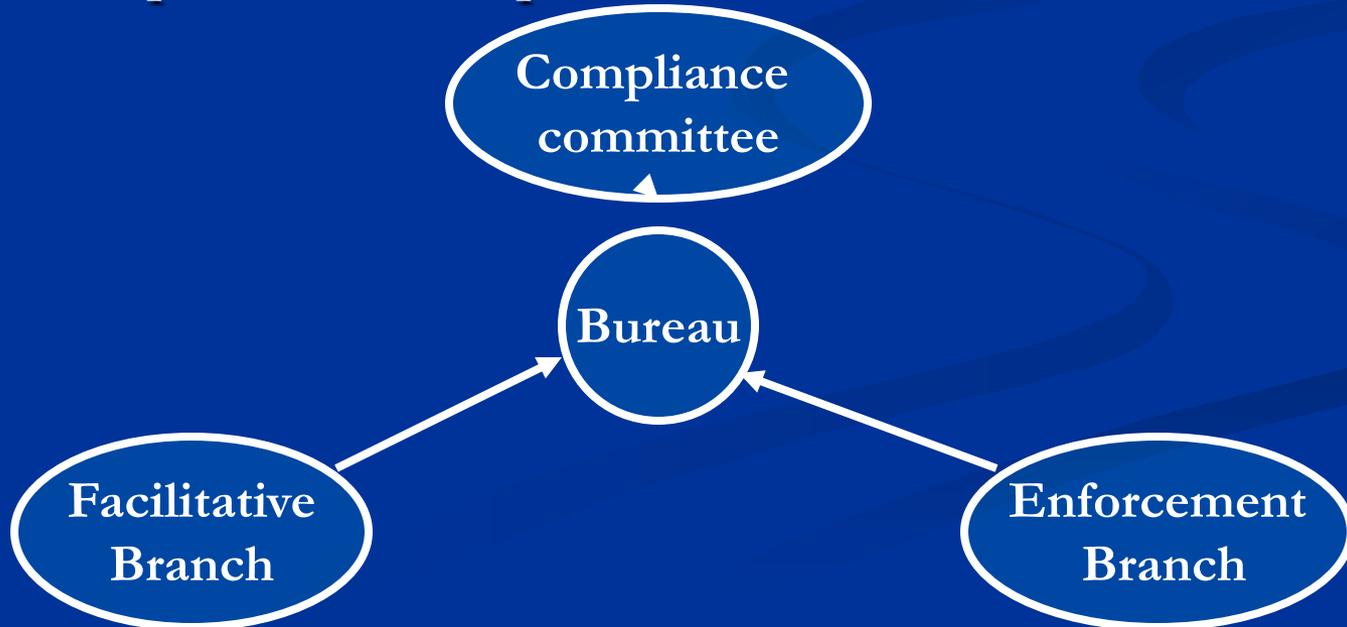
- Separate mechanisms within MEAs to promote compliance
- Objective:
 - encourage states to comply with their treaty obligations
 - provide a 'softer' system to address non-compliance
- Designed to assist the non-complying state, not to incriminate it for non-compliance
 - Access broader than in traditional dispute resolution (can be invoked by one or more parties regarding another parties implementation)
 - No 'standing' in the traditional sense required, no injured states necessary
 - Reflect the need for continuing participation in the treaty and fulfilment of generally non-reciprocal obligations



Non-Compliance Measures & Kyoto Protocol

Art. 18 Kyoto Protocol: “The Conference of the Parties shall...approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance.... Including through the development of an indicative list of consequences.”

COP7/COP11: adoption of a compliance committee





Conclusion:

- confidence building and cooperation between parties rather than authoritative, confrontational means;
 - allow compliance issues to be addressed in a multilateral context, rather than through bilateral disputes resolved through third party arbitration
- can be designed to head-off potential non-compliance, rather than waiting for a formal case of breach to be established
- promote the resolution of compliance problems in a cooperative rather than adversarial manner through procedures designed to facilitate rather than enforce compliance
- relationship to general international law: not *res judicata*; if the question that the EB had to decide were to be raised before another tribunal (ICJ, ITLOS, ECJ, ECHR, PCA), the decisions of the EB would not be considered to have any precedential legal effect