Recap

1. Which **relevance** does the principle of state sovereignty have for International Environmental Law?

2. Which arguments could be made **in favour** of the principle of state sovereignty with respect to the protection of the (global and domestic) environment?

3. Where do you see **limitations** of the principle of state sovereignty with respect to the protection of the (global/domestic) environment?
Implementation, Compliance and Enforcement of MEAs

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1. Definitions (implementation, compliance, enforcement)
2. Means of Implementation
   traditional and novel
3. Non-Compliance Mechanisms and Enforcement
   e.g. Kyoto Protocol, Aarhus Convention
Definitions: Implementation

1. Adoption of national measures in order to fulfill the obligations deriving from MEAs (e.g. regulation, procedural measures, economic measures)

2. Ensuring that these national measures are complied with by national subjects
Kyoto Protocol Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:
(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:
   (i) Enhancement of energy efficiency in relevant sectors of the national economy;
   (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases....
Convention on Biological Diversity
Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:
(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned; and
(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.
Definitions:
Compliance

Continuing fulfillment of international legal obligations
Definitions:
Enforcement

Right to take measures to ensure the fulfillment 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. Risk Assessment

4. Environmental Information – PIC

5. 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
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

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5. Economic Measures
Non-Compliance Measure 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 party’s 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 mechanisms in MEAs

• The Montreal Protocol
• CLRTAP
• CITES
• The Aarhus Convention
• UNFCCC /Kyoto protocol
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
The compliance system of the Kyoto Protocol

• Three functions
  – Fact-finding
  – Legal assessment
  – Determination of consequences

• Legal basis
  – Expert Review Teams (KP art. 8)
  – Non-compliance procedure (KP art. 18)
    • Dec. 24/CP.7 (Marrakesh Accords)
    • Dec. 27/CMP.1
    • Rules of Procedure (Dec. 4/CMP.2 revidert Dec. 4/CMP. 4)
## Compliance Committee

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## Sanctions

| Non-compliance with emissions obligations | Compliance action plan  
|                                          | Suspension of the rights to sell emission quotas  
|                                          | Reduction of emission quota for the next commitment period x 1.3 |
| Non-compliance with methodological and reporting obligations | Declaration of non-compliance  
|                                                            | Compliance action plan |
| Non-compliance with requirements for flexibility mechanisms | Suspension of the rights to use the relevant flexibility mechanism |
Legal status of sanctions

• Compliance action plan
• Suspension of right to sell quotas
• Suspension of right to use the relevant flexibility mechanism
• Reduction of quota for the next commitment period
• What are the consequences of non-binding consequences?
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