

*Course on Compliance with and Enforcement of
Multilateral Environmental Agreements: Lecturer's Manual*



UNEP

UNITED NATIONS ENVIRONMENT PROGRAMME



COURSE ON

COMPLIANCE WITH AND ENFORCEMENT OF
MULTILATERAL ENVIRONMENTAL AGREEMENTS

LECTURER'S MANUAL

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Acronyms

CBD:	Convention on Biological Diversity, 1992
CEP:	compliance and enforcement program
CI:	Conservation International
CITES:	Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973
CMS:	Convention on the Conservation of Migratory Species of Wild Animals, 1989
COP:	Conference of the Parties
CSD:	Commission on Sustainable Development
DSB:	(WTO's) Dispute Settlement Body
DVD:	digital video disk
EC:	European Community
ECOSOC:	(UN) Economic and Social Council
ECTS:	European Credit Transfer and Accumulation System
EEP:	environmental enforcement program
EU:	European Union
FAO:	UN Food and Agriculture Organization
FIELD:	Foundation for International Environmental Law and Development
GATT:	General Agreement on Tariffs and Trade
GEF:	Global Environment Facility
GEO:	Global Environment Outlook
ICJ:	International Court of Justice
IEC:	international environmental court
IEL:	international environmental law
IGO:	inter-governmental organization
INC:	Inter-governmental Negotiating Committee

INECE:	International Network for Environmental Compliance and Enforcement
ITLOS:	International Tribunal of the Law of the Sea
IUCN:	International Union for the Conservation of Nature (formerly, the World Conservation Union)
MEA:	multilateral environmental agreement
NAAEC:	North American Agreement on Environmental Cooperation
NAFTA:	North American Free Trade Agreement
NCP:	non-compliance procedure
NGO:	non-governmental organization
ODP:	ozone depletion potential
PIC:	prior informed consent, often referring to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998
POPs:	persistent organic pollutants, often referring to the Stockholm Convention on Persistent Organic Pollutants, 2001
PPT:	PowerPoint (presentation)
UNCCD:	United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994
UNCLOS:	UN Convention on the Law of the Sea, 1982
UNDP:	United Nations Development Programme
UNEP:	United Nations Environment Programme
UNFCCC:	UN Framework Convention on Climate Change, 1992
UNFSA:	UN Fish Stocks Agreement, 1995
UNITAR:	United Nations Institute for Training and Research
UNU:	United Nations University
WSSD:	World Summit on Sustainable Development
WTO:	World Trade Organization

Course Overview

This *Manual* is part of a set of materials for a university course on “Compliance with and Enforcement of Multilateral Environmental Agreements” developed by the United Nations Environment Programme (UNEP) in cooperation with IUCN Academy of Environmental Law. These materials include a course syllabus; curriculum content (including sample PowerPoint presentations) with supporting references and materials; and this *Manual* for lecturers, instructors, and professors.¹ The course and its materials are designed to be adapted to a wide range of legal, educational, and cultural settings.

This course on Compliance with and Enforcement of MEAs provides students with guidance on the practical aspects of negotiating, implementing, and enforcing environmental law at the international and national levels. As such, the course and its materials are designed to complement existing courses on environmental law and international environmental law.

Indeed, the course and materials assume a certain familiarity with MEAs and domestic environmental law. If this course is being used in a context where the students have not yet studied international or domestic environmental law, the lecturer may need to provide additional substantive background, especially regarding the MEAs and institutions in this course’s case studies and examples.

ORIGINS

This course grew from the synergies of two initiatives to promote compliance and enforcement. Its genesis lies in the work of the IUCN Commission on Environmental Law Specialist Group on Compliance and Enforcement. The course scope and materials draw heavily from a UNEP initiative that led to the development of Guidelines (in 2002) and a Manual (in 2006) on Compliance with and Enforcement of Multilateral Environmental Agreements, as well as other capacity-building activities.

For more information, see http://www.unep.org/dec/Support/Cross_Cutting/Compliance_Enforcement.asp.

As set forth in the syllabus (in Appendix I), the course begins with an overview of MEAs and what motivates people, institutions, and states to comply with and enforce environmental law. The first section of the course – focusing on compliance and enforcement at the international level – includes units on preparing for and participating in negotiation of MEAs, implementation, compliance processes, responses to non-compliance, and synergies and interlinkages. The second section of the course – focusing on compliance and enforcement at the national level – includes units on national approaches for implementation and enforcement, incorporation of MEAs into national law, institutional arrangements, enforcement, the role of the public, public

¹ For simplicity, this Manual refers to use by “lecturers.” This is understood to include professors, instructors, teachers, and other educators who may use the materials in a course.

education and working with the media, and case studies on national institutions and practices. The course concludes with a discussion of trends and future directions.

Throughout the course, the curriculum and materials highlight real-world examples and lessons learned that are set forth in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*. In many instances, the *Manual* has additional case studies that lecturers may use to illustrate particular points.

Scope of MEAs

The course and materials will focus on 10 MEAs, bringing in examples from other MEAs for specific illustrations, for example, when these 10 do not necessarily have a good example. These include, by cluster:

○ Rio Conventions

- Convention on Biological Diversity (CBD) (including the Cartagena Protocol)
- Climate (UNFCCC and Kyoto)
- UN Convention to Combat Desertification (UNCCD)

○ Biodiversity-Related MEAs

- CBD and Cartagena Protocol on Biosafety (repeat)
- Convention on International Trade of Endangered Species of Wild Flora and Fauna (CITES)
- Ramsar Convention on Wetlands
- Convention on Migratory Species (CMS)
- World Heritage Convention

○ Chemical and Waste-Related MEAs

- Ozone (Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer)
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (and regional conventions)
- Stockholm Convention on Persistent Organic Pollutants/POPs
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade/PIC

○ Other MEAs

- UN Convention on the Law of the Sea (UNCLOS) (including the United Nations Fish Stocks Agreement (UNFSA); depending on the location of the university and interest, this may also include the relevant Regional Seas Agreement(s))

Target Audience

This course is designed for postgraduate and advanced undergraduate students, depending on the country and educational institution. The primary focus is on law students, but the course and materials are designed to be relevant to students in international relations, environmental management, and other related disciplines.

The course and materials are intended to be relevant to a broad array of countries and educational contexts. As such, the materials provide generic material; lecturers are encouraged to add the country-specific and region-specific perspectives (laws, policies, constraints, political priorities, experiences, etc.).

Length of Course

The materials have been developed initially for a one-semester course lasting up to 15 weeks. The syllabus and curriculum may easily be adapted to shorter semesters, as well as to short courses and certificate courses.

Course Units

This course is divided into 15 Units. Each Unit is a thematic unit. It may, for example, constitute one class of 2 or 3 hours, or two classes of 60 or 90 minutes.

How to Use This Manual

The course and materials may be used as a stand-alone course or alternatively, elements of this course and materials may be incorporated into existing courses, for example on international environmental law. It is designed to be adaptable to a wide range of contexts, including developed and developing countries; civil and common law systems; and classes on law, policy, management, and international relations. The course and materials are intended for advanced undergraduate or postgraduate students. In addition to law students, the course may be appropriate for students in courses such as environmental management and international relations.

The syllabus, curriculum, and other materials have been prepared to assist universities in both developing and developed countries to prepare future lawyers to more effectively negotiate, draft, implement, and enforce MEAs and implementing environmental laws and policies.

In many universities in developing countries, opportunities to use electronic teaching aids in classes are quite limited. While the course materials include sample PowerPoint presentations and other technology-based approaches, in many instances, these materials may equally be used as the basis for more traditional lectures.

For each Unit, this *Manual* provides:

- an **introduction** to the topic(s) and how the topic(s) of that Unit relate to other Units;
- **learning objectives**, to indicate what the student should know by the end of that Unit;
- suggested **teaching methodology** and considerations for that particular Unit;
- **substantive knowledge to be gained** in the Unit, including the principal themes, variations, and the lecturer's country context;
- ideas for **class discussion**, including questions and discussion points; and
- **reading materials**, including reference materials (including relevant MEAs and MEA provisions) and other materials that the lecturer may consider as background for the lecture or as additional/alternative reading assignments.

The syllabus, curriculum, and materials are designed to be adapted to different academic, legal, cultural, and socio-economic systems. This includes a range of preferred methods of academic teaching, from formal lectures to information technology-assisted teaching. **Lecturers are actively encouraged to amend, excerpt, or otherwise adapt and use the course materials. However, in doing so, you are asked to acknowledge that you have adapted the materials from those provided by UNEP.**

In preparing the course for use in a particular institution, consideration should be given regarding opportunities to earn class credit. In the European Union (EU), this may mean development of a course by which a student may earn credits under the European Credit Transfer and Accumulation System (ECTS). For an overview about the European ECTS, see http://ec.europa.eu/education/programmes/socrates/ects/index_en.html. As an example, see the programme for a Certificate of Advanced Studies in Environmental Diplomacy jointly undertaken by the University of Geneva, UNEP, and UNITAR <http://www.unige.ch/formcont/environmentaldiplomacy/certificate.html>. Similarly, there is a Diploma in International Environmental Law-making and Diplomacy jointly provided by the University of Joensuu and UNEP (<http://www.joensuu.fi/unep/envlaw>).

Teaching Methodology

The course materials encourage the use of a range of teaching approaches. Compliance and enforcement entail practical considerations of implementation. As such, the teaching methodologies need to be versatile. Lecturers are encouraged to try additional methodologies in order to actively engage the students. The teaching methodologies for this course can include:

- traditional course reading assignments and lectures,

- active discussion with the students (sometimes referred to as the “Socratic method”),
- role playing,
- small group discussions,
- brain-storming,
- problem solving, and
- drawing lessons from the experiences of students and guest lecturers.

For many subjects, it may be possible or desirable to invite someone with particular experience in that particular aspect to share experience (e.g., in negotiating MEAs). Guest lecturers can add invaluable on-the-ground perspectives. They also provide the students with opportunities to meet, learn from, and talk with practitioners of diverse backgrounds.

For each topic, a lecturer may consider beginning with the general background, and then cover how the lecturer’s country addresses the particular issue. The lecturer may then provide examples from other countries and contexts – the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* provides many such examples that may be useful in this respect – and inquire about the comparative benefits and problems of the other approaches.

KEY POINTS TO BEAR IN MIND:

- the course and materials focus on *practical*, real-world aspects of developing, implementing, and enforcing MEAs;
- the course and materials assume *some familiarity with MEAs and domestic environmental law*;
- the course is designed to *complement existing courses* on environmental law and international environmental law; and
- the course and materials are *adaptable* and are intended to be tailored to the particular course context and needs.

UNIT 1:

Introduction to Compliance with and Enforcement of MEAs

INTRODUCTION

This Unit introduces the course, orients students, and provides background information as necessary. It begins with a review of environmental trends. Most students will be familiar with some environmental trends from the popular press, their other classes, and perhaps also their own personal reading and inquiry. In addition to the various statistics and anecdotes common to existing courses, this Unit provides graphic illustrations to give people visual perspectives regarding environmental trends.

The Unit then describes the role of international environmental law (especially MEAs) in responding to those environmental challenges. For classes in which students have not taken public international environmental law, the Unit provides an optional primer on international law.

Using specific examples, the Unit discusses the basics of compliance and enforcement. It highlights the international shift from developing treaties to implementation. The Unit identifies a number of key cross-cutting themes. These include:

- benefits of compliance and enforcement;
- transition to compliance and enforcement;
- relationship between regulatory models and compliance and enforcement;
- coordination and cooperation; and
- synergies and interlinkages.

The Unit highlights the roles of different actors, including various national government agencies, intergovernmental bodies, sub-national governmental units, the public and private sectors, local communities, and indigenous people. The Unit also compares several effective and problematic examples of compliance and enforcement. It concludes with a brief overview of the course.

From an administrative standpoint, Unit 1 is also the orientation for the course. In this context, time may need to be allotted to describe the grading policy, attendance policy, etc. This is also an opportunity to explain innovative teaching methods, if lecturers wish to adopt them, as described below.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- discuss recent environmental trends, highlighting a range of environmental priorities (including those that are being addressed by MEAs, as well as those not covered by MEAs);
- describe the importance of international environmental law – and MEAs in particular – in responding to environmental challenges;
- identify challenges to effective compliance with and enforcement of MEAs;
- compare the effectiveness and appropriateness of different approaches for promoting compliance with and enforcement of MEAs; and
- describe various factors that promote or deter compliance.

These learning objectives reflect the broader learning objectives for the overall course. At the end of the Unit, the students should understand the basic concepts and ideas regarding these topics, which will be expanded upon over the remainder of the course.

TEACHING METHODS

As the beginning of the course, Unit 1 necessarily entails some of the standard administrative tasks (reviewing the syllabus, reading materials, grading policy, etc.). Considering the breadth of material to be covered in the course and in the Unit, it is important to cover the administrative matters expeditiously.

Students should be asked to complete a one-page survey that assesses their perspectives on different aspects of compliance with and enforcement of MEAs. This is not a test to see how much they know as much as an assessment of what they view to be the context, the adequacy of responses, the next steps to be taken, etc. This survey should be quick and easy to fill out and be amenable to tabulating the results. Lecturers may consider doing this exercise at the very beginning of the class – before any substantive presentations have been given– and then again at the end of the course in Unit 14. Comparing the “before” and “after” results can generate interesting discussions in the subsequent class, in Unit 15. **Sample surveys are included in Appendices II and III.** Note: the results may also indirectly highlight certain aspects of teaching. It would also be worth saving the results from year to year to compare trends over time.

Depending on your particular educational institution, it may not be realistic to require students to read material in advance. While reading and reference materials are included below, this Unit can be taught without any advance reading on the part of the students.

After dealing with administrative matters, the Unit should canvass global environmental challenges and reasons for international environmental law. This discussion

will assist in motivating students, providing clear reasons why compliance with and enforcement of MEAs is important.

UNEP produced a compelling publication entitled *One Planet, Many People: Atlas of Global Environmental Change* (available on-line at <http://www.na.unep.net/OnePlanetManyPeople/index.php>). This “Atlas” provides numerous side-by-side comparisons of satellite images over a period of approximately 30 years. This clearly illustrates sprawl, deforestation, disappearance of lakes, and other environmental challenges. Rather than doing so in a dry, fact-intensive lecture, the Atlas *illustrates* it with photos.

Drawing upon the images and stories of the Atlas, UNEP developed a PowerPoint presentation. ***This PowerPoint presentation is included in the teaching materials as Unit 1.*** Please note the following:

1. The comparison of images in the Atlas PPT presentation can be quite compelling, and the lecturer may want to repeat the images once or twice so that the students can see the changes more clearly.
2. If lecturers use the Atlas PPT presentation, note that the “notes” below the PPT image frequently include a summary of the story behind the images.
3. The Atlas PPT presentation does not have much that is not subject readily to satellite imaging. Accordingly, lecturers might consider supplementing the PPT presentation with other images and/or statistics on waste, hazardous waste, persistent organic pollutants, biological diversity, and climate change.
4. Lecturers may use this PPT presentation (if PPT facilities are available for their class). Alternatively, lecturers may draw upon the statistics and anecdotes in the Atlas PPT. In both cases, lecturers may wish to use the findings, maps, PPT presentations, etc. from UNEP’s Global Environment Outlook (GEO). The latest report, GEO 4, is available in English, French, Chinese and Spanish (<http://www.unep.org/geo/geo4/media/>). The DVD of *An Inconvenient Truth*, including both the movie and the update, may provide additional images and film footage.

Following a discussion of the environmental challenges, Unit 1 can provide a brief review of MEAs and how they were intended to respond to the challenges. This may include a broad historic overview, and a survey of the 10 MEAs on which the class will focus.

Depending on the students’ knowledge – namely, whether they have already taken public international law and/or international environmental law – it may be useful to provide a brief primer on basic international law concepts and an overview of international environmental law. This component of the class may be optional (self-study) or shortened, depending on the need. Material for such an introduction to international law and international environmental law is provided in Unit 2.

The final segment of Unit 1 focuses on the basics of compliance and enforcement, cross-cutting themes, and the roles of various actors in the environmental law realm.

SUBSTANTIVE ISSUES

Principal Themes

1. Environmental change can sometimes be dramatic, but often it is the result of numerous small decisions and actions over time. It is only by taking a broad view over space and time that the changes become apparent. It is generally only then that basic assumptions, such as the extent and limits of available resources, may be challenged.
2. There are numerous responses to environmental challenges. These include literally hundreds of MEAs developed on a global and regional basis. These have grown dramatically in number and scope over the last 40 years.
3. Often however, there is an “implementation gap”, where institutional, legislative, and policy measures and compliance and enforcement processes substantially lag behind the ratification of an MEA.
4. Attention is increasingly focused on ways to improve compliance with and enforcement of MEAs at the international and national levels. Regional measures – including regional agreements, cooperation, and exchange of information – are also important.
5. In order to realize improved compliance and enforcement, it is necessary to understand what is effective and under what circumstances. It is also important to know what motivates people and institutions in particular contexts, and how to put the necessary measures in place to ensure compliance and enforcement.

Variations in Teaching Approach

Variations in teaching approach in the delivery of the Unit may be necessary, depending on practical availability of PowerPoint (PPT) facilities. Where PPT facilities are not available, reliance on the UNEP GEO and similar publications will be appropriate.

Delivery of the Unit will also depend on the extent to which students have taken a course in international environmental law (which is strongly encouraged). If they are not familiar with the basics of international environmental law, a survey of the instruments may be appropriate in this Unit as well as the next.

To the extent possible, the Lecturer may wish to draw upon examples from the region. This can include specific environmental problems in recent news, as well as longer-term trends. There are many more “before” and “after” images available for free download from the Atlas website; you may select specific examples from your region that may be more familiar or relevant to the students. For example, images from the African region are available at <http://www.na.unep.net/atlas/AfricaAtlas/media.html>.

Your Country

1. Identify specific changes that have occurred in your country over the past 100, 30, or 10 years. This may be a mixture of nation-wide and local changes (e.g., urban sprawl or clean water issues). Some of these changes may be improvements, for example, as a result of the implementation of certain regulatory measures (e.g., the phasing-out ozone-depleting substances). One useful resource may be your country's State of the Environment report, if it produces them. Even if such reports are not prepared on a regular basis, there may be *ad hoc* reports, such as the ones that many countries prepared for the World Summit on Sustainable Development (WSSD).
2. Prepare a list of all MEAs to which your country is (1) a signatory, or (2) a party (that is, that your country has ratified the MEA). You may also note examples where your country is participating in negotiations that may lead to new MEAs or adjustments to existing MEAs.

CLASS DISCUSSION

Issues for Discussion (**NOTE: These questions are key thematic questions and issues that the class will examine throughout the course.**)

1. Specify the major environmental problems in your country, and discuss the extent of each of those problems.
2. Can the environmental problems be solved? Are there technical matters which need to be addressed? Are there difficulties with environmental governance and institutional inertia? Or is it a combination of both technical and governance issues? Is there hope for a better environmental future in your country?
3. What is the role of international environmental law, and particularly MEAs, in resolving global environmental problems?
4. What is the role of national initiatives in resolving global environmental problems? How well do the national laws, plans, institutions, and other initiatives assist in implementing MEAs and other international initiatives?
5. What are the benefits and challenges for countries – including yours – of being party to many MEAs? What are some approaches for addressing the challenges?
6. What is the role of the public in developing, implementing, and enforcing MEAs? Should developing, implementing and enforcing MEAs be stronger? If so, why and how should this be done?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit – if readings cannot be done before Unit 1 begins, lecturers should encourage students to peruse them before Unit Two is conducted. The material listed under Suggested Readings can assist in preparing for this Unit. Lecturers may also assign excerpts from these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006) available at http://www.unep.org/delc/docs/UNEP_Manual.pdf at pp. 29 - 38 (background on compliance and enforcement); and pp. 43 – 58.

Suggested Readings

- UNEP, *One Planet, Many People: Atlas of Global Environmental Change*, available on-line at <http://www.na.unep.net/OnePlanetManyPeople/index.php>.
- UNEP, *Global Environment Outlook* and associated publications and resources, available generally at <http://www.unep.org/DEWA/>.
- The State-of-the-Environment report (or reports) for your country.
- UNEP, *Training Manual on International Environmental Law* (2006), available at http://www.unep.org/law/PDF/law_training_Manual.pdf.
- Carl Bruch, *Growing Up: International Environmental Law Enters Adolescence*, 23(3/4) *Envtl. F.* 28 (2006) (included in course materials).
- Web pages for the 10 target MEAs:
 - Convention on Biological Diversity (CBD) (including the Cartagena Protocol on Biosafety): <http://www.cbd.int/>.
 - United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to the UNFCCC: <http://unfccc.int/>.
 - United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD): <http://www.unccd.int>.
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): <http://www.cites.org>.
 - Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention): <http://www.ramsar.org>.
 - Convention on the Conservation of Migratory Species of Wild Animals (CMS): <http://www.cms.int>.
 - World Heritage Convention: <http://whc.unesco.org/>.
 - Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer: <http://ozone.unep.org/>.
 - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal: <http://www.basel.int>.
 - Stockholm Convention on Persistent Organic Pollutants (POPs): <http://chm.pops.int/>.

- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC): <http://www.pic.int>.
- UN Convention on the Law of the Sea (UNCLOS): <http://www.unlawoftheseatreaty.org/>.
- The International Network for Environmental Compliance and Enforcement (INECE) is a leading resource on compliance and enforcement. In addition to their website (<http://www.inece.org>) which has an extensive set of resources (including archived papers from past INECE conferences), INECE produced *Making Law Work: Environmental Compliance & Sustainable Development* (Cameron May 2005), a 2-volume set edited by Durwood Zaelke et al. This invaluable compendium is worth reviewing, both for background and for potential class readings.

Section I

Compliance and
Enforcement at the
International Level

UNIT 2:

Negotiating MEAs

INTRODUCTION

In Unit 1, students learned about the nature of international environmental law (IEL), the challenges that it presents, and how MEAs fit into the overall scheme of IEL. Unit 2 brings home the fact that an MEA is a negotiated product that is developed, implemented, and enforced out of concern for a specific environmental issue such as biodiversity conservation, climate change, or pollution of the air, water, or land. An MEA can also address particular needs, such as demands for greater public participation in environmental decision-making processes. It also emphasizes the fact that MEAs can originate from specific interests represented by the primary stakeholders and the various States that will ultimately become a Party to the agreement, but can also be influenced by other actors including non-government organizations (NGOs), international institutions, and private industrial and commercial interests, generally known as the “private sector.”

The process of negotiating an MEA can be important in enhancing compliance. As such, students should understand the preliminary work conducted both before and during actual negotiations, in addition to understanding the roles that the various actors, play in these processes. Those actors include States, intergovernmental organizations, NGOs, and the private sector. This Unit therefore focuses on the processes of preparing for and effectively participating in negotiations, the dynamics of the process itself, and its outcomes.

Students may benefit greatly from participation in simulated negotiations, which can provide a better understanding of the dynamics and complexities of developing an MEA. Accordingly, Unit 3 offers students that experience. However, before they participate in a simulated negotiations process, they should understand the rules associated with that process. This Unit prepares them for the simulation by surveying substantive aspects of MEA negotiations as well as practical considerations.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- comment on the preparations that a State should make in order to participate effectively in negotiations and describe specific ways to prepare for negotiations;
- generally discuss and evaluate negotiations processes;

- compare and contrast signature, ratification, acceptance, approval, and accession to MEAs;
- debate the issue of withdrawal from an MEA; and
- participate in a role-playing exercise on negotiation of an MEA.

TEACHING METHODS

Unit 2 is designed to prepare students for Unit 3, which involves a role-playing in MEA negotiations. It thus focuses mainly on negotiation processes, including prenegotiations, negotiations, adoption, and signature, as well as ratification, accession, and entry into force.

The teaching of this Unit would be a good time to invite to the class a ministerial representative in charge of negotiating MEAs (if available) to share real-world experiences with the class. The first part of the Unit can focus on reviewing the key aspects of MEA negotiations by going through the various phases and discussing the accompanying issues.

The second part of the Unit can then be devoted to the guest speaker who can share some practical considerations. He/she should also share some ideas concerning negotiation skills and methods. Depending on the specific speaker, it may be worth asking the speaker focus on negotiations in a specific context, such as biodiversity or climate change, so that the discussion is as concrete as possible.

SUBSTANTIVE ISSUES

Principal Themes

1. Begin the class by reviewing basic aspects of an MEA from Unit 2 [**slide 2**].
2. The above review will form the background for a discussion on the broad steps in a negotiation process [**slide 3**], which includes:
 - pre-negotiation,
 - negotiation,
 - adoption and signature,
 - ratification and accession,
 - entry into force, and
 - withdrawal.
3. Before discussing the various steps, explain that negotiations can take place within a range of contexts, which may determine how issues are approached and the strategies that may be employed [**slide 4**].
4. Examine each of the various steps. When discussing pre-negotiations [**slides 4 - 8**], emphasize the distinction between pre-negotiation on the international level and at the national level. On the international level [**slide 4**], discuss the role of interna-

tional organizations in creating awareness that may ultimately lead to the creation of an official intergovernmental body to investigate a specific issue as a possible treaty subject. Lecturers should also highlight the role of intergovernmental bodies such as the United Nations Environment Programme (UNEP), the Economic and Social Council of the United Nations (ECOSOC), the Commission on Sustainable Development (CSD), and the United Nations Development Programme (UNDP) in identifying the need for such investigation. At this point, it would be useful to contrast different experiences regarding scientific understandings of particular issues and how that has influenced the development and implementation of MEAs (e.g., compare and contrast ozone depletion and climate change).

On the national level [slides 6 - 8], lecturers should stress the importance of a detailed analysis of issues most relevant to a negotiating country's position and the involvement of the different stakeholders in this process. In particular, lecturers should address the benefits of particular negotiating positions, risks of alternative positions, ability to implement or enforce (at the national and international levels, as appropriate), and potential implications of failure to implement or enforce.

You may want to ask your guest lecturer (if you have one) to comment on the task of mobilizing a national team during negotiations and the roles assigned to each member.

5. Guide the class through the process of the actual negotiations [slides 9 - 14], distinguishing between the roles of plenary sessions, contact groups, subsidiary bodies, and working groups. Here, lecturers should once again discuss the role of the various groups in the Intergovernmental Negotiating Committee (INC) – i.e., governments, intergovernmental organizations, and NGOs such as IUCN, and business groups. Lecturers should emphasize the fact that while NGOs and most intergovernmental organizations may not become parties to the final agreement, they do play an increasingly central role in making and implementing MEAs. NGOs, for example, may provide legal and technical expertise, as well as diplomatic expertise, where that expertise is lacking within a specific country. In addition, you may ask your guest lecturer to address the dynamics of the negotiation process, such as situations of deadlocks and how they are resolved, or the “rules for negotiation”, such as making oral interventions at a meeting. A brief discussion on the role of language in treaty making should follow. Lawyers will know that a single word may change the meaning of a legal provision. This must be taken into account when negotiating an MEA. You could illustrate this by using different terms, such as the words “may,” “should,” “must,” and “shall.” You should explain the way such words are used in treaty provisions. You should also discuss the role of different negotiating strategies. You could ask your guest lecturer how these different strategies can be practically applied to achieve maximum benefits for the negotiating country. Finally, you should discuss possible outcomes from the negotiations process such as a Statement of the Chairperson, resolutions, conclusions, recommendations, or formal decisions.
6. Focus next on what happens at the end of the negotiations process: signing and adopting the final text [slide 15]. Discuss the function of signature by a State.

7. Highlight the fact that States may make a reservation when becoming party to an MEA, for example to restrict the application of certain provisions of the MEA [slide 16], but also stress that more recent MEAs generally do not allow for reservations.
8. Briefly discuss the effect of ratification and accession [slide 17], keeping in mind that this will be dealt with more fully in unit 9.
9. Discuss what occurs when an MEA enters into force [slide 18].
10. Discuss the question of whether a State may withdraw from an MEA [slide 19] and raise the possibilities for amending an MEA [slide 20].

Variations in Teaching Approach

The lecturer may consider comparing two sets of negotiations as case studies. Such an approach could highlight how different contexts can shape different negotiating strategies, approaches, and outcomes.

Your Country

1. Establish whether your country is participating in any current MEA negotiation processes and use a current process as the basis for discussion.
2. If you are from a small or developing country,
 - Consider how the various steps in the negotiation process will affect your country, addressing issues such as financial and human capacity to negotiate effectively.
 - Consider specifically the capacity of your country to engage effectively in the pre-negotiation process and whether it sufficiently engages with all the stakeholders during this period.
 - If your country is currently involved in negotiations, has it engaged stakeholders in its current MEA negotiations process?
 - Consider also the ability of your country to assess its own needs and abilities to implement MEAs, and especially any that are currently under negotiation, where applicable.
3. If possible, obtain samples of briefing notes and statements used by your country in negotiations (note 2 above).
4. Ask your guest lecturer to discuss how your country approaches the negotiations process, including strategies, rules of negotiations, preparation, and so on.
5. Prepare a list of all MEAs signed and ratified by your country and make it available to the class.

CLASS DISCUSSION

Issues for Discussion

1. Negotiating an MEA is an ideal opportunity to discuss global environmental problems and how they relate to the need for new international law, thus connecting environmental problems with the question of how international law is made. Students can identify current global problems that may require new MEAs. They can also discuss the challenges that may arise when environmental problems are not perceived to be truly global problems. For example, the process leading to the 1992 UN Conference on Environment and Development (more popularly known as the Earth Summit) highlighted the priority of developing countries to address desertification. The push by developing countries, and particularly African countries, to address desertification and land degradation led to the negotiation and adoption of the 1994 UN Convention to Combat Desertification – a convention that now enjoys near-universal membership. In contrast, climate change was perceived at that time to be primarily a developed country problem, so the UNFCCC (and especially the subsequent Kyoto Protocol) focused particularly on controlling emissions from developed countries. More recently, that perception has changed, with increasing emphasis now being placed on a much wider range of industrialised developing countries being brought into the emissions control regime.
2. Students may discuss the need for countries to assess their own needs with respect to a specific global environmental problem and their capacity to implement and enforce an agreement, especially with respect to existing national laws and regulations, and to the financial and human resources required to implement and enforce those provisions.
3. Students may discuss the need to form or join coalitions to increase negotiation leverage and reduce costs, especially for smaller developing countries.
4. Students must clearly understand the difference between merely signing a treaty and becoming party to it through the process of ratification or accession. They must also understand the different consequences that result from MEAs that are signed and those that are ratified.

In particular, signature indicates that the final document reflects the negotiations and is generally understood to indicate an intent to become a party. According to the 1969 Vienna Convention on the Law of Treaties, signature of a treaty, protocol, or other international instrument obliges a country to refrain from acts that would defeat the object and purpose of the instrument. What is the difference between being bound by an MEA and being committed to not undermine it? Perhaps the clearest example comes from outside the environmental context.

In 2002, the United States and Israel “unsigned” the 1998 Rome Statute establishing the International Criminal Court (ICC). (This may have been the first documented case of unsigned a convention.) If the U.S. and Israel were only signatories and not parties to the Rome Statute – and thus not bound by its provisions – why would they unsigned the Statute? In short, they were concerned that,

under the terms of the Rome Statute, other countries would be bound to send U.S. and Israeli nationals to the ICC if those persons were indicted and within the territory of the other countries. This was particularly a concern for the United States regarding its soldiers.

The United States sought to negotiate binding, bilateral arrangements with countries by which the other countries agreed that they would not send U.S. citizens to the ICC. Concluding such agreements would, however, “defeat the object and purpose” of the Rome Statute. Therefore, the United States sought to no longer remain a signatory.

The action of unsigned the Rome Statute generated significant international condemnation and discussion. Of note, there was no precedent. The 1969 Vienna Convention on the Law of Treaties addressed withdrawal from a treaty (i.e., the process by which a party becomes a non-party), but it does not address whether or how to unsign a treaty.

In contrast, ratification, accession, adoption, and the other national means of becoming party to a convention is the process by which a nation becomes bound by a convention, and indicates its intention to be bound. This process may occur before domestic implementing legislation has been adopted, at the same time, or after implementing legislation is in place.

The question of the legal impact of becoming a party depends on the context. Internationally, becoming a party commits a country vis-à-vis other nations. For “monist” countries, ratification, accession, or other means of becoming a party also make the international convention part of domestic (“municipal”) law. For “dualist” countries, domestic implementing legislation is necessary to define the respective rights and responsibilities applicable to natural and legal persons. [For more information on monist and dualist countries, see the Bruch article in the Reading Materials: C. Bruch, “Is International Environmental Law Really Law?: An Analysis of Application in Domestic Courts,” 22 *Pace Env'tl. L. Rev.* 401 (2006).]

5. Raise the issue that States cannot be bound to an MEA without their consent. In particular, once a State has ratified, acceded to, or otherwise become party to an MEA, the State is bound by the provisions of the MEA unless they have made a reservation to it (assuming that reservations are permitted). This can be discussed by contrasting the way nations become bound to legal norms, in contrast to the way citizens can legally bind themselves.

Does the fact that States can unilaterally make reservations mean that international law is somehow different than domestic law? Are there any examples where citizens can “opt out” of laws by making “reservations”? What about “conscientious objector status” to avoid the military draft, or exemptions for drug laws or other laws on the basis of religious beliefs?

6. Discuss the related issue of whether newly formed (successor) States are bound to agreements signed and ratified by their predecessors.
7. Finally, initiate a discussion on the consequences – legally and diplomatically – of withdrawing from an MEA.

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 43 – 58 (if the Unit included a brief discussion on MEAs); and pp. 59 – 114 (a discussion accompanying Guidelines 5-12).
- UNEP, *Training Manual on International Environmental Law*, available at http://www.unep.org/law/PDF/law_training_Manual.pdf, chapter 4: Compliance and Enforcement of Multilateral Environmental Agreements (2006).

Suggested Readings

- B. Arts & S. Mack, "Environmental NGOs and the Biosafety Protocol: A Case Study on Political Influence," 13 *European Environment* 19-33 (2003).
- M.R. Auer, "Colleagues or Combatants? Experts as Environmental Diplomats," 3 *International Negotiation* 267-287 (1998).
- S. Barret, *Environment and Statecraft: The Strategy of Environmental Treaty Making* (Oxford University Press 2003).
- H.W. Bashor, "The Role of the Internet in Multilateral Treaty-Making," available at http://www.diplomacy.edu/Conferences/WMIO/PAPERS_PRESENTATIONS/Bashor/Bashor.pdf.
- R. Benedict, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Cambridge: Harvard University Press 1999).
- P. Birnie & A. Boyle, *International Law and the Environment*, chapter 2: "International Governance and the Formulation of Law and Policy" (Oxford University Press 2002).
- M.J. Bowman, "The Multilateral Treaty Amendment Process: A Case Study," 44(3) *International and Comparative Law Quarterly* 540-559 (1995).

- J. Brunnée, "COPing with Consent: Law-Making Under Multilateral Environmental Agreements," 15 *Leiden Journal of International Law* 1-52 (2002).
- C. Bruch, "Is International Environmental Law Really Law?: An Analysis of Application in Domestic Courts," 22 *Pace Env'tl. L. Rev.* 401 (2006).
- J. Gupta, *On Behalf of my Delegation,....: A Survival Guide for Developing Country Climate Negotiators* (CSDA/IISD 2000), available at: <http://www.cckn.net/www/completeindex.html>.
- B.E. Kock, "Engaging Non-Governmental Organizations with International Environmental Negotiations: Institutional Approaches to Reforming State-NGO Interactions," in W.R. Moomaw & L. E. Susskind (eds.), *Papers on International Environmental Negotiation, Volume 15: Ensuring a Sustainable Future* (2006) (Harvard Law School Program on Negotiation 2006), available at <http://www.pon.org/downloads/ien15.4.Kock.pdf>.
- W. Lang, *International Environmental Negotiations* (UNITAR, Programme of training for the application of environmental law).
- J.T. Roberts, B.C. Parks & A.A. Vásquez, "Who Ratifies Environmental Treaties and Why? Institutionalism, Structuralism and Participation by 192 Nations in 22 Treaties," 4(3) *Global Environmental Politics* 22-64 (2004).
- Secretariat of the Convention on Biological Diversity, *Cartagena Protocol on Biosafety: A Record of the Negotiations* (CBD & UNEP, Montreal 2003).
- Secretariat of the Convention on Biological Diversity, *Cartagena Protocol on Biosafety: From Negotiations to Implementation – Historical and New Perspectives as the World marks the Entry-into-force of the Protocol* (CBD & UNEP, Montreal 2003) (This edited book includes a broad range of chapters relating to the Cartagena Protocol. Two chapters focus on preparing for and participating in negotiations: Veit Koester, "The History Behind the Protocol on Biosafety and the History of the Cartagena Biosafety Protocol Negotiation Process," p. 6; and Juan Mayr, "Doing the Impossible: The Final Negotiations of the Cartagena Protocol," p. 10).
- T. Skodvin & S. Andresen, "Negotiating International Environmental Agreements: Leadership Revisited," 6(3) *Global Environmental Politics* 13-27 (2006).
- A. Timoshenko, *Environmental Negotiator Handbook* (Kluwer Law International 2003).
- M. Tolba & I. Rummel-Bulska, *Environmental Diplomacy: Negotiating Environmental Agreement for the World 1973-1992* (MIT Press 1997).
- United Nations, *Basic Information on Secretariats of Multilateral Environmental Agreements: Mission, Structure, Governance and Finance*, available at <http://www.un.org/ga/president/60/summitfollowup/060612d.pdf>.

- UNEP, *Negotiating and Implementing MEAs: A Manual for NGOs* (UNEP 2007), available at <http://www.unep.org/dec/docs/MEAs%20Final.pdf>, modules I – IX.
- UNEP & FIELD, *Guide for Negotiators of Multilateral Environmental Agreements* (2006), available at <http://www.unep.org/dec/docs/Guide%20for%20Negotiators%20of%20MEAs.pdf>.
- William Zartman, “International Environmental Negotiation: Challenges for Analysis and Practice,” *Negotiation Journal* 113-123 (April 1992).

UNIT 3:

Role-Playing Exercise for Participation in Negotiations

INTRODUCTION

Unit 2 provided students insight into the role that negotiations play in compliance. With the completion of Unit 2, students should understand the process and the importance of sufficient preparation for and effective participation in negotiations. Unit 3 allows students to experience the process of negotiations by way of a simulated exercise, with the aim of providing them with a better understanding of the dynamics and complexities of developing an MEA. This Unit thus introduces students to international multilateral negotiations and to international environmental policy-making through negotiations. In addition, it also introduces them to key policy issues that underlie the subject matter chosen for the exercise. The material for the Role-Playing Exercise is made available separately.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- understand the process of negotiations;
- comment on the way in which national policy informs the positions of States when negotiating an MEA; and
- evaluate the role of various players in negotiations.

TEACHING METHODS

This class is a negotiation simulation. In preparing for the role-play, the teacher should make sure that students understand the procedures and etiquette of negotiations. They should prepare by reading pages 35 – 40 of the UNEP & FIELD *Guide for Negotiators of Multilateral Environmental Agreements*. For negotiation skills and strategies in particular, they should read pages 41 – 49 and 52 – 53.

SIMULATION EXERCISE

This Unit comprises a 17-party negotiation simulation exercise on negotiating a global policy for the management and conservation of forests. The simulation exercise was developed in partnership by the United Nations Environment Programme (UNEP), the United Nations Institute for Training and Research (UNITAR), the Fletcher School of Law and Diplomacy (Tufts University), and the University of Joensuu, Finland. It can

be used either as a model for developing your own simulation exercise or it can be adapted for use in your class.

The 17 parties in the role-play exercise include a Chair who also has substantive concerns on the management and conservation of forests for her/his country. The material can be easily adapted if you have less than 17 students in your class. It can also be played with more than 17 players, in which case each national delegation has one or more people representing the country – this can also highlight differing capacities of negotiating delegations that are experienced in actual negotiations. Having more than two players per country is generally not recommended. However, it may be appropriate for some of the larger countries to have 3-person delegations.

While the simulation is designed to be played over a period of 1-2 days, it can be adapted for your purposes. It requires a **MINIMUM** of 6 negotiating hours. It is **STRONGLY RECOMMENDED** that the simulation **NOT** be played over less than 6 negotiating hours. You could attempt to deal with time restriction by running the exercise outside of class time (for example, by scheduling a Saturday class).

The materials include a Logistics Note, which you should use to design the simulation exercise. It also includes the following:

- 18 sets of confidential instructions (including two separate instructions for the Chair, one on being the Chair and one from the Swiss government),
- One Background Note,
- One Scenario Note,
- One fictional Press Release, and
- Copies of two Proposals.

You will note that the Logistics Note suggests a debriefing period of 90 to 120 minutes. If this is not possible, you should try to incorporate a debriefing period of at least 30 minutes.

Preparation for the exercise may be done outside formal classes if all documents are distributed beforehand and students are instructed to review and prepare for the exercise in their own time before it commences. Independent preparation could serve as pre-negotiation preparations at national level.

CLASS DISCUSSION

The discussion will take the form of a debriefing session. The debriefing should focus not only on what happens in the simulation exercise but also on highlighting areas in which the simulation, and the actual experience of the players, was similar or different from real negotiations. The debriefing may be structured around the three goals of the simulations, namely: (a) to introduce participants to international multilateral negotiations; (b) to introduce participants to international environmental policy-making

through negotiations; and (c) to introduce participants to key international forest policy issues.

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- Review the text accompanying Guidelines 5-10 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (pp. 59-86), available at http://www.unep.org/dec/MEA_Manual.html.
- UNEP & FIELD, *Guide for Negotiators of Multilateral Environmental Agreements*, pp. 34 – 53, available at <http://www.unep.org/DEC/docs/Guide%20for%20Negotiators%20of%20MEAs.pdf>.

Suggested Readings

- J. Gupta, *On Behalf of my Delegation,...: A Survival Guide for Developing Country Climate Negotiators* (CSDA/IISD 2000), available at: <http://www.cckn.net/www/completeindex.html>.
- A. Timoshenko, *Environmental Negotiator Handbook* (Kluwer Law International 2003).
- W. Lang, *International Environmental Negotiations* (UNITAR, Programme of training for the application of environmental law).
- UNEP, *Negotiating and Implementing MEAs: A Manual for NGOs* (UNEP 2007), module X, available at: <http://www.unep.org/dec/docs/MEAs%20Final.pdf>.

UNIT 4:

Implementation of MEAs

INTRODUCTION

In Units 2 and 3, students learned about treaty negotiations and participated in a negotiations exercise. Unit 4 addresses the next step: implementation of MEAs. It addresses this topic from the perspectives of different institutions – including parties to an MEA, intergovernmental organizations, treaty secretariats, and non-State actors – who may all in one way or another have the legal or moral responsibility for implementing the MEA. As such, it addresses issues related to international cooperation and coordination, capacity building and technology transfer, information on compliance status, experience sharing and networking, regional action plans, increasing awareness of MEAs to enhance participation, and enhancing cooperation among MEA Secretariats.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- critically appraise the implementation of MEAs and address whether enough is being done to ensure effective implementation;
- comment on the value of the role that different institutions have in promoting and ensuring implementation;
- discuss and evaluate measures to facilitate MEA implementation; and
- suggest other possible measures for ensuring effective implementation.

TEACHING METHODS

This module may take the form of a discussion with various case studies that could be utilised throughout the class for illustrative purposes. You may wish to invite a guest lecturer from a non-State actor organization such as an NGO or industry representative to talk about the role of non-State actors in implementation. You could also consider inviting someone from the media to talk about generating public interest regarding rights and responsibilities associated with MEAs.

SUBSTANTIVE ISSUES

Principal Themes

1. This Unit provides an opportunity to address implementation of IEL in general, with a specific focus on MEAs. Given the opaque nature of the distinction between implementation and compliance, it is important to start with a definition of implementation [slide 2] and to discuss the relationship between the two concepts [slide 3].
2. Examine the importance and value of implementation, as well as its potential role in ultimately ensuring compliance [slide 4].
3. Discuss compliance measures in MEAs [slide 5] and highlight the fact that including these types of measures in the text of an MEA can help to facilitate implementation. You may use the Basel Convention as an example of an MEA that specifically requires implementation as a compliance measure (in Article 4(4)). You could also discuss Article 5 of the Basel Convention and Article 19 of the Biosafety Protocol, which require parties to designate a competent national authority or focal point for international liaison purposes to ensure domestic implementation.
4. Review institutions that are responsible for implementation [slides 6 and 7].
5. Then explore in more detail the various roles and duties of each of these actors, starting with the role of Parties [slide 8]. Provide an overview of the measures that can be adopted to ensure implementation: compliance assessment [slide 9]; compliance plans [slide 10]; national implementation plans [slide 11]; changes in the legal and regulatory frameworks [slide 12]; enforcement [slide 13]; use of economic instruments [slide 14]; national focal points [slide 15]; coordinating and strengthening institutions [slide 16]; public awareness and stakeholder involvement [slide 17]; capacity-building and technology transfer [slide 18]; and international co-operation [slide 19]. You may wish to use examples from your country or your region for illustration of these mechanisms.
6. Much of this Unit focuses on examining the respective roles of the different institutions in implementing MEAs. These include: UNEP [slide 21]; CSD [slide 22]; UNDP [slide 23]; and the World Bank and the Global Environment Facility (GEF) [slide 24]. The most significant institutions – and thus the ones that require the most discussion – are those associated most directly with MEAs: Conferences of the Parties (COPs) [slide 26]; Secretariats [slides 27-34]; and subsidiary bodies and committees [slide 35].
7. Review the role of non-State actors in implementation of MEAs [slides 36 – 37].
8. Finally, briefly discuss differential implementation schedules and obligations for developing countries [slide 38].

Variations in Teaching Approach

There are a few possible variations for conducting this class. One option is to draw upon a variety of examples from the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, which could illustrate a wide range of

approaches and institutions associated with different MEA regimes. Another option is to focus particularly on one or two MEAs, to illustrate the respective roles of different institutions in a specific context. For this variation, it may be necessary to supplement examples in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* with information from the relevant MEA website.

Your Country

Assess your country's record of implementation of MEAs. The use of a guest lecturer from a non-State actor may be useful during this exercise, as such a person would have a different perspective. You could raise a number of issues for discussion:

- How many MEAs have been implemented in your country?
- Have the MEAs been implemented effectively (i.e., policies adopted, laws created/modified, resources allocated, etc.)?
- What are the measures that your country generally uses to implement MEAs? How do they compare with suggested measures as outlined under the principal themes, above?
- Does your country have the capacity to fully implement and enforce MEAs?
- If the legal framework has been amended to implement specific MEAs, has your country successfully enforced the implementing laws?
- To what extent are other stakeholders involved (e.g., NGOs, the private sector, the public in general, universities, etc.)?
- Are there any public awareness campaigns about MEAs (generally or regarding particular MEAs) and the respective rights and obligations of your country?
- Does your country engage in any regional or international cooperation on MEA implementation? If so, what cooperative mechanisms are there? How effective is such cooperation?

CLASS DISCUSSION

In addition to addressing the country-specific questions mentioned above, you could:

1. Generate a debate on why implementation is important, and the distinction between implementation and compliance.
2. Discuss the consequences for enforcement of treaty obligations where Parties have failed to implement an MEA domestically. Depending on the country, treaties may not be directly enforceable without domestic implementing legislation (these are referred to as dualist countries, as opposed to monist countries). In contrast, EC law can create rights and obligations enforceable before national courts without being implemented, provided that the EC provisions fulfill certain conditions, such as being clear and unconditional. Ask the class whether such a model could work

effectively on a broader international scale. What might be some of the difficulties and benefits associated with international use of direct application of MEA provisions?

3. Use “Coordination of MEA Focal Points and Institutions in the Republic of Congo” the basis of a case study on National Focal Points [slide 15]; see <http://www.unep.org/DEC/OnLineManual/Compliance/NationalImplementation/NationalFocalPoints/Resource/tabid/675/Default.aspx>.
4. Examine the: Bali Strategic Plan for Technology Support and Capacity Building as a Case study [slide 18]; see <http://www.unep.org/DEC/OnLineManual/Compliance/NationalImplementation/CapacityBuilding/Resource/tabid/679/Default.aspx> and <http://www.unep.org/GC/GC23/documents/GC23-6-add-1.pdf>.
5. Focusing on MEA measures designed to enhance implementation, ask the class whether these measures are sufficient to achieve compliance. What other MEA measures would the class recommend that might achieve (or facilitate) compliance?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 115-119 (discussion accompanying Guidelines 13, 14 (a) and (b)); you may also refer to the discussion associated with Guidelines 18, 19, 21, 24, 33, and 34.
- UNEP, *Training Manual on International Environmental Law* (2006), available at http://www.unep.org/law/PDF/law_training_Manual.pdf, p. 20 Implementation of International Environmental Law at the National Level). Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC), Article 2.

Particular Provisions of MEAs (depending on how lecturers conduct the Unit)

- Montreal Protocol to the Vienna Convention, <http://ozone.unep.org/>, Article 4.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), <http://www.cites.org>, Article VIII(1).
- Convention on Biological Diversity, <http://www.cbd.int/>, Articles 6 and 11.

- Cartagena Protocol on Biosafety, <http://www.cbd.int/>, Articles 2 and 19.
- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, <http://www.basel.int>, Articles 4(4) and 5.
- Bamako Convention, http://www.iss.co.za/uploads/BAMAKO_CONVENTION.PDF, Articles 4 and 5.
- Stockholm Convention on Persistent Organic Pollutants (POPs), <http://chm.pops.int/> Articles 3, 5, and 7.
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), <http://www.pic.int>, Articles 4 and 15.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), <http://www.ramsar.org>, Article 3.
- UN Convention to Combat Desertification (UNCCD), <http://www.unccd.int>, Articles 3 and 5.
- Convention on the Conservation of Migratory Species of Wild Animals (CMS), <http://www.cms.int>, Article II.
- UN Convention on the Law of the Sea (UNCLOS), <http://www.unlawofthese-atreaty.org/>, Articles 194, 207-212.

Suggested Readings

General

- S. Andressen & E. Hey, "The Effectiveness and Legitimacy of International Environmental Institutions," *5 International Environmental Agreements* 211-226 (2005).
- G. Bankobeza, "Strengthening the Implementation of Multilateral Environmental Agreements," Paper presented at the Seventh International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/conference/7/vol1/Bankobeza.pdf>.
- P. Birnie & A. Boyle, *International Law and the Environment*, chapter 2: "International Governance and the Formulation of Law and Policy" (Oxford University Press 2002).
- L.M. Dee, "The Role of UNEP and UNDP in Multilateral Environmental Agreements," *5 International Environmental Agreements* 227-263 (2005).
- K.R. Gray, "Multilateral Environmental Agreements in Africa: Efforts and Problems in Implementation," *3 International Environmental Agreements: Politics, Law and Economics* 97-135 (2003).

- D. Hunter, J. Salzman & D. Zaelke *International Environmental Law and Policy* (3rd ed.) (Foundation Press 2006).
- R. Mackenzie, "Towards the Future Implementation of the Biosafety Protocol: Key Areas for Action at the International Level," in *Cartagena Protocol on Biosafety: From Negotiations to Implementation – Historical and New Perspectives as the World marks the Entry-into-force of the Protocol* (CBD & UNEP, Montreal 2003), at 15-17.
- S. Namnun, "The Inter-American Convention for the Protection and Conservation of Sea Turtles and Its Implementation in Mexican Law," 5 *Journal of International Wildlife Law and Policy* 87-103 (2002).
- W. Plesmann & B. Goller, "Financial Mechanisms," in F.L. Morrison & R. Wolfrum (eds.) *International, Regional and National Environmental Law* 887-908 (Aspen 2000).
- I. Stribis, "Institutionalization of Cooperation between Inter-Governmental Organisations and NGOs: The BSEC Experience," 5 *Non-State Actors and International Law* 21–57 (2005).

Implementation of European Community Law

- R. Wagenbauer, "The European Community's Policy on Implementation of Environmental Directives," 14 *Fordham International Law Journal* 455 (1990).
- L. Krämer, "The Implementation of Community Environmental Directives within Member States: Some Implications of the Direct Effect Doctrine," 3 *Journal of Environmental Law* 39 (1991).

National Implementation Plans

- W. Anderson, "Domestic Programmes for Implementing Multilateral Environmental Agreements: Establishing MEA Implementation Mechanisms," in *Proceedings of the Sixth International Conference on Environmental Compliance and Enforcement Vol.1* (INECE 2002), available at <http://www.inece.org/conf/proceedings2/22-DomesticPrograms.pdf>.
- Foundation for International Environmental Law and Development (FIELD), *Implementation of Multilateral Environmental Agreements for Efficient Water Management* (2005).

MEA Enforcement in Dualist and Monist Countries

- C. Bruch, "Is International Environmental Law Really Law?: An Analysis of Application in Domestic Courts," 22 *Pace Env'tl. L. Rev.* 401 (2006).

UNIT 5:

Compliance Processes

INTRODUCTION

This Unit builds on the discussion in Unit 4 and addresses the international compliance processes required for effective implementation of MEAs. It raises some of the challenges inherent in ensuring compliance with international law, including international environmental law, and examines in particular the limited institutional mechanisms to enforce compliance and the general reliance on good will of States to comply.

The Unit discusses the measures employed in MEAs to ensure compliance. MEAs provide *inter alia* for the following:

- interpretation,
- research,
- information, and data collection dissemination,
- reviews of performance,
- reporting,
- monitoring, and
- verification.

The Unit also acknowledges the role that inter-governmental organizations and MEA bodies play in supervising compliance. The next Unit – Unit 6 – addresses specific mechanisms for responding to non-compliance.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- assess the value of interpretation and research in ensuring compliance with MEAs;
- evaluate the value of performance review measures in assessing the overall effectiveness of MEAs;
- discuss and evaluate the extent to which reporting, monitoring, and verification measures can assist countries in tracking their compliance under the various MEAs;
- understand different approaches that could facilitate national reporting under MEAs; and
- assess the role of IGOs and MEA bodies in supervising compliance.

TEACHING METHODS

This class will be a workshop in which the lecturer, students, (and guest lecturer, if you have one) can interact on compliance-enhancing measures for MEAs. Most likely options for a guest lecturer for this Unit include someone from the foreign affairs ministry or someone from an NGO who works at the international level. Either of them could share experiences and lessons learned in using different approaches to facilitate compliance with MEAs.

SUBSTANTIVE ISSUES

Principal Themes

1. Start the class by discussing some of the challenges for compliance with MEAs [slide 2].
2. Talk about ways in which these challenges are addressed [slide 3].
3. Provide an overview of the different techniques or measures that are used to ensure compliance [slide 4]. These will be discussed in the following slides.
4. Talk about the role of research and data collection and dissemination [slide 5]. Refer to the Climate Change Convention that obliges Parties to communicate to the COP a general description of steps taken to implement the Convention, including a detailed description of anthropogenic emissions by sources and removal by sinks [see Articles 4(1)(a), (j) and 12(1)(a), (b)]. Effective research can assist in national reporting.
5. Examine the role of reporting [slides 6 - 7] and how it relates to performance reviews [slide 8]. Discuss some of the resource constraints that countries may face in complying with MEAs: lack of data, systems for collecting and managing data, staff to collect and process data, etc. In this respect, you can refer to the mechanisms available under the Climate Change Convention, the Montreal Protocol, and the Biodiversity Convention, as well as funding available from the GEF or other multilateral mechanisms to assist developing countries in preparing national reports and “communications.”

Refer to Article 13 of the Basel Convention as an example of reporting requirements and review. It requires the submission of detailed information to UNEP, which acts as its Secretariat. See *also* CITES, Article VIII(7); Climate Change Convention, Article 12; Montreal Protocol, Article 7; and Biodiversity Convention, Article 26.

As an example of a standardized format for reporting, you could use the CITES examples, available for download from <http://www.cites.org> (particularly <http://www.cites.org/eng/resources/reports.shtml>).

You may also add that the process of performance review can include operational performance relating to operational obligations, e.g. information on proposed environmentally sensitive trade transactions

6. Highlight the role of monitoring and verification [slides 9 - 10]. As an example, you may use the Montreal Protocol, which requires Parties to provide the Secretariat with baseline and annual data on their production, import, and export of controlled ozone depleting substances. You may also use the monitoring and verification mechanisms contained in CITES as an example. See pages 129-143 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*.
7. Discuss the role of Intergovernmental Organizations (IGOs). For this discussion, you can refer back to the role of the institutions, as discussed in Unit 4 in ensuring compliance [slides 11 - 12].

Variations in Teaching Approach

In using examples of specific MEAs to illustrate the different tools, approaches, and points in this Unit, it is probably best to use MEAs that have been ratified by your country.

Your Country

You could initiate the discussion by assessing the extent to which your country complies with MEAs that it has signed and ratified, or acceded to. It may be useful to try to obtain a few samples of country reports submitted to MEAs. Also, where your country has had difficulties complying, what have been its experiences?

CLASS DISCUSSION

Questions for Discussion

1. You may begin the discussion by asking whether (and to what extent) States comply with MEAs and how you would evaluate whether States have in fact complied with the provisions of an MEA. Here, it may be useful for the lecturer to read the article by Prof. Edith Brown Weiss on compliance mechanisms (listed below). To the extent that States do comply, what motivates them? Self-interest? Prevention of “free-riding”?
2. Discuss the utility, efficacy, and possible shortcomings of the various measures employed to enhance compliance. With regard to reporting, consider the poor compliance with these requirements and ask how overall compliance with reporting requirements could be improved. Raise possibilities such as financial and technical assistance, streamlining of reporting requirements, and co-operation of Secretariats (in light of the reporting requirements of multiple MEAs).

On the last point, you may consider the development of integrated data collection, managing, and reporting systems, as well as harmonization of reporting requirements (say, of biodiversity-related MEAs). Here the UNEP and IUCN Project on Issue-Based Modules may be particularly useful, listed below; see also C. Bruch & E. Mrema and UNEP GEO, listed below.

3. Discuss the role of the public in preparing national reports on implementation of specific MEAs. Here you could use the case study set out on pp. 134-35 of the

UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements that highlights a Ukrainian project to involve the public in the development of Ukraine's national reports for MEAs. To what extent could similar public involvement be possible in your country? What would be the benefits? The challenges (cost, political will, time, etc.)?

4. Discuss the role of IGOs and MEA Secretariats in supervising compliance. Also talk about the possible roles that NGOs can play, for example by granting them observer status.

READING MATERIALS

The materials indicated under Assigned Readings may be used as the primary source of reading material for this Unit. These include references to some websites of MEA Secretariats where students can observe first-hand the manner in which reporting is done. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 129 - 143 (discussion accompanying Guideline 14(c)), with additional reference to material accompanying Guideline 34(d) (p. 244).
- UNEP, *Training Manual on International Environmental Law*, available at http://www.unep.org/law/PDF/law_training_Manual.pdf, chapter 4: "Compliance and Enforcement of Multilateral Environmental Agreements" (2006).
- P. Birnie & A. Boyle, *International Law and the Environment*, chapter 4 (Oxford University Press 2002).
- P. Sands, *Principles of International Environmental Law*, chapter 5 (Oxford University Press 2003).
- D. Hunter, J. Salzman, & D. Zaelke, *International Environmental Law and Policy*, chapter 8 (3rd ed.) (Foundation Press 2006).

Particular Provisions of MEAs

- UN Framework Convention on Climate Change (UNFCCC), <http://unfccc.int/resource/docs/convkp/conveng.pdf>, Articles 10 and 12.
- Montreal Protocol to the Vienna Convention, <http://ozone.unep.org/>, Articles 4B, 6, and 7.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), <http://www.cites.org/eng/disc/text.shtml>, Article VIII(7).

- Convention on Biological Diversity, <http://www.cbd.int/>, Articles 7 and 26.
- Cartagena Protocol on Biosafety, <http://www.cbd.int/>, Article 34.
- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, <http://www.basel.int>, Article 13.
- Bamako Convention, http://www.iss.co.za/uploads/BAMAKO_CONVENTION.PDF, Article 5.
- Stockholm Convention on Persistent Organic Pollutants (POPs), <http://chm.pops.int/>, Article 15.
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), <http://www.pic.int>, Articles 10 and 11.
- (Ramsar) Convention on Wetlands of International Importance Especially as Waterfowl Habitat, <http://www.ramsar.org>, Articles 4 and 6.
- UN Convention to Combat Desertification (UNCCD), <http://www.unccd.int/convention/text/convention.php>, Articles 22(2)(a) and 26.
- Convention on the Conservation of Migratory Species of Wild Animals (CMS), <http://www.cms.int>, Article V(4) and (5).
- UN Convention on the Law of the Sea (UNCLOS), <http://www.unlawofthesea-treaty.org/>, Part XII Section 6.

Useful Websites

- Secretariat for the United Nations Framework Convention on Climate Change, <http://unfccc.int/>
- UNEP Ozone Secretariat, <http://ozone.unep.org/>
- Secretariat of the Basel Convention, <http://www.basel.int/>
- Secretariat for the Convention on Biological Diversity, <http://www.cbd.int/>
- CITES Secretariat, <http://www.cites.org/>

Suggested Readings

General

- U. Beyerlin, P.-T. Stoll, & R. Wolfrum (eds.), *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia* (Martinus Nijhoff 2006).

- E. Brown Weiss, "Understanding Compliance with International Environmental Agreements: the Baker's Dozen Myths," 32 *Richmond Law Review* 1555 (1999).
- R.R. Churchill & G. Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law," 94 *American Journal of International Law* 623 – 659 (2000).
- T. Crossen, "Multilateral Environmental Agreements and the Compliance Continuum," 16 *Georgetown International Environmental Law Review* 473-500 (2004).
- L. Guruswamy et al., *International Environmental Law and World Order*, chapter 3 (West Group 1999).
- H. Jacobsen & E. Brown Weiss, *Engaging Countries: Strengthening Compliance with International Environmental Accords* (MIT Press 1998).
- R.B. Mitchell, "Compliance Theory: Compliance, Effectiveness and Behavioural Change in International Environmental Law," in D. Bodansky, J. Brunnée, and E. Hey (eds.), *The Oxford Book of International Environmental Law*, ch. 39 (Oxford 2007).
- L. Nowlan & C. Rolfe, *Kyoto, POPS and Straddling Stocks: Understanding Environmental Treaties* (2003), available at <http://wcel.org/sites/default/files/publications/Kyoto,%20POPs,%20and%20Straddling%20Stocks%20-%20Understanding%20Environmental%20Treaties.pdf>.

Compliance Mechanisms

- E. Brown Weiss, "Understanding Compliance with International Environmental Agreements: the Baker's Dozen Myths," 32 *Richmond Law Review* 1555 (1999).
- K. Raustiala, *Reporting and Review Institutions in 10 Multilateral Environmental Agreements* (2001), available at <http://www.unep.org/GEO/techreports.htm>.
- L. Nowlan & C. Rolfe, *Kyoto, POPS and Straddling Stocks: Understanding Environmental Treaties* (2003), available at <http://wcel.org/sites/default/files/publications/Kyoto,%20POPs,%20and%20Straddling%20Stocks%20-%20Understanding%20Environmental%20Treaties.pdf>.
- UNEP, *Compliance Mechanisms under Selected Multilateral Environmental Agreements* (UNEP 2007).

Reporting, Monitoring, and Verification

- D.M. Goldberg et al., *Building a Compliance Regime under the Kyoto Protocol*, available at <http://www.ciel.org/Publications/buildingacompliance-regimeunderKP.pdf> (especially on review and monitoring).
- G. Loibl, "Reporting and Information Systems in International Environmental Agreements as a Means for Dispute Prevention –The Role of International Institutions," *5 Non-State Actors and International Law* 1–19 (2005).
- K. Raustiala, *Reporting and Review Institutions in 10 Multilateral Environmental Agreements* (2001), available at <http://www.unep.org/GEO/techreports.htm>.

Synergetic Implementation of MEAs

- C. Bruch & E. Mrema, "More than the Sum of its Parts: Improving Compliance with and Enforcement of International Environmental Agreements through Synergetic Implementation," *Proceedings of the 4th Colloquium of the IUCN Academy of Environmental Law* (2008).
- F. Dodds, *Inter-linkages: Strategies for Bridging Problems and Solutions to Work Towards Sustainable Development* (UNU 2001), available at <http://www.unu.edu/interlink/papers/WG2/Dodds.doc>.
- IUCN/UNEP TEMATEA Project on Issue Based Modules, available at <http://www.tematea.org>.
- UNEP, *Global Environment Outlook (GEO-4)*, chapter 8: "Interlinkages: Governance for Sustainability" (2007), available at <http://www.unep.org/geo/geo4/media/>.
- UNEP, Project on Issue-Based Modules for the Coherent Implementation of Biodiversity-Related Agreements, available at http://unep.org/dec/Support/Cross_Cutting/IBM.asp.
- UNU, *Global Climate Governance: A Report on the Inter-Linkages between the Kyoto Protocol and other Multilateral Regimes*, available at <http://www.geic.or.jp/climgov/> (see especially chapter 5 on "Private Sector, Compliance and Standard Forms: Inter-linkages with Private Contractual Regimes").

UNIT 6:

Responses to Non-Compliance

INTRODUCTION

This Unit continues with the theme of compliance with MEAs (addressed in Unit 5) and describes the means by which MEA Secretariats and Conferences of the Parties (COPs) respond to non-compliance. It discusses non-compliance procedures (NCPs), as well as dispute settlement procedures. With respect to NCPs, it sets out the processes and also explains why MEA negotiators frequently opt for a non-coercive format. This Unit also deals with the utilisation of broader review mechanisms to determine the extent of overall compliance (or non-compliance) with a specific MEA. The Unit then addresses dispute settlement and describes the various procedures used in MEAs. It also raises the issue of dispute avoidance, examines why Parties to an agreement tend to avoid dispute settlement processes, and discusses some dispute avoidance measures. Finally, this Unit briefly considers other forums, outside of MEAs, where environmental disputes could be resolved through dispute settlement procedures.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- debate the relative merits of non-coercive and coercive means to bring Parties into compliance;
- critically assess the advantages and disadvantages of non-compliance processes;
- comment on the use of specific compliance measures;
- examine the role of informal approaches to compliance;
- evaluate the value of review measures in assessing the overall effectiveness of MEAs; and
- present the main arguments for and against including dispute settlement procedures in MEAs.

TEACHING METHODS

This Unit takes the form of a discussion in which the lecturer can explain NCPs and dispute settlement, as well as fostering a debate on the merits of the various processes. It also includes a case study, which can be employed in two ways. First, the case study can stimulate discussion on the merits and effectiveness of dispute resolution mecha-

nisms; and second, it can be used as the basis for role-playing in which students argue for the use of different dispute settlement forums.

Lecturers may wish to develop an alternative case study that is tailored to their specific national or regional context, or focuses on a different MEA. The discussion of NCPs in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (pp. 115-177, especially pp. 144-168) may be useful in developing alternative case studies.

SUBSTANTIVE ISSUES

Principal Themes

1. Start this class by comparing and contrasting the consequences of failure to comply with the MEA in domestic law and failure to comply with international law. Discuss the concept of state sovereignty and what it means for compliance [slide 2]. Note that NCPs are often referred to as “Compliance Mechanisms”. You should explain that NCPs are in fact regarded as part of the compliance mechanism process. Then lead the class into a discussion of the details of non-compliance procedures [slides 3 – 9].
2. Explain NCPs and discuss the motivation for the specific form they take (most frequently facilitative or non-coercive) [slides 4 - 6]. Also explain that it is possible to establish such a procedure after the MEA has come into effect. Here there are a number of examples that you can use for illustration purposes. One of the first NCPs was established under Article 8 of the Montreal Protocol in 1989. The procedure can be invoked by any Party, including the non-compliant Party, as well as by the Secretariat. The matter is referred to the Implementation Committee, consisting of 10 people (all from Parties to the Protocol) who are elected on the basis of geographical representation. It considers the submissions, information, and observations made to it with a view to finding an amicable solution. A report is made to the COP, which decides on compliance measures.

For examples of other NCPs, see Article 18 of the Kyoto Protocol, Article XII of CITES, and Article 34 of the Cartagena Protocol. For a discussion of NCPs of different MEAs, see pp. 144-157 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* as well as pp. 163-177 (regarding development of NCPs after entry into force).

3. Discuss the two categories (facilitative/non-coercive and coercive) of non-compliance response measures [slides 6 – 8] as well as the benefits of NCPs [slide 9]. For more information on these two categories, you can consult *UNEP, Compliance Mechanisms under Selected Multilateral Environmental Agreements*, p.33.
4. Discuss the possibility of using informal approaches to non-compliance [slides 10 – 11]. One example of this is the *Montreaux Record* used in the Ramsar Convention (discussed on pp. 145-146 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*).

- Briefly discuss the possibility of assessing general compliance or non-compliance with a particular MEA by using periodic review of other MEAs [slide 12]. Use the process of reviewing the Lusaka Agreement as an example (pp. 161-162 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*).

The Montreal Protocol is another example: the requirement to assess and review controls at least every 4 years; the ability to add new chemicals or change phase-out; and that consensus is not necessary.

- Note that NCPs may be developed after an MEA has entered into force [slide 13]. For examples, see pp. 163-168 of *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*. Discuss whether and under what circumstances it would be necessary to formally amend the MEA, if the MEA does not provide for an NCP.
- Discuss dispute settlement [slides 14 – 16] by emphasising the need for dispute settlement mechanisms and discussing the various measures employed. Also raise the strategy of dispute avoidance [slide 17] and highlight the various alternatives that can be employed [slides 18 - 19].

For information on transboundary environmental impact assessment, see Bastmeijer & Koivurova and C. Bruch et al. (in the Suggested Readings, below).

- Conclude with a discussion of other forums for resolving environmental disputes [slide 20].

Variations in Teaching Approach

Consider NCPs or dispute settlement procedures in relevant regional MEAs and institutions. An example is the citizen submission process (Articles 14 and 15) of the North American Agreement on Environmental Cooperation (NAAEC), available at <http://www.cec.org/Page.asp?PageID=122&ContentID=1388>.

Your Country

Have non-compliance procedures or dispute settlement procedures ever been invoked against your country? Has your country ever invoked NCPs or dispute settlement procedures against another country? If so, discuss the nature and merits thereof. If not, ask whether the students are aware of any non-compliance by your country and whether these procedures should be invoked. Discuss the appropriate response measures in such an instance.

CLASS DISCUSSION

Questions for Discussion

- Discuss in general the challenges regarding non-compliance and sanctions in international law, including IEL (including those raised in slide 2) and ask students whether they consider NCPs to be an appropriate response in light of these chal-

lenges. Debate the suitability of facilitative and coercive processes to generate compliance with MEAs and protection of the environment in general. Do they agree with the listed benefits of NCPs [slide 9]? Do they believe that the sanctions (compliance response measures) are sufficient and appropriate? Why or why not?

2. Ask students to debate the merits of NCPs versus dispute settlement procedures. Ask them to speculate on why so few environmental disputes are resolved formally and in particular through the International Court of Justice (ICJ).
3. Raise the issue of unilateral enforcement. Some countries have elected to impose trade restrictions on the activities of sovereign nations and on individuals operating beyond their borders (e.g., the Tuna/Dolphin GATT dispute). Whilst unpopular, this type of extraterritorial behaviour may be effective in curbing threats to natural resources or to the environment in general. How do students view this type of action? Do they believe that it is good for environmental governance? Do they believe it is good for the environment?
4. Ask students to comment on dispute settlement mechanisms in the GATT/WTO (General Agreement on Tariffs and Trade / World Trade Organization) and whether they believe that it is an appropriate forum for dealing with such disputes. Do they have a view on how and where clashes between MEAs and WTO law should be resolved?

CASE STUDY A

The Montreal Protocol on Substances that Deplete the Ozone Layer (1987) froze the production and consumption levels of controlled substances such as CFCs 11, 12, 113, 114, and 115, as well as halon 1211, 1301, and 2402. It set in place a reduction schedule that obliged Parties to the Protocol to achieve a 50% reduction in CFC consumption by 1998. In addition, Parties are prohibited from trading these substances (or products containing these substances) with non-Party nations.

Country X, a non-Party to the Montreal Protocol, is a developing country with a population of almost one billion people. Whilst the country has the status of a developing nation, it has a fast-growing economy. It has adopted a policy of rapid economic growth in order to address the problems of large-scale poverty. In its industrial policy, Country X targeted the electronics industry as a contributor to rapid economic growth. Having been developed for the past decade, this industry is now extremely successful. CFC 113, used as a solvent in the electronics industry, is not produced by Country X, which has been importing CFC 113 from Country Y.

Country Y, which is a Party to the Montreal Protocol, is a highly industrialized developed country. It is a major CFC producer and exports CFCs to a number of countries. Whilst it has adopted domestic legislation that prohibits the use of CFCs, it continues to export CFCs to both Parties and non-Parties of the Montreal Protocol.

Country Z, a Party to the Montreal Protocol, is also a developing country with a growing electronics industry. As a result of its electronics industry, its consumption of CFC 113 exceeded 0.3 kg per capita on the date the Protocol entered into force. As a result, it could not rely on Article 5 of the Protocol, which provides for a delay in compliance for developing countries. It has thus enacted domestic regulations that require phasing out the use of CFC 113. The electronics industry have lodged a complaint, however, that alternatives to CFC 113 are expensive, as a result of which electronics from Country Z cannot compete with electronics from Country X. The industry demands that the government find a way of addressing the continued use of CFC 113 by Country X.

Some questions for consideration

1. Can Country Z act against Country X under the Montreal Protocol?
2. Can Country Z use the non-compliance procedures as set out in Annex IV of the Montreal Protocol against Country Y? On what basis?
3. Explain in detail the non-compliance procedure of the Montreal Protocol.
4. What is the potential for success of this procedure, under these circumstances?

CASE STUDY B

A conflict arose between Chile and the European Union (EU) regarding swordfish fisheries in the South Pacific. Chile claimed that the EU failed to cooperate with Chile to ensure the conservation of these highly migratory species, in violation of the United Nations Convention on the Law of the Sea (UNCLOS). In particular it violated Articles 64 (calling for cooperation in ensuring conservation of highly migratory species), Articles 116-119 (relating to conservation of the living resources of the high seas), Article 297 (concerning dispute settlement) and Article 300 (calling for good faith and no abuse of right). Chile further asserted that the EU failed to enact and enforce substantive conservation measures on its vessels fishing in the area, that the EU has failed to report its captures to the relevant international organization (in this case, the UN Food and Agriculture Organization (FAO)), and that the EU has failed to cooperate with the coastal state in ensuring the conservation of highly migratory species.

The EU, on the other hand, claimed that Chile denied EU vessels port access to land EU-caught swordfish, which was required to re-export swordfish to the markets of GATT Member States, particularly the United States. They claimed that the prohibition was inconsistent with GATT 1994 Articles V (providing for freedom of transit for goods through the territory of each contracting party on their way to or from other contracting parties) and XI (prohibiting quantitative restrictions on imports or exports).

The parties initiated bilateral consultations, exchanged notes, and eventually appointed a bilateral technical commission. All these efforts failed, and the EU therefore brought a case before the World Trade Organization (WTO) in April 2000. As part of the dispute settlement process of the WTO, they engaged in consultations, which still did not succeed in settling the controversy. A Panel was finally established by the WTO's Dispute Settlement Body (DSB) in December 2000.

Chile insisted that the issue at stake in the controversy was not a trade issue, but rather that it related to the need for conservation measures to ensure sustainable swordfish fisheries. Chile thus initiated a separate proceeding under UNCLOS Part XV. In November 2000, the Parties agreed *ad referendum* (i.e., subject to finalization of details) to the establishment of a special five-judge Chamber of the International Tribunal of the Law of the Sea (ITLOS). The agreement was ratified in December 2000. The case is ongoing (see http://www.itlos.org/start2_en.html).

Some questions for consideration

1. Does Chile's argument for the case to be heard by ITLOS amount to forum shopping? If so, should it be allowed?
2. What might be a more appropriate forum for settling this particular dispute?
3. What factors should be considered in resolving the dispute?
4. Should the ITLOS Chamber use international environmental law to interpret UNCLOS provisions? If so, in what manner and on what basis?
5. Should the WTO Dispute Settlement Body consider the provisions of UNCLOS in settling this matter?
6. Should Chile be allowed to enact unilateral measures to ensure the conservation of fish stocks within and beyond its jurisdiction?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 144-177 (a discussion accompanying Guidelines 14(d), 15, 16, and 17).
- UNEP, *Training Manual on International Environmental Law*, available at http://www.unep.org/law/PDF/law_training_Manual.pdf, chapter 4: “Compliance and Enforcement of Multilateral Environmental Agreements” (2006), especially p. 43.

Particular Provisions of MEAs (depending on how you conduct the Unit)

- UN Framework Convention on Climate Change (UNFCCC), <http://unfccc.int/resource/docs/convkp/conveng.pdf>, Article 14.
- Montreal Protocol to the Vienna Convention, <http://ozone.unep.org/>, Article 8.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), <http://www.cites.org/eng/disc/text.shtml>, Article 12.
- Convention on Biological Diversity, <http://www.cbd.int/>, Article 27. Cartagena Protocol on Biosafety, Article 27.
- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, <http://www.basel.int>, Article 12.
- Bamako Convention, http://www.iss.co.za/uploads/BAMAKO_CONVENTION.PDF, Article 12.
- Stockholm Convention on Persistent Organic Pollutants (POPs), <http://chm.pops.int/>, Article 17.
- Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC), <http://www.pic.int>, Article 17.
- UN Convention to Combat Desertification (UNCCD), <http://www.unccd.int/convention/text/convention.php>, Article 20(5)(a).

- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), <http://www.unece.org/env/eia/>, Article 14 *bis*.

Suggested Readings

- U. Beyerlin, P.-T. Stoll & R. Wolfrum (eds.), *Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue between Practitioners and Academia* (Martinus Nijhoff 2006).
- P. Birnie & A. Boyle, *International Law and the Environment*, chapter 4 (Oxford 2002).
- E. Brown Weiss. "Understanding Compliance with International Environmental Agreements: the Baker's Dozen Myths," 32 *Richmond Law Review* 1555 (1999).
- C. Bruch & E. Mrema, "More than the Sum of its Parts: Improving Compliance with and Enforcement of International Environmental Agreements through Synergetic Implementation," *Proceedings of the 4th Colloquium of the IUCN Academy of Environmental Law* (forthcoming 2008).
- M.M. Goote, "Non-Compliance Procedures in International Environmental Law: The Middle Way between Diplomacy and Law," 1 *International Law FORUM du droit international* 82–89 (1999).
- D. Hunter, J. Salzman, & D. Zaelke, *International Environmental Law and Policy*, chapter 8 (Foundation Press 2002).
- L. Guruswamy et al., *International Environmental Law and World Order*, chapter 3 (West Group 1999).
- H. Jacobsen & E. Brown Weiss, *Engaging Countries: Strengthening Compliance with International Environmental Accords* (MIT Press 1998).
- B. Luecke, "Strengthening International Fisheries Regimes: Regulating Flags of Non-compliance," in W.R. Moomaw & L.E. Susskind (eds.), *Papers on International Environmental Negotiation, Volume 16: Enhancing the Effectiveness of the Treaty-making System* (Harvard Law School Program on Negotiation (2007)), available at <http://www.pon.org/downloads/ien16.7.Luecke.pdf>.
- R.B. Mitchell, "Compliance Theory: Compliance, Effectiveness and Behavioural Change in International Environmental Law," in D. Bodansky, J. Brunnée, & E. Hey (eds.), *The Oxford Book of International Environmental Law*, ch. 39 (Oxford 2007), especially pp. 908 – 921.
- K. Raustiala, *Reporting and Review Institutions in 10 Multilateral Environmental Agreements* (2001), available at <http://www.unep.org/GEO/techreports.htm>.
- C. Redgwell, *Non-Compliance Procedures and the Climate Change Convention* (UNU 1998), available at <http://www.geic.or.jp/climgov/>.

- P. Sands, *Principles of International Environmental Law*, chapter 5 (Oxford 2003).
- H. Schiffman, "The Dispute Settlement Mechanism of UNCLOS: A Potentially Important Apparatus for Marine Wildlife Management," 1(2) *Journal of International Wildlife Law and Policy* 293-306 (1998).
- T. Stephens, *International Courts and Environmental Protection*, chapter 3: "Institutions of International Environmental Governance" (Cambridge University Press 2009).
- UNEP, *Compliance Mechanisms under Selected Multilateral Environmental Agreements* (2005), available at http://www.unep.org/law/PDF/comp_analysis_compliance_mechanisms.pdf.
- L. Nowlan & C. Rolfe, *Kyoto, POPS and Straddling Stocks: Understanding Environmental Treaties* (2003), available at <http://wcel.org/sites/default/files/publications/Kyoto,%20POPs,%20and%20Straddling%20Stocks%20-%20Understanding%20Environmental%20Treaties.pdf>.

Transboundary Impact Assessment

- K. Bastmeijer & T. Koivurova, *Theory and Practice of Transboundary Environmental Impact Assessment* (2007).
- C. Bruch et al., "Assessing the Assessments: Improving Methodologies for Impact Assessment in Transboundary Watercourses," 22(3) *International Journal of Water Resources Development* 391-410 (2007).

UNIT 7:

Synergies and Linkages in Compliance and Enforcement

INTRODUCTION

This Unit serves as a conclusion to the international portion of the course and a transition to the national portion. It attempts to bring together the issues raised in previous units and thus starts out by considering the efficacy of compliance and enforcement of international environmental law as a whole, including MEAs. Some of the challenges in this regard may stem from two sources: first, the inability of States to comply with all the MEAs to which they are party; and second, the related issue of overlapping powers and functions of treaty organizations and of institutions responsible for international environmental governance.

Against this background, this Unit addresses synergies aimed at improving efficacy. It also addresses synergies with soft law principles and demonstrates how such principles can be used to enhance enforcement of international environmental law. It also considers how financing mechanisms may be utilized to address the capacity constraints of States. The Unit concludes by considering alternative options for global environmental governance, including proposals for new global environmental institutions and for a dedicated global court or tribunal that would settle international environmental disputes.

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- critically assess the efficacy of compliance and enforcement of IEL in general and MEAs in particular;
- comment on the ways in which the number of MEAs affects compliance and enforcement of MEAs both on the national and international levels;
- critically examine how synergies and cooperation may address some of these challenges;
- evaluate the role of soft law in addressing these challenges;
- evaluate the role of financial mechanisms in addressing the stated challenges; and
- present the main arguments for and against the alternative options for global environmental governance.

TEACHING METHODS

This class takes the form of a discussion. A group exercise (4 to 5 students per group) is suggested, during which students can formulate alternative approaches (including alternative institutions) to global environmental governance.

SUBSTANTIVE ISSUES

Principal Themes

1. Compliance and enforcement mechanisms enhance the effectiveness of international environmental law [slides 2 - 3]. Thus, you can begin this class by introducing some of the theories on compliance and enforcement as espoused by experts such as Thompson, Mitchell, and Kennedy (see Suggested Readings, below). See Thompson for his contention that international behaviour and practice is shaped not so much by law as by geo-political powers. See Mitchell for the argument that States adhere to treaty provisions because it is in their interest to do so and not because they are obliged by law. Refer to the view of critical legal theorists, such as Kennedy, who view the distinction between law and politics merely as an illusion and believes that legal language operates simply in the persuasion toward some practical end. You can use this as the context for engaging the class in a discussion on the effectiveness of compliance and enforcement in IEL and the ways in which alternative regulatory approaches can be utilized to fill the gaps. See, for example, the discussion in P. Sands, *Principles of International Environmental Law*, pp. 154 – 170.
2. Discuss the capacity of States to comply with the numerous treaties in existence [slides 4 - 5]. The number of environmental treaties has increased dramatically over the last few decades and is estimated to be over 900 (depending on how agreements are judged as being “environmental”). States may be party to a large number of MEAs. While they may intend to implement all of these MEAs, the complexity of implementing different provisions from related MEAs may be overwhelming. It may also create considerable administrative overlap, as different institutions may be designated to implement different but related MEAs. At the same time, implementation requires considerable human and financial resources and States may lack the necessary capacity to fully implement and comply with all their obligations under different MEAs. This is sometimes referred to as “treaty fatigue”.
3. A related issue is the overlapping powers and functions of treaty organizations and of institutions responsible for international environmental governance such as UNEP, UNDP, the CSD, etc. [slides 6 – 14]. Some scholars believe that there is a lack of a clear mandate for coordination, cooperation, and leadership among the various organizations that currently claim some role in environmental protection. This need is further underscored by the increasing call to simultaneously address environmental and developmental concerns in an integrated and sustainable fashion. The *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* outlines the need for cooperation and synergies among

MEA secretariats, the need for cooperation on a national level, and the need for cooperation between global and regional treaty institutions. Lecturers can use the practical examples outlined in the *UNEP Manual* (pp. 269-286) to illustrate attempts at cooperation and synergies. These could include, for example, the River Basin Initiative between the CBD and the Ramsar Convention (on p. 275) and the Joint Liaison Group of Rio Conventions together with Ramsar (on p. 276).

4. Discuss the role that soft law can play in enhancing treaties [slides 15 – 16]. For example, to what extent can soft law principles be used in interpreting treaties when settling disputes? Refer to the *Gabcíkovo-Nagymaros Case* between Hungary and Slovakia. The two countries had entered into a treaty to construct a system of locks and dams on the Danube River. Once completed the system was supposed to substantially contribute to the economies of the two countries. While this system was still under construction, Hungary halted the project, claiming, *inter alia*, that newly emerging rules of international environmental law prohibited actions that posed serious environmental threats. The ICJ held that the Parties were still bound by the terms of their treaty. However, the ICJ pointed out that new developing norms of IEL were relevant to the implementation of treaties, and that Parties could incorporate them by agreement. These principles could be applicable in two ways. First, new environmental norms could be applied as *jus cogens* (this refers to a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted), a process that would override the treaty. Second, the new norms could be applied within the interpretation of existing treaties. The Court thus took the view that international treaties are not static and that their interpretation may be supplemented with soft law norms. In a separate opinion, Judge Weeramantry elaborated on the proper role of sustainable development in international environmental law. He suggested that sustainable development is a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community. He believed that the concept therefore has a significant role to play in the resolution of environment-related disputes.
5. You can raise the issue of funding, funding trends, and how funding can assist in ensuring compliance with and implementation of MEAs [slides 17 – 22]. Refer to Plesmann & Goller (see Suggested Readings, below) for an overview of these mechanisms. You can use the example of the Bolivian debt-for-nature swap initiated by Conservation International (CI). CI acquired US\$650,000 of Bolivian external debt at a discounted price of \$10,000. In return, Bolivia undertook to provide the Beni Biosphere Reserve with maximum legal protection and to create three adjacent protected areas. For more information, see: <http://www.esri.com/news/arcnews/spring08articles/conserving-bolivias.html>.
6. Finally, you can conclude the discussion by returning to the issue of effectiveness of IEL and MEAs by introducing some alternatives concerning environmental governance [slides 23 – 24]. Ask the class whether they believe that there may be a need for different or new institutions or world environmental organizations, including dispute settlement institutions to address issues of non-compliance and overlapping institutions and functions. Refer to Hunter, Salzman & Zaelke

(see Suggested Readings, below) for a discussion of this topic and proposals for an alternative world environmental organization. After the group exercise (see below) you can raise and discuss the options outlined here: an Environmental Protection Council, a Global Environmental Organization, a World Environmental Organization, or a Trusteeship of the Global Commons. You can also raise the possibility of an international environmental court. It has been said that the limited success of enforcing rules of international environmental law against deviant states establishes the need for the creation of an international environmental court or tribunal (IEC) capable of issuing binding and enforceable decisions against those states. Discuss the issues raised by Hey (see Suggested Readings, below). How does the growing number of compliance mechanisms affect the arguments for and against an international environmental court?

Your Country

To what extent do policy, regulatory, legislative, or other measures exist that are aimed at creating synergies in the implementation of related MEAs? Does your country participate or benefit from any of the available financial mechanisms?

CLASS DISCUSSION

Questions for Discussion

1. Discuss the proposition: Formal legal mechanisms within MEAs play only a small role in encouraging compliance with their provisions. External political pressures and the need to be seen to conform are generally more important factors in compliance.
2. Ask students whether they believe that there are too many MEAs for them all to be adequately implemented in many countries. What are the most effective and efficient ways to implement them? (See Bruch & Mrema, below.)
3. Ask students to reflect on the judgments in the *Gabcíkovo-Nagymaros Case*. What are the effects of this case on international environmental law?
4. Ask students to critically assess the ideas for cooperation and synergies as outlined in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*. What are the most promising approaches? Are there other possibilities for cooperation and synergy that they can think of?
5. Do students believe that financial assistance is the answer for the capacity problems outlined in point 2 above? What other mechanisms can be utilized? In particular, what are the lessons learned from providing financial and technical assistance to implement the Montreal Protocol? To what extent might such an approach apply to other MEAs?

Group Exercise

For the final section on international environmental governance, you may want to conduct a group exercise where the class is divided into 4 or more groups (depending on class size) with 4 to 5 students per group. Each group may then develop a proposal outlining ideas for addressing the concerns raised regarding international environmental governance (themes 1 to 3). Their proposal may include amendments to existing rules and institutions, but may also include the creation of new institutions. When debriefing the exercise, contrast their views with those raised in Hunter, Salzman & Zaelke in the context of questions such as:

- a. What advantages to these proposals present over current international institutions?
- b. To what extent do these proposals require the surrender of state sovereignty to make them effective?
- c. Would the proposals have rule-making, enforcement, or adjudicatory powers?
- d. Would the proposals complement or replace UNEP, UNDP, and the CDS?
- e. How might a new environmental organization be complemented by the creation of an international environmental court?
- f. Is there a need for an international environmental court?
- g. What are the primary challenges to improving international environmental governance, including the possibility of an international environmental court?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 269 - 285 (discussion accompanying Guideline 34(h)). Refer also to discussion accompanying Guidelines 10(e), 33(f), 40, and 41(n).
- R. Mitchell, *Intentional Oil Pollution at Sea: Environmental Policy and Treaty Compliance* (MIT Press 1994), pp. 28-29.
- D. Kennedy, "A New Stream of International Law and Politics," 7 *Wisconsin International Law Journal* 1 (1988).
- *Case Concerning the Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), 1997 I.C.J. 92. Also read the Separate Opinion of Vice-President Weeramantry. Available at <http://www.icj-cij.org/docket/files/92/7375.pdf>.
- W. Plessman & B. Goller, "Financial Mechanisms," in F. Morrison & R. Wolfrum (eds.), *International, Regional and National Environmental Law* (Kluwer 2000), p. 887.

Suggested Readings

- S. Bauer & F. Biermann, *Does Effective International Environmental Governance Require a World Environment Organization?*, Global Governance Working Paper No. 13 (2004), available at <http://glogov.org/images/doc/WP13.pdf>.
- S. Bauer & F. Biermann (eds.), *A World Environment Organization: Solution or Threat for Effective International Environmental Governance?* (Ashgate 2005).
- E. Hey, *Reflections on an International Environmental Court* (Springer 2000); see also the ICEF website <http://www.icef-court.org>.
- D. Hunter, J. Salzman, & D. Zaelke, *International Environmental Law and Policy* (3rd ed.) (Foundation Press 2006), pp. 241 – 250.
- P. Sands, *Principles of International Environmental Law* (Oxford 2003), chapter 5 and pp. 154 – 170.
- T. Stephens, *International Courts and Environmental Protection* (Cambridge University Press 2009).
- K. Thompson, *Politics among Nations: The Struggle for Power and Peace* (McGraw Hill 1993).
- UNU, *Handbook on Key Linkages among the Rio+ Conventions*, available at <http://geic.hq.unu.edu/ENV/publication1.cfm?type=1&ID=482>.
- WTO, *Existing Forms of Co-operation and Information Exchange between UNEP/MEAs and WTO*, (WTO 2007), available at http://www.wto.org/english/tratop_e/envir_e/envir_neg_mea_e.htm.
- Other suggested readings on synergies are listed on page 286 of the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, as well as in Suggested Readings on Synergetic Implementation of MEAs for Unit 5 (above).
- More information on the Global Environment Facility can be found on <http://www.thegef.org/>.
- On debt-for-nature swaps, see e.g.,
 - J.P. Resor, “Debt-for-Nature Swaps: A Decade of Experience and New Directions for the Future,” *Unasyuva* (vol. 48), available at <http://www.fao.org/docrep/w3247e/w3247e06.htm>.
 - WWF, “WWF Commercial Debt Donations and Swaps” (2003), available at <http://www.cbd.int/doc/external/wwf/www-swaps-1988-2003-en.pdf>.

Section II

Compliance and
Enforcement at the
National Level

UNIT 8:

Introduction to National Approaches for Environmental Implementation and Enforcement

INTRODUCTION

Unit 8 is the first class of the second part of the course. In this Unit, students will learn the basic concepts of national approaches to environmental implementation and enforcement. The exact meaning of the term “enforcement” in both national and international law should be examined at the beginning of this class. The term derives from an Anglo-Saxon Law tradition, and it has no equivalent or exact translation in many other languages. In Spanish, for example, enforcement can be translated as “observance of the law.” However, it is a term with no legal relevance in that language and its concept and intent must therefore be approached differently. Accordingly, various countries may use different language and conceptual constructs to refer to enforcement, and this range of understandings should be considered in the design and operation of an MEA in any particular jurisdiction.

Unit 8 covers the role of enforcement in the implementation of an MEA. It outlines the interrelationship between compliance and enforcement, with an emphasis on the role of national implementation and enforcement of MEAs. These roles include protection of public health and environmental quality, creation and reinforcement of the credibility of regulatory and enforcement authorities and their decisions, ensuring fair and impartial treatment, and reducing costs of prevention and contamination through a responsive and equitable system.

An overview of the components of an enforcement programme is also useful to start the discussion of national compliance and enforcement. This discussion will be particularly important in later assisting students in Unit 11 to design a set of instruments. Understanding why an effective MEA enforcement program is a key element in achieving concrete results in compliance and enforcement is important, so this Unit seeks to cover the main components of an environmental enforcement program (EEP).

As discussed in this Unit and elaborated in U.S. Environmental Protection Agency (EPA), *Principles of Environmental Enforcement* (see Reading List), an effective enforcement programme involves several components:

- creating requirements that are enforceable;
- identifying who is subject to the requirements;
- setting programme priorities;

- monitoring compliance;
- promoting compliance in the regulated community;
- responding to violations;
- clarifying roles and responsibilities; and
- evaluating the success of the program and holding program personnel accountable for its success.

Finally, this Unit examines the variety of policies and approaches that different country use to promote the effectiveness of MEAs. These implementation tools include:

- legal tools, such as
 - command-and-control approaches,
 - responsive regulation, and
 - liability, both fault-based and strict;
- economic tools, such as
 - green taxes and subsidies, and
 - emissions trading (e.g., for greenhouse gases and other atmospheric emissions);
- voluntary tools; and
- information-based tools, including
 - collaborative management approaches, and
 - customary law tools.

LEARNING OBJECTIVES

By the end of this Unit, students should be able to:

- understand the basic principles, rationale, mechanisms, and approaches for compliance and enforcement at the national level, particularly for implementing MEAs;
- identify the importance of national enforcement to the implementation of an MEA;
- understand the importance for each country of having an environmental enforcement program to enforce MEAs; and
- identify the internal and external factors (including social, cultural, and economic factors) that affect implementation of MEAs in national legislation and determine national enforcement capacity.

TEACHING METHODS

This Unit focuses on the various aspects of enforcing the requirements of an MEA in different national contexts. It should take the form of a discussion in which these aspects can be identified and explained. Discussion should focus on legal tools (command-and-control, responsive regulation, and liability), economic tools, voluntary tools, and information-based tools.

Lecturers may wish to use case studies to illustrate how a compliance and enforcement program (CEP) works, such as the Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999 (see Reading List). The case studies can be followed by exercises that ask the students to identify and analyze the environmental management tools that a State can use to implement MEAs, asking students to assess the particular benefits, costs, and risks of specific approaches.

SUBSTANTIVE ISSUES

Principal Themes

1. Start the class by outlining the terms and concepts underlying compliance, enforcement, implementation, environmental law, and environmental crime [slides 3, 4, 5, 6, and 7].
2. Discuss the interrelationships between those concepts and encourage discussion on some specific topics [slide 8].
3. Note how some countries tend to omit environmental enforcement and compliance programs from their national policies, or to de-emphasize those programs, but that environmental enforcement programs can promote compliance and enforcement of MEAs [slides 9 - 10].
4. Examine the limitations to enforcement and compliance of environmental requirements. Briefly discuss why some MEAs are better implemented than others at the national level and what happens when an MEA fails to reflect a country's priorities [slides 11 - 18].
5. Outline the components of an effective enforcement program [slide 19].
6. Explain that each State generally is free to design implementation and enforcement measures that are most appropriate to its own legal system and related social, cultural, and economic circumstances [slide 20].
7. Discuss the considerations that a State should bear in mind when selecting approaches for compliance and enforcement [slide 20].
8. Introduce case studies that illustrate how a national compliance and enforcement program works. Examples are the Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999 and the World Bank pilot programs

- on environmental compliance and enforcement indicators; see Suggested Readings, below [slide 21].
9. Discuss the variety of approaches that a State can establish and use to promote its environmental policy, including implementation of MEAs [slides 22, 23, and 24]. When reviewing the considerations of effectiveness of “hard” versus “soft” options, consider the resources listed in the Suggested Readings (below), especially by Rechtshaffen & Markell and by Cohen.
 10. Ask the students for specific examples of environmental management tools that a State can use to implement MEAs. NOTE 1: which tools might already be in use or under consideration? NOTE 2: are there distinctions between those tools that are relevant to implementing MEAs and those which are relevant to implementing domestic environmental law and policy more generally? Which tools might be particularly applicable to MEAs? [slide 25].
 11. Introduce legal tools and explain command-and-control approaches [slides 26, 27, and 28].
 12. Discuss responsive regulation [slides 29 and 30]. For more information on the U.S. experiences, see <http://www.negotiations.org/reg-neg1.htm>.
 13. Outline liability approaches [slide 31]. Discuss the potential benefits (safety net, fairness, etc.) and shortcomings (notice, ad hoc, unpredictability, etc.) of liability approaches.
 14. Explain the concept of economic tools, and discuss the range of modalities and their respective strengths and limitations [slides 32 - 36]. In addition to the example provided, there are many other examples – some of which might be more relevant to your particular class – in the discussion following Guideline 41(g) on the use of economic instruments, including user fees, pollution fees and other measures promoting economically efficient compliance in UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, on pp. 421-447.
 15. Explain voluntary tools [slide 38].
 16. Identify and discuss information-based tools [slide 39].

Your Country

Applying the concepts of enforcement learned in this Unit to a concrete reality is fundamental in identifying the range of factors and circumstances that influence the implementation and enforcement of an MEA. In discussing the various approaches (legal, economic, voluntary, etc.), you may focus particularly on the specific context of your country.

CLASS DISCUSSION

Many of the specific questions and opportunities for discussion are outlined above in the Principal Themes. In addition, you may note that defining clear objectives in enforcement capability is a critical requirement in policy design. What factors facilitate or limit a country's ability to do so?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings for purposes of additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 289 - 311 (discussion accompanying Guidelines 35, 36, 37, 38, 39, and 41).

Suggested Readings

- M.A. Cohen, *Monitoring and Enforcement of Environmental Policy* (Owen Graduate School of Management, Vanderbilt University, 1998), available at: [http://sitemason.vanderbilt.edu/files/dbRqyQ/monitoring and enforcement working paper1.pdf](http://sitemason.vanderbilt.edu/files/dbRqyQ/monitoring_and_enforcement_working_paper1.pdf).
- M.A. Cohen, "Empirical Research on the Deterrent Effect of Environmental Monitoring and Enforcement," 30 *Envtl. L. Rep.* 10245 (2000).
- Environment Canada, *Compliance and Enforcement Policy for the Canadian Environmental Protection Act, 1999 (CEPA, 1999)* (2001), available at <http://www.ec.gc.ca/ceparegistry/enforcement/CandEpolicy.pdf>.
- C. Dion, P. Lanoie, & B. Laplante, *Monitoring Environmental Standards – Do Local Conditions Matter?*, World Bank Policy Research Working Paper N° 1701 (January 1997).
- N. Gunningham, "Reconfiguring Environmental Regulation: Next Generation Policy Instruments," in: *Industrial Innovation and Environmental Regulation: Developing Workable Solutions* (United Nations University, 2007), available at http://www.idrc.ca/en/ev-110171-201-1-DO_TOPIC.html.
- R. Kemp, "Integrating Environmental and Innovation Policies," in: *Industrial Innovation and Environmental Regulation: Developing Workable Solutions* (United Nations University, 2007), available at http://www.idrc.ca/en/ev-110173-201-1-DO_TOPIC.html.

- C. Rechtshaffen, "Deterrence vs. Cooperation and the Evolving Theory of Environmental Enforcement," 71 *Southern California L. Rev.* 1181 (1998).
- C. Rechtshaffen & D.L. Markell, *Reinventing Environmental Enforcement and the State/Federal Relationship* (2003).
- J.D. Silberman, "Does Environmental Deterrence Work? Evidence and Experience Say Yes, But We Need to Understand How and Why," 30 *Envtl. L. Rep.* 10523 (2000).
- M.M. Stahl, "Promoting Voluntary Compliance: A Valuable Supplement to Environmental Enforcement," *INECE Papers from the Fourth International Conference on Environmental Compliance and Enforcement* (1996), available at <http://inece.org/3rdvol1/pdf/stahl.pdf>.
- UNEP, *Negotiating and Implementing MEAs: A Manual for NGOs* (UNEP 2007), module IX.
- U.S. Environmental Protection Agency (EPA), *Principles of Environmental Enforcement* (1992), available at <http://www.inece.org/enforcementprinciples.html>.
- The World Bank Institute's Environmental Compliance and Enforcement Indicators Project in Latin America, available at <http://www.inece.org/newsletter/10/indicators.html>.

UNIT 9:

Implementation of MEAs in National Law

INTRODUCTION

Unit 9 covers the process of incorporating an MEA into the national law of a State. This process is the “hinge” linking an MEA and national legislation:

The experience with the implementation of MEAs is that once there is an agreement on what has to be done, programmatic elements rather than legally binding commitments play the decisive role in an effective response to environmental problems. International environmental commitments are not directly responsible for most changes in behaviour. [see Sanwal, in Reading Materials].

These programmatic elements are closely related to internal and external factors that can determine the level of implementation and support, or alternatively hinder enforcement at the national level.

This Unit reiterates that each State generally is free to design the most appropriate implementation and enforcement measures for its legal system, given its particular social, cultural, and economic context. In some circumstances, though, an MEA may require certain measures or approaches to be taken before a country can be considered to be in compliance with its international obligations. The effective implementation of an MEA in national legislation depends in large part on correctly gauging these extra-legal considerations. Addressing these social, cultural, and economic factors allows students to understand that law is not detached from a concrete reality and that this reality has important effects regarding implementation and enforcement of an international treaty. This is also related to the fact that international treaties are the result of long international negotiations and consensus-building processes that do not necessarily coincide with internal and external mechanisms, and which in fact influence the effectiveness of the law at the national level.

In addition, Unit 9 discusses methods for incorporating international environmental law into national law, as well as the considerations and options that a State should bear in mind when designing legislation intended to implement an MEA. Clearly defining the goals that such legislation is intended to achieve is a critical element of this process.

Implementation of an MEA is linked not only to enforcement mechanisms at the national level, but also to the way that an MEA is adopted at the international level. Limited or non-existent participation and involvement by local institutions in the negotiation process can create a disconnect between its rules and local policies and legislation. On the other hand, implementation which does not consider internal or external factors that can potentially influence the effectiveness of its enforcement could also lead to problems and even failure.

LEARNING OBJECTIVES

By the end of this Unit, students should be able to:

- describe the methods and mechanisms by which national legislation may recognize and incorporate an MEA;
- identify the mechanisms and procedures by which a national legal system implements an MEA (including both formal, legal mechanisms and other mechanisms such as economic incentives, voluntary approaches, certification, etc.). This includes understanding the way in which national laws and regulations are related to and develop the objectives of the MEA; and
- assess whether national legislation for the implementation of an MEA has taken into account the legal, cultural, social, and economic contexts in the country (at the national and subnational levels, as may be appropriate and necessary) when designing and adopting legislation and institutions to implement an MEA.

TEACHING METHODS

Begin this unit by outlining the theories regarding how countries incorporate MEAs into national legislation, and then implement and enforce the MEAs and implementing legislation.

- Emphasize the legal mechanisms by which a treaty is incorporated into national legislation as well as the recognition of the legal status of environmental treaties in the legal system.
- Also discuss further legislative developments for the implementation of an MEA (laws, regulations, policies, etc.) and evaluate their legal binding nature.

In the second part of the class, present specific examples of success and failure in the implementation and enforcement process of an MEA. Encourage a debate that identifies:

- which examples and approaches seem to be successful and which do not seem to be effective; and
- the factors that seem to influence whether a particular approach will be successful or not.

Ask the students to provide examples of non-legal or non-formal ways to promote implementation of MEAs. In this part of the class, lecturers should stimulate a discussion that identifies external or internal factors that can determine the effective implementation of an MEA in national law.

SUBSTANTIVE ISSUES

Principal Themes

1. Begin by reviewing and analyzing the institutions responsible for negotiation and implementation of MEAs, and the level and nature of coordination among these institutions prior to and during negotiations [slide 2].
2. Differentiate between international instruments which are hard law (i.e., binding agreements with concrete obligations) those that are soft law (e.g., non-binding declarations), and how mechanisms for implementation of hard and soft law instruments may differ [slide 3].
3. Describe the various methods for incorporating international environmental law into national law [slide 4].
4. Discuss the legal status of an MEA in the national legal system hierarchy, and how various countries may accord different legal status to the same MEA. Discuss the difference between monist and dualist systems [slide 5]. You may wish to ask the class to discuss why it is important to clearly identify the legal status of an MEA. For a comparative analysis of the actual legal status of MEAs in domestic legislation, see Bruch, "Is International Environmental Law Really Law?: An Analysis of Application in Domestic Courts" (in Reading List, below).
5. Explore the institutions and individuals who may be involved in the process of incorporating an MEA into national legislation, both in the initial drafting and in reviewing and commenting on the draft legislation [slide 6].
6. Consider the various options for how to draft the legislation, whether based on experiences of other countries, a model law, or from scratch [slide 7].
7. Discuss the need to assess and structure national environmental policy in light of the objectives of an MEA, as well as the particular national governance system (e.g., federal or unitary) and the importance of an adaptive framework [slides 8, 9, and 10].
8. Describe cross-cutting considerations and the general structure of implementing legislation. Elements of implementing legislation include provisions that establish the necessary institutional, administrative, policymaking, inspection and enforcement frameworks; as well as legislative elements including definitions, objectives, principles, operational provisions, incentives, awareness-raising, capacity-building, phase-in period (if appropriate), enforcement, and liability [slides 11 - 15].

9. Discuss why it is important to be able to assess the success or failure of legislative, administrative, and legal frameworks implementing an MEA [slide 16]. How is effectiveness measured? How could it be measured? This discussion may be made concrete by presenting and analyzing cases of successful and problematic implementation of an MEA in national legislation. These cases can help to identify positive and negative lessons and to highlight that effective enforcement depends to a considerable extent on adequate implementation. You may wish to compare and contrast experiences with the Montreal Protocol (usually considered to be successful), the Convention on Biological Diversity (mixed), and the Climate Change Conventions (generally considered, so far, to be highly problematic).
10. One specific example of national implementation is provided (for Peru) in relation to the listing of the Caoba tree (*Swietenia macrophylla*; *Big Leaf Mahogany*) on Appendix II of CITES [slide 17]. Discuss and analyze internal and external factors that influence the implementation and enforcement processes [slide 18].

Variations in Teaching Approach

In order to highlight the complexity of the implementation process, discussion can focus on extreme examples, such as:

- What is the relevance of the Convention on Biological Diversity for a country with scarce or limited biodiversity?
- What is the relevance of the implementation of agreements related to climate change for a country which is undergoing economic turmoil, is highly vulnerable (such as a small island developing state), or a developed country which emits a high level of greenhouse gases per capita, but, in comparison with other industrialized countries, a comparatively low level of greenhouse gases (such as Australia)?

Your Country

Use concrete experiences to illustrate how a specific country – your country – has implemented a specific MEA. You may also contrast various approaches that your country has adopted to develop national legislation implementing different MEAs. What are the various approaches? What were different approaches adopted? What were the implications of these different approaches (e.g., differing cost, legitimacy, effectiveness, etc.)?

CLASS DISCUSSION

In addition to the questions and issues for discussion outlined above under Substantive Issues, questions for class discussion could include:

- How important is political will for effective implementation and enforcement of MEAs?

- How does centralization/decentralization affect MEA implementation and enforcement?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings for purposes of additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 315-369, 421-454, 497-504 (discussion accompanying Guidelines 40, 41 (g), (h), and (n)) (specific readings to be selected by the lecturer).

Suggested Readings

- P. Birnie and A. Boyle, *International Law and the Environment*, chapter 1 (2nd ed.) (Oxford 2002).
- Carl Bruch, "Is International Environmental Law Really Law?: An Analysis of Application in Domestic Courts," 22 *Pace Env'tl. L. Rev.* 401 (2006).
- D. Caron, *Analyzing and Understanding Treaties in the Area of International Environmental Law*, available at <http://www.wcl.american.edu/environment/iel/caron.cfm>.
- D. Hunter, J. Salzman, & D. Zaelke. *International Environmental Law and Policy* (3rd ed.) (Foundation Press 2006).
- IMO, Guidance on the National Implementation of the 1996 Protocol to the London Convention 1972, available at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D17050/implementation-guidance.PDF.
- M. Sanwal, *Framework for MEA Cooperation*, World Summit for Sustainable Development, Version 26-07-02, available at <http://www.unu.edu/inter-linkages/eminent/papers/WG2/Sanwal.pdf>.

On enforcement in States with a federal system of government, see

- K.M. Holland et al. (eds.), *Federalism and the Environment: Environmental Policymaking in Australia, Canada, and the United States* (Greenwood 1996).
- W.E. Oates, *A Reconsideration of Environmental Federalism: Institutions and Regulatory Practices in the EU and Beyond*, (RFF 2001), available at <http://www.rff.org/Documents/RFF-DP-01-54.pdf>.

- D. Vogel, M. Toffel & D. Post, “Environmental Federalism in the European Union and the United States,” Prepared for an international conference on “Globalization and National Environmental Policy” (Veldhover, the Netherlands, September 2003), available at <http://www.tilburguniversity.nl/globus/activities/conference/papers/vogel.pdf>.

On considerations in structuring environmental compliance and enforcement programs, see

- Environmental Law Institute, *Innovation, Cost and Environmental Regulation: Perspectives on Business, Policy and Legal Factors Affecting the Cost of Compliance* (1999), available at http://www.elistore.org/reports_detail.asp?ID=475.
- L. Pratt & C. Mauri, “Environmental Enforcement and Compliance Competitiveness in Developing Countries,” Paper presented at the Seventh International Conference on Environmental Compliance and Enforcement, available at http://www.inece.org/conference/7/vol1/Pratt_Mauri.pdf.
- D. Zaelke et al., “What Reason Demands: Making Law Work for Sustainable Development,” in D. Zaelke, D. Kaniaru, & E. Kruzikova, *Making Law Work: Environmental Compliance & Sustainable Development*, vol. 1, p. 29 (Cameron May 2005) (discussing the importance of environmental compliance and enforcement to rule of law, good governance, and sustainable development), available at http://www.inece.org/mlw/Chapter1_ZaelkeStilwellYoung.pdf.

On evaluating national implementation, see

- C. Dion, P. Lanoie, & B. Laplante, *Monitoring Environmental Standards – Do Local Conditions Matter?*, World Bank Policy Research Working Paper N° 1701 (1997).
- N.S. Nguyen & V.V. Phung, “A Large Scale Survey Using Environmental Inspections to Assess and Enforce the Implementation of the Law on Environmental Protection in Vietnam, 1997,” Paper presented at the Fifth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/5thvol1/vanvui.pdf>.
- M. Stahl, “Promoting Voluntary Compliance: A Valuable Supplement To Environmental Enforcement,” Paper presented at the Fourth International Conference on Environmental Compliance and Enforcement, available at <http://inece.org/3rdvol1/pdf/stahl.pdf>.

UNIT 10:

Institutional Frameworks

INTRODUCTION

In Unit 10, students will learn more about national environmental institutional frameworks to enable them to identify, analyze, and understand the various national and local authorities responsible for implementing and enforcing MEA provisions. In addition, the existing relationship between the national authority and the Secretariat (or the most relevant body) for each MEA will be examined. This discussion is intended to lead to a debate about the strengths and weaknesses of the national authorities in charge of implementation, and to understand the real capacity of the country to enforce MEA requirements. The clear identification of responsibilities of the relevant authorities is essential for enforcing laws and regulations, for designing an environmental enforcement program (EEP), for monitoring and assessing implementation, for data production, and for promoting public awareness.

At the national level, the need for strong mechanisms to coordinate among the various authorities responsible for implementation of MEAs should be emphasized. Coordination among relevant authorities and agencies is indispensable to effective enforcement. Coordination is essential among various enforcement agencies, environmental authorities, tax, customs, and other relevant officials at different levels of government. Establishing and maintaining linkages among cross-sectoral task forces is equally crucial. It is worth distinguishing the main features of a federal governmental system and a unitary or centralized governmental system, including the function of different levels of government.

Considering the fundamental role of the courts of justice and citizens in enforcement, the Unit emphasizes the responsibility of national authorities when reporting, gathering and analyzing environmental information, as well as creating instruments to access such information from judges and the public in general. These approaches should also consider how the information generated through monitoring and assessment may be provided to the relevant MEA Secretariats. Access to information by citizens will be discussed in depth in Unit 12.

LEARNING OBJECTIVES

By the end of Unit 10, students should be able to:

- identify and describe authorities with responsibility for implementation of an MEA in national legislation, both in their own jurisdictions as well as in other countries;

- identify mechanisms for coordinating authorities at the national level to support implementation of an MEA under national legislation; and
- recognize the responsibilities of national authorities in the implementation of an MEA in national legislation.

TEACHING METHODS

The teaching method for this Unit is through lecture and facilitated discussion.

The lecturer may wish to use several examples to illustrate different ways of structuring institutions to implement and enforce an MEA. This comparison should emphasize the need for development of competent authorities at the national and international level, as well as institutional coordination mechanisms that should be established for supporting MEA implementation.

This Unit presents a good opportunity to invite a professional from a relevant authority involved in implementing and enforcing an MEA. Such a guest lecturer could share their practical experience in the institutional development, coordination, and enforcement.

SUBSTANTIVE ISSUES

Principal Themes

1. Start the class by pointing out the concern of the international community for MEA enforcement, referring to Agenda 21 (1992) and UNEP *Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements* (2002) (see Assigned Readings below, and stressing the importance of national enforcement as a critical factor for the effectiveness of international environmental law [slides 2 and 3].
2. Identify the national and international institutional frameworks related to the implementation of MEAs, particularly focusing on national frameworks [slide 4].
3. Briefly review some of the international institutions responsible for implementing MEAs (previously presented in Unit 4) [slide 5].
4. Outline and describe institutions responsible for incorporating MEAs into national legislation [slide 6].
5. Outline and describe institutions for the implementation of MEAs at the national level [slides 7 and 8].
6. Discuss the responsibilities of national implementing institutions [slides 9-19].
7. Discuss the responsibilities of customs and other related authorities [slides 20 and 21].

8. Describe the responsibilities of enforcement bodies [slide 22].
9. Discuss the various types of authority that may be made available to enforcement officials through environmental laws [slides 23 - 26].
10. Stress the challenges of enforcing compliance, including the potential need for strengthening institutional capacities, supervision responsibilities that require the creation of inspection agencies and strategies, public budget issues, political will, and investment in infrastructure and equipment [slide 27].

Your Country

The role that national authorities assume in the implementation and enforcement of MEAs will depend on the legal system of a country, as well as the established institutional framework. You should complement the examples in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* with examples from your particular country. In this context, students can compare the institutional frameworks between those in their country and in other countries.

CLASS DISCUSSION

The experiences of the guest speaker and the Power Point presentation will guide class discussion.

READINGS AND MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. You may also assign excerpts from some of these readings to the students for purposes of additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 371-410, 494, 505-510, and 511-544 (discussion accompanying Guidelines 41 (a), (b), (c), (l), (o), and 42) (specific readings to be selected by the lecturer).
- UNEP *Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements*, available at <http://www.unep.org/dec/onlinemanual/>.

Suggested Readings

- A. Adegoroye, "The Challenges of Environmental Enforcement in Africa: The Nigerian Experience," Paper presented at the Third International Conference

on Environmental Compliance and Enforcement, available at <http://www.inece.org/3rdvol1/pdf/adegoro.pdf>.

- A. Azuela & J. Warman, "From 'The Mexican Problem' to a Regional Experience: Environmental Enforcement and Compliance in North America," Paper presented at the Sixth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/conf/proceedings2/15-Mexican%20Problem.pdf>.
- D. Kaniaru, "The Role of Institutions and Networks in Environmental Enforcement," Paper presented at the Sixth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/conf/proceedings2/10-Role%20of%20Institutions.pdf>.
- M. Mulkey & K.E. Chanon, "National Compliance and Enforcement of International Environmental Treaties," Paper presented at the Sixth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/conf/proceedings2/19-Nationalompliance.pdf>.
- A. Nollkaemper, "Compliance Control in International Environmental Law: Traversing the Limits of the National Legal Order," *Yearbook of International Environmental Law*, vol. 13 (2002).
- OECD, "Guiding Principles for Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus and Central Asia" (OECD 2002), available at <http://www.oecd.org/dataoecd/36/51/26756552.pdf>.
- J. Zao, "Implementing International Environmental Treaties in Developing Countries: China's Compliance with the Montreal Protocol," 5(1) *Global Environmental Politics* 58-81 (2005).

UNIT 11:

Tailoring Enforcement Mechanisms

INTRODUCTION

Unit 11 will analyze ways to tailor enforcement responses. These include – in the words of UNEP Guideline 38(b) – “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 multilateral environmental agreements, can be obliged to comply and/or be sanctioned through civil, administrative or criminal action.”

In this Unit, students will learn about the enforcement pyramid used to tailor enforcement responses to the severity of the offense. In relation to enforcement responses, it is important to acknowledge that each State “is free to design the implementation and enforcement measures that are most appropriate to its own legal system and related social, cultural and economic circumstances” [Guideline 38(b)].

Once this concept has been recognized and its equivalence in the national legal system discussed, students will learn about elements of national legal and institutional frameworks that can be employed to improve enforcement. This Unit will also consider opportunities to improve enforcement through transboundary cooperation and through the use of non-environmental tools (e.g., adaptation mechanisms).

In order to distinguish Unit from the previous Units in this section of the course, enforcement mechanisms should be considered as a set of tools to design and continue an efficient strategy for enforcement. The focus should thus be on analyzing the ways to organize enforcement mechanisms, based on an assessment of specific features (both positive and negative) of national enforcement structures.

LEARNING OBJECTIVES

By the end of this Unit, students should be able to:

- understand enforcement responses as a way ensure the application and compliance of environmental legislation at the national level;
- identify key elements of appropriate national enforcement responses that account for specific legal, social, economic, and policy realities;
- identify available environment-related mechanisms in the national legal system to promote environmental enforcement;

- describe how transboundary cooperation can facilitate enforcement in theory and in practice; and
- understand the variety of tools available for enforcement [see Anderson, in Reading Materials]:
 - prescriptions for corrective actions,
 - administrative, civil, and criminal sanctions,
 - environmental damage compensation claims,
 - legal action through the courts,
 - closing down facilities, and
 - canceling permits.

TEACHING METHODS

Unit 11 explores the application of enforcement responses and tools designed to ensure compliance with environmental law at the national level. To avoid duplication with other Units, we recommend this Unit be organized in such a way, that by the end, students understand the range of specific enforcement tools, their application, and their integration into specific strategies to be adopted in order to ensure compliance with environmental law.

Depending on the extent to which the concept of enforcement was discussed in Unit 8, you may spend some time at the beginning of the Unit discussing different understandings of the term and the implications of these differing interpretations.

The class can analyze the existing elements of national law to identify the extent to which existing enforcement instruments can be applied to ensure national compliance with the requirements of MEAs. Students should assess the available national enforcement tools in light of the range presented in the *Manual* to identify potential weaknesses in the existing national legal and institutional systems.

For the final part of the Unit, the lecturer may divide the class in groups, identify two or three MEAs, and ask students to develop the basics of an enforcement strategy (articulating a set of instruments) based on the most important requirements of those two MEAs. Strategies could include administrative, civil, and/or criminal mechanisms, etc.

The Unit may end with an analysis of an international transboundary case illustrating enforcement problems. A useful example could be to compare the enforcement approaches and mechanisms of two bordering States which are parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

SUBSTANTIVE ISSUES

Principal Themes

1. Discuss the scope of response mechanisms imposed by enforcement authorities [slides 2 and 3].
2. Describe an enforcement pyramid and how it can be used to tailor responses to the severity of a violation [slides 4 and 5].
3. Acknowledge that each State is free to design the implementation and enforcement measures that are most appropriate to their own legal system and related social, cultural, and economic circumstances [slide 6]. At the same time, discuss how an MEA might require certain measures and thereby limit sovereignty and the attendant national discretion.
4. Outline the factors used to design effective responses [slide 7]. And discuss the need to analyze the regulated community in order to design effective environmental enforcement programs [slide 8].
5. Discuss the need to identify economic considerations in order to design effective environmental enforcement programs [slide 9].
6. Discuss the need to identify technological considerations when developing an environmental enforcement program [slide 10].
7. Analyze how to structure appropriate sanctions in light of the factors used to design effective environmental enforcement programs, discussing the meanings of “comprehensive,” “proportionate,” and “appropriate” [slide 11].
8. Discuss, compare, and contrast administrative penalties, civil penalties, and criminal penalties [slide 12].
9. Delve into more depth on some of the specific types of sanctions [slides 13 - 23]. To illustrate these sanctions, you can draw upon the examples in the *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* as well as your own national system.
10. Encourage a debate on whether your country promotes and uses, where appropriate, a set of incentives -- including effective civil liability mechanisms -- to encourage compliance with environmental law [slide 24].
11. Establish what type of sanctions a State should impose, taking into consideration the appropriateness of a range of legal authorities [slide 25].
12. Identify and define real enforcement powers (capacity and ability) of the National Agency responsible for enforcement [slide 26].
13. Analyze the enforcement options that national law offers to authorities and citizens [slide 27].

14. Identify 2 MEAs and their most important provisions regarding enforcement. Discuss how administrative, civil, penal, liability, etc. mechanisms can and do operate in enforcement of those 2 MEAs [slide 28].
15. Introduce a case of real or potential transboundary pollution (for example, pollution of a river or import/export of toxic and/or hazardous residue) to illustrate the enforcement capacities of individual countries, highlight challenges with transboundary enforcement, and discuss opportunities and mechanisms for transboundary cooperation in enforcement [slide 29].

Variations in Teaching Approach

Emphasizing the variation in each country's legal and policy systems is fundamental to the purpose of this Unit. After identifying the basic enforcement concepts, focus on the reality of individual States and the challenges in designing enforcement strategies to fit that reality.

Your Country

Discuss the legal, institutional, cultural, and political realities of your country in order to analyze the factors, circumstances, conditions, and limitations which influence the enforcement of an MEA.

This Unit provides a good opportunity to bring in an outside expert (for example, an enforcement officer) as a guest lecturer to provide a real-world perspective on the contrast between the theory and practice of environmental enforcement.

CLASS DISCUSSION

The PowerPoint presentation for this Unit will generate and guide class discussion.

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, pp. 411-420, 545-582, and 605-657 (discussion accompanying Guidelines 41 (d)-(f), 43, and 45-49) (specific readings to be selected by the lecturer).

Suggested Readings

- W. Anderson, "Domestic Programs for Implementing Multilateral Environmental Agreements: Establishing MEA Implementation Mechanisms," in Proceedings of the Sixth International Conference on Environmental Compliance and Enforcement, vol. 1, p. 147 (INECE 2002), available at <http://www.inece.org/conf/proceedings2/22-DomesticPrograms.pdf>.
- L.L. Bergeson, "Guidelines for Joint State/Federal Civil Environmental Enforcement Litigation," 13(1) *Environmental Quality Management* 85-90 (2003).
- CEC, *Indicators of Effective Environmental Enforcement: Proceedings of a North American Dialogue* (Commission for Environmental Cooperation, 1999), available at <http://cec.org/files/pdf/LAWPOLICY/indic-e.pdf>.
- B. Dalal-Clayton & B. Sadler, *Strategic Environmental Assessment: A Sourcebook and Reference Guide to International Experience* (OECD/UNEP 2004).
- S. Ercmann, "Enforcement of Environment Law in United States and Environmental Law: Realities and Expectations," 26 *Environmental Law* 1212-1237 (1996).
- L. Feris, Compliance Notices – A New Tool in Environmental Enforcement," available at http://www.puk.ac.za/opencms/export/PUK/html/fakulteite/regteper/issues/2006_3__Feris_sum.pdf.
- S. Kadambe & K. Segerson, "On the Role of Fines as an Environmental Enforcement Tool," 41(2) *Journal of Environmental Planning and Management* 217-226 (1998).
- S. Kravchenko, "Environmental Enforcement and Public Advocacy in Ukraine," Paper presented at the Fourth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/4thvol1/kravchen.pdf>.
- J.A. Minz, "Scrutinizing Environmental Enforcement: A Comment on Recent Discussion in the AALS," 17 *Journal of Land Use and Environmental Law* 127-148 (2001).
- W.S. Neilson & G.S. Kimt, "A Standard-Setting Agency and Environmental Enforcement," 67(3) *Southern Economic Journal* 757 (2001).

UNIT 12:

The Role of the Public

INTRODUCTION

In Unit 12, students will identify access rights recognized under Principle 10 of the Rio Declaration, as well as other international norms: access to information, access to public participation and access to justice.

Throughout the Unit, students will learn about the minimum material content these rights should have, as well as the importance of access rights for the proper enforcement of MEAs.

Likewise, students will review international legislation and comparing the development of these rights in their countries, with the support of practical cases.

LEARNING OBJECTIVES

By the end of this Unit, students should be able to:

- identify access rights which citizens are entitled to: access to information, access to public participation and access to justice;
- explain why these access rights are important to implementation of MEAs, as well as environmental law more generally; and
- recognize mechanisms to access environmental information, access public participation processes and access to justice.

TEACHING METHODS

This Unit complements Units 8, 9, 10, and 11, highlighting the importance of public participation in order to enforce MEAs. In this context, teaching methods proposed include:

- In first part of the class, a conceptual and theoretical approach is taken, covering the content of access rights, the mechanisms to access environmental information, the mechanisms for public participation and access justice. The lecturer will lead this part of the class.

- Where possible, during the last part of the class, concrete examples on rights to access should be presented and discussed by selected students.
 - An MEA can be identified as a demonstration on how mechanisms to access information, public participation, and access to justice in the enforcement of an MEA could be applied.

This class can be a good opportunity to ask someone from an NGO to provide a guest lecture to the class. An NGO representative could provide practical experiences about the opportunities and challenges for NGOs, but they also can provide a different perspective and operational methodology from most of the other guest lecturers that have been suggested for other Units.

SUBSTANTIVE ISSUES

Principal Themes

1. Present the rights all citizens to access: access to information, public participation and access to justice [slides 2 and 3]. Throughout the Unit, it may be worth considering the substantive meaning of these norms. Are they rights? Are these “real” rights under international law? How does your legal system provide treat these rights? Are they rights in theory and in law, but not in practice? Rights in practice, but not law?
2. Define the right to access environmental information [slides 4 and 5].
3. Discuss the steps to be followed in order to ensure access environmental information for the community on an adequate and timely manner [slide 6], drawing upon examples in the *UNEP Manual* and from your country [slide 7].
4. Define the scope of the right to access public participation [slide 8].
5. Discuss public participation in plans, programs, and projects [slides 9 and 10]. For discussion of projects with potentially transboundary impacts, you may draw upon the Suggested Readings (below).
6. Examine the role of public participation in enforcement [slide 11].
7. Consider additional mechanisms for promoting public participation [slide 12].
8. Discuss the importance and possible implications of public participation [slides 13 and 14].
9. Describe the scope of access to justice [slide 15].
10. Discuss the benefits and importance of access to justice in strengthening environmental enforcement nationally, and how to ensure fast and effective access to environmental justice [slides 16, 17, and 18]. You may also wish to discuss public participation in enforcement of MEAs at the international level (e.g., through Compliance Mechanisms); the Aarhus Convention has many examples of this on its website.

11. Highlight some important aspects regarding access to justice [slide 19]. In this discussion, you may contrast the scope provided for public access to justice under your country's laws (both generally and in the environmental context) with those in other countries and with the emerging international norms.
12. Identify the legal and administrative procedures that may be used to access courts and administrative tribunals, and in some cases international courts [slide 20].

Your Country

Discuss the degree of development of access rights, not only at the legal level, but also in practice.

To what degree has your country incorporated access rights into its constitutional, legal, regulatory, and institutional frameworks? Are some rights more established than others? Why?

Discuss whether there is a disconnect between the establishment of access rights and the *practice* on the ground. Why might there be a disconnect? What can States, NGOs, and others do to bring practice into line with the legal requirements and rights?

CLASS DISCUSSION

The PowerPoint presentation for this Unit will generate and guide discussion. In particular, you may want to focus discussion on a few key questions:

- Why are public access to information, participation, and justice important?
- Why does practice often lag behind the establishment of access rights?
- Should there be different rights of access at different levels (local, national, and international), or should everyone have access to protect their rights? Which rights?
- Should the degree and nature of access depend on the activity (negotiation of an MEA, development of legislation, regulatory development, decisionmaking on projects, monitoring, enforcement, etc.)?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. Lecturers may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, available at http://www.unep.org/delc/docs/UNEP_Manual.pdf, Guidelines 41(i)-(k) and accompanying text.

Suggested Readings

- Aarhus Clearinghouse for Environmental Democracy, available at <http://aarhusclearinghouse.unece.org/resources.cfm> (including case studies and analysis).
- Access Initiative, available at <http://www.accessinitiative.org> (including various publications).
- C. Behre, "Mexican Environmental Law: Enforcement and Public Participation since the Signing of NAFTA's Environmental Cooperation Agreement," 12 *Journal of Transnational Law and Policy* 327-343 (2003).
- C. Bruch (ed.), *The New "Public": The Globalization of Public Participation* (ELI 2002), available at http://www.elistore.org/reports_detail.asp?ID=10662.
- C. Bruch et al. (eds.), *Public Participation in the Governance of International Freshwater Resources* (UNU Press 2005).
- P. Caratti et al. (eds.), *Analysing Strategic Environmental Assessment: Towards Better Decision-Making* (Elgar 2004).
- S. Casey-Lefkowitz et al., "The Evolving Role of Citizens in Environmental Enforcement," Paper presented at the Fourth International Conference on Environmental Compliance and Enforcement, available at <http://www.inece.org/4thvol1/futrell.pdf>.
- "Rethinking Governance" Handbook: An Inventory of Ideas to Enhance Participation, Transparency and Accountability (2001), available at <http://www.globalcentres.org/html/docs/Inventory.pdf> (including a wide range of case studies and resource materials at the international, regional, national, and local levels).
- E. Roberts & J. Dobbins, "The Role of the Citizen in Environmental Enforcement," available at http://www.enviro-lawyer.com/The_Role_of_the_Citizen_in_Environmental_Enforcement.pdf.
- J. Stærdahl & H. Schroll, "Environmental Impact Assessment in Malaysia, South Africa, Thailand, and Denmark: Background, Layout, Context, Public Participation and Environmental Scope," 3(1) *Journal of Transdisciplinary Environmental Studies* 1 (2004), available at http://www.journal-tes.dk/vol%203%20no%201/jens%20St%20St%20E6rdahl_lav.pdf?id=00028.

- S. Stec (ed.), *Handbook on Access to Justice under the Aarhus Convention* (2nd ed. 2003), available at <http://www.unece.org/env/pp/a.to.j/handbook.final.pdf>.
- T. Stephens, *International Courts and Environmental Protection*, chapter 8 (Cambridge University Press 2009) (on public interest proceedings).
- UNEP, *Law and Practice Relating to Access to Information on the Environment, Public Participation in Processes Leading to Decision-making and Access to Judicial and Administrative Procedures Relating to Environmental Matters: A Report on Models of National Legislation, Policy and Guidelines in the Africa Region, Asia and Pacific Region, and the Latin America and Caribbean Region* (UNEP 2002).
- UNITAR, Report of a National Workshop on Public Participation in Environmental Decision-making in South Africa: Draft Observations, Conclusion and Recommendations (12-14 June 2006, Cape Town), available at http://www2.unitar.org/eg/publications/eg/Recommendations_PP_Workshop_SA_%2026_Jul_06.pdf.

UNIT 13:

Public Education and Working with the Media

INTRODUCTION

Unit 13 addresses the value and importance of public education and working with the media for the enforcement of an MEA. It is important to consider how environmental issues – especially with regard to enforcement of MEAs – are internalized by the population. These may include public campaigns and other mechanisms that establish a linkage with the general public.

Public education and awareness raising – including working with the media – can play a central role in changing conduct. As with other approaches discussed in this class, though, these tools usually require considerable effort, commitment, and resources. This Unit explores the use of a series of tools and approaches for environmental public education and working with the media.

The process to be followed in order to undertake a successful public campaign is also addressed. This may include, for example, the role of enforcement in the implementation of an MEA. Another good example is the media exposure and campaigns related to global climate change. Other examples of global issues that are part of the history of the conservation movement (such as protection of species and/or ecosystems) can also be used. In many of these cases, national and local public interest groups are quite aware of the use of public campaigns and their implications.

To successfully implement media plans, we suggest the following steps are taken into account:

1. An analysis of the existing level of public awareness and opinion regarding the issue of concern. For example, it is quite different to communicate an environmental concern related to genetic resources from communicating about environmental contamination of a specific place.
2. A strategic assessment and understanding of the media's role in the specific advocacy campaign. What do you want the media to do? When? What steps need to be done to realize the strategy?
3. Careful crafting of the message to be communicated.
4. Determine what activities to undertake and what materials (brochures, press releases, advertisements, public notices, etc.) will be needed.
5. Develop and evaluate the media campaign.

LEARNING OBJECTIVES

By the end of this Unit, students should be able to:

- discuss the importance of public education and working with the media to effective implementation and enforcement of an MEA;
- identify and describe the relative benefits and limitations of different tools that can be used to educate the public, raise awareness, and work with the media; and
- describe generally how the various tools and approaches can be assembled into a campaign.

TEACHING METHODS

The basic teaching method is a lecture with a PowerPoint presentation and discussion that addresses both conceptual and practical approaches.

At the end of the Unit, a case study on climate change education and awareness raising will be analyzed. This case study will highlight how many different tools and approaches can be used to educate the public and work with the media.

This Unit is also an opportunity to have a guest speaker address the class. The guest speaker could be someone from the media (e.g., someone who covers environmental issues or even has the “environmental beat”). Alternatively, the guest speaker could be someone who has worked on public education and awareness raising, whether it is in the context of governmental outreach or a campaigning organization.

SUBSTANTIVE ISSUES

Principal Themes

1. Start with some introductory reflections on the roles of public education, awareness raising, and working with the media **[slide 2]**.
2. Discuss the importance of public education **[slide 3]**. Cross-reference to Unit 12, on the important role of the public in implementing and enforcing MEAs.
3. Consider the importance of targeted messaging and how to do it **[slide 4]**. Discuss how to frame a message, and why framing is important **[slide 5]**. Also discuss what might be the scope of a particular message or communications campaign [slide 6]. If possible, use an example from your country when presenting these two slides.
4. Briefly describe the different types of education programs **[slide 7]**. You can also discuss other activities to educate the public, such as written material and other approaches.

5. Discuss the importance of the media, ways of working with the media, and the benefits and constraints of the various tools [slides 8 - 12].

On slide 9, noting that “The Government, NGOs, and others may use the media to disseminate information and sensitize the population,” ask the class whether and how the media might be used for purposes that harm the environment. Are there any specific examples that you could highlight?

On slide 12, see the case study on Ozzy Ozone on pp. 600-601 of the *UNEP Manual*. See also <http://www.ozzyozone.org>.

6. Consider the possible role of celebrities in media campaigns [slide 13]. For examples and more information, see pp. 586-590. See if the class can highlight specific instances where sports figures, actors, and other celebrities have lent their name and face to an environmental cause. What were the impacts of celebrity involvement?
7. Discuss the media campaign on climate change, with the widespread presentation of the film and slideshow entitled “An Inconvenient Truth” by Al Gore and a wide range of trained presenters [slide 14].
8. Review the strategies for a successful advocacy campaign, including identifying the targeted audience [slides 15 - 20].
9. Review the role of environmental education and opportunities for incorporating MEA issues into curricula at various levels [slide 21].
10. Discuss education of community and traditional leaders [slide 22]. Note that traditional, religious, and local community leaders can play an influential or even decisive role in how people act. This is particularly true in rural areas. Education of these leaders can assist in facilitating the implementation of MEAs.
11. Finally, the class may identify and discuss a local or national experience with an MEA that received significant media attention [slide 23]. This may be a campaign responding to a particular crisis (e.g., dumping of hazardous waste in a specific location), or a more general advocacy campaign (e.g., on climate change, perhaps even the campaign by Al Gore).

Variations in Teaching Approach

Discussion of training for enhancing national enforcement capacities (Guideline 43) could be incorporated into this Unit.

Your Country

Try to ground the discussions in the context of your particular country. What are the various media in your country? Print, broadcast, etc. What are their strengths and weaknesses (e.g., Who has access to which media? Might illiteracy limit effectiveness of a campaign targeting print media? etc.)?

You could draw upon experiences of awareness raising campaigns in your country. It could be particularly useful to compare and contrast experiences of campaigns undertaken by the government and by NGOs.

CLASS DISCUSSION

The experiences of the guest speaker and the Power Point presentation will guide class discussion.

READINGS AND MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. You may also assign excerpts from some of these readings as additional reading.

Assigned Readings

- UNEP, *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements* (2006), pp. 205-206, 391, 495, and 565- 604 (discussion accompanying Guidelines 30, 31, 41(a)(iv), 41(m), and 44).

Suggested Readings

- Center for Global Environmental Education, <http://www.hamline.edu/education/environmental/cgee/index.html>.
- Council for Environmental Education, <http://www.cee.org.uk/>.
- Earth Day Network (EDN), <http://www.earthday.net>.
- EnviroEducation, <http://www.enviroeducation.com>.
- Environmental Education and Training Partnership, <http://www.eetap.org>.
- Environmental Education Exchange, <http://www.eeexchange.org>.
- Global Higher Education for Sustainability Partnership (GHESP), <http://webapps01.un.org/dsd/partnerships/public/partnerships/71.html>.
- L.L. Lin & C.Y. Ling, "Promoting and Facilitating Informed Public Participation in the Implementation of the Biosafety Protocol and the National and international levels," in *Cartagena Protocol on Biosafety: From Negotiation to Implementation – Historical and New Perspectives as the World Marks the Entry-into-Force of the Protocol* (CBD & UNEP 2003), at 26-27, available at <http://www.cbd.int/doc/publications/bs-brochure-02-en.pdf>.
- S. McDonald, "Improving Public Education on Global Environmental Treaties Using the Basel Convention as an Example," in W.R. Moomaw & L.E. Susskind (eds.), *Papers on International Environmental Negotiation, Volume*

16: Enhancing the Effectiveness of the Treaty-making System (Harvard Law School Program on Negotiation (2007)), available at <http://www.pon.org/downloads/ien16.4.McDonald.pdf>.

- National Environmental Education and Training Foundation, <http://www.neetf.org>.
- National Environmental Education Week, <http://www.eeweek.org>.
- M.K. Otsuka, *The Role of the Press in Creating Effective Environmental Treaty Negotiations* (Gelbspan 2004), available at http://www.pon.org/downloads/ien14_6Otsuka.pdf.
- UNEP Environmental Education and Training, <http://www.unep.org/training/>.
- UNEP, *Ozzy Ozone Education Pack* (available from <http://www.unep.fr/ozonation>) and *Ozzy Ozone Kids Corner* (<http://www.ozzyozone.org>).
- USEPA Environmental Education Center, <http://www.epa.gov/teachers/>.

UNIT 14:

Case Studies on National Institutions and Processes

INTRODUCTION

Units 8 – 13 have analyzed various tools and approaches that can be deployed to implement and enforce MEAs at the national level. Leading up to Unit 14, then, students will have learned about:

- i) incorporating MEAs into national legislation;
- ii) voluntary mechanisms for enforcement; and
- iii) institutional arrangements required for national implementation and enforcement to be effective.

At the same time, students have been learning about the roles of various actors in these strategies, as well as instruments such as liability and enforcement systems, sanctions, regulatory regimes, and others. Of particular importance, students will have learned about public participation mechanisms, as well as public education and working with the media.

Unit 14 concludes the second section of the class – on compliance and enforcement at the national level – by tying the issues together in a series of concrete examples. The Unit examines practical, real-world examples of national implementation and enforcement of MEAs. To achieve this, the lecturer has a few alternatives for how to manage the Unit:

- (1) you can use the two MEAs that the editors have selected (namely the Convention on Biological Diversity and the Climate Change Conventions).
- (2) you can identify two MEAs for the class to analyze and discuss (this selection may be based on the importance of the issues and MEAs, complexity of the national and international arrangements, and diversity of experiences, so that a comparative analysis (both between the MEAs and between your country and other countries) can generate an informed discussion); or
- (3) you may work with the students in a participatory manner to select two (or three) MEAs to be discussed (this selection may be based on the specific national context, the relative priority of the MEAs, and specific characteristics of the MEAs).

The methodology for this Unit has been designed so that any of these options is feasible. The PPT that has been developed for the first option may also be the basis (procedurally and perhaps substantively) for either of the other two options. In particular, the structure for analysis of the MEAs may be followed for practically any MEA that has been selected.

This Unit seeks to focus on successful and problematic aspects of implementing and enforcing an MEA at the national level. Taking the tools and approaches that have been presented, discussed, and analyzed in Units 8 through 13, this Unit “puts it all together” and analyzes the factors that influence their effectiveness in specific contexts.

LEARNING OBJECTIVES

By the end of Unit 14, students should be able to:

- understand how various national approaches for implementing and enforcing MEAs actually work and do not work in practice;
- based on specific experiences (particularly in their country), assess which mechanisms are most effective in implementing and enforcing MEAs and why certain mechanisms are more effective than others;
- consider to what extent the lessons learned in the specific experiences may be generalized to other countries and to other MEAs;
- identify practical barriers in national legislation and/or culture that hinder national implementation and enforcement of MEAs and suggest proposals to eliminate or reduce such barriers; and
- describe how to select and combine various approaches to most effectively implement MEAs, while taking into account specific national legal, social, policy, and economic realities.

TEACHING METHODS

This Unit focuses on the real-world effectiveness of national measures to implement and enforce MEAs. It does so by analyzing experiences with two MEAs. As discussed above, the lecturer may use the two MEAs suggested by the editors (namely, the Convention on Biological Diversity and the Climate Change Convention), or select others (on your own or with your students). In this analysis, either an MEA can be chosen whose application has been successful or one where barriers have limited the enforcement or made its effectiveness impossible.

For these cases, the following analysis methodology is suggested (based on the CBD):

1. Analyze the relevance of the three objectives of the CBD for your country: (1) conservation of biological diversity; (2) sustainable use of its components; and (3) the fair and equitable distribution of benefits derived from the use of genetic resources [**slide 9**].
2. Review other elements of the Convention. This may include, for example, the protection of knowledge, practices, and innovations of communities; the relevance of the concept of sovereignty to regulate access to genetic resources; and technology transfer. *Focus on those elements that are particularly relevant to the reality of your country.*
3. Analyze the recommendations of the last COP of the Convention on issues prioritized in point 2 (above).
4. Has the CBD been incorporated into your national legislation? What process was followed? Are there any gaps in the legislation? Did the legislation go beyond what was required by the CBD? [**slide 12**].
5. Discuss the levels of knowledge of the CBD in different sectors and the consequences of these levels of knowledge.
6. Consider the level of participation of national institutions in negotiating the CBD. If key institutions were not involved, what are the implications?
7. Have complementary rules been developed, or national or sub-regional legislation, to comply with the objectives of the CBD? Discuss constitutional treatment of the issue; laws on natural resources; laws on biological diversity; rules on bio-safety; national or sub-regional strategies on biological diversity, etc.
8. Discuss the scope, process, and effectiveness of the country's National Biodiversity Strategy and Action Plan, which was required by Article 6 [**slides 10 and 11**].
9. In terms of the issues prioritized, analyze the level of development and compliance of the CBD objectives [**slides 13-15**].
10. Discuss the country's participation in the CBD COP, proposals, and national positions (in the CBD and other forums), particularly as they relate to compliance with the Convention's objectives and national legislation.
11. Assess compliance and enforcement in the context of *in situ* and *ex situ* obligations.

In case of the Climate Change Convention, the lecturer can follow the same template identified for the CDB, including the specific topics related to the Convention [**slides 17 - 22**].

In case the lecturer selects another MEA, the discussion should be organized as follows:

1. Review the MEA's objectives and its relevance for the country.
2. Review which mechanisms and requirements in the MEA are mandatory and which are voluntary. In addition, students may consider the Recommendations and Decisions of subsidiary bodies, the MEA Secretariat, and the COP.
3. Identify institutional mechanisms contained in an MEA designed to facilitate its application.
4. Identify the national process followed when formulating and negotiating an MEA, including the national institutions involved and level of commitment.
5. Analyze the process for incorporating an MEA in national legislation.
6. Analyze the national legislative processes for enforcing an MEA. In this case, consider the relevant national legislation implementing the MEA's objectives.
7. Review the national institutional frameworks for implementing and enforcing an MEA and its effectiveness.
8. Discuss the forms of citizen participation and their effectiveness in implementing and enforcing the MEA.
9. Identify gaps, weaknesses, and other constraints that affect implementation and enforcement of the MEA.
10. Consider to what extent the lessons learned in this analysis might apply more broadly to other countries and/or to other MEAs.

NOTE: *At the end of class, in preparation for Unit 15, the lecturer may circulate the one-page survey for students so that the lecturer has time to compile the results for discussion in Unit 15.*

SUBSTANTIVE ISSUES

Principal Themes

The main theme for analysis and discussion in Unit 14 is the integrity and effectiveness of enforcement tools. Although the class may briefly review each tool, the key is to examine how these relate to one another, the respective roles that they play, and – ultimately – what works in specific circumstances and what does not.

An effective enforcement strategy requires a series of measures at different levels and the responsibility of different actors, but all with a similar goal: promoting compliance of MEA objectives while respecting the context and capacity of the country.

Variations in Teaching Approach

The primary variation is in selecting which MEAs to discuss.

In addition, the differences between specific countries in their legal, political, cultural, and economic systems will generate significant variability in how this Unit is developed and delivered. The Unit emphasizes how *a specific country* implements and enforces two MEAs.

Depending on the composition and orientation of the class, another variation could be to compare how two or three different countries implement a single MEA.

Your Country

Unit 14 is based on the analysis of an MEA at the level of a country as a case study. Recognizing the local context, social, economic, legal, and policy realities of your country is therefore fundamental.

CLASS DISCUSSION

The Power Point presentation will guide class discussion.

READING MATERIALS

The primary reading materials are likely to be:

- a. relevant documents *from your country* (including implementing laws, reports, plans and programs such as the National Capacity Self Assessment, news reports, etc.); and
- b. relevant international documents (such as reports to and from the respective MEA Secretariats about implementation and non-compliance, model laws, etc.).

Section III

WRAP-UP

UNIT 15:

Cross-Cutting Themes and Emerging Trends

INTRODUCTION

This Unit takes a broad view across the previous 14 Units. It examines key cross-cutting themes and emerging trends. Likely themes of interest include:

- role of different actors, especially the public and NGOs;
- institutional coordination (both horizontal (between sectors and Ministries) and vertical (between national and sub-national governmental units));
- synergies and interlinkages;
- financial arrangements; and
- leadership and support (political, institutional, social, private sector, etc.).

LEARNING OBJECTIVES

At the completion of this Unit, students should be able to:

- discuss the key themes that cut across considerations of compliance and enforcement;
- identify emerging trends and explain their significance; and
- debate relative priorities for improving compliance with and enforcement of MEAs.

TEACHING METHODS

At the beginning of class, circulate an identical result of the one-page class survey.

NOTE: This survey could be circulated at the end of Unit 14, so that the lecturer has time to compile the results.

This Unit is best conducted as a facilitated discussion. This Unit serves a synthesizing role of drawing lessons learned from across the various preceding 14 Units. A comparison of the compiled results of the survey may serve as a context for discussion (or even the primary basis for discussion).

SUBSTANTIVE ISSUES

Principal Themes

1. The roles of all actors, including governments, the public, the private sector and environmental non-governmental organisations (NGOs).
2. Institutional coordination (both *horizontal* (between sectors and Ministries) and *vertical* (between national and sub-national governmental units)).
3. Synergies and interlinkages.
4. Financial arrangements.
5. Leadership and support (political, institutional, social, private sector, etc.)

Variations in Teaching Approach

There are many possible variations. The entire session could be spent discussing the survey results, and comparing results in the survey completed in Unit 1 with the Survey completed in Unit 14.

Your Country

Discuss the priorities for compliance and enforcement of MEAs in your country. What are the opportunities? How can your country best take advantage of the opportunities?

Discuss to what extent do the global priorities – improving negotiating capacity, using synergies and interlinkages to improve efficient and effective implementation of MEAs, improving institutional coordination, financing, etc. – reflect your country's priorities. If there are differences, why do they exist?

CLASS DISCUSSION

Issues for discussion:

1. What is the role of international environmental law, and particularly MEAs, in resolving global environmental problems?
2. What are the key barriers to effective MEA compliance and enforcement? Globally? In your country?
3. Steps to improve MEA compliance and enforcement
 - a. What are three “easy” and discrete steps that your country can take to improve MEA compliance and enforcement?
 - b. What are three major (but potentially difficult) steps that your country should take to improve MEA compliance and enforcement?
 - c. What are three key measures that the international community should undertake to improve MEA compliance and enforcement?

4. Are there too many MEAs? If so, what can be done? To what extent can synergetic implementation reduce implementation burdens?
5. What is the role of the public in developing, implementing, and enforcing MEAs? What should it be? Why?

READING MATERIALS

The material indicated under Assigned Readings may be used as the primary source of reading material for this Unit. The material listed under Suggested Readings can assist you in preparing for this Unit. You may also assign excerpts from these readings as additional reading.

Assigned Readings

- Carl Bruch, Growing Up: International Environmental Law Enters Adolescence, 23(3/4) *Envtl. F.* 28 (2006) (***included in course materials***) (if not assigned for Unit 1).

Suggested Readings

- *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, pp. 222-236 (on synergies and MEA coordination/cooperation at the international level).
- *UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*, annex IV (on compliance and enforcement in SIDS).

APPENDIX I:

Syllabus

Unit	Theme/topic of class	Comments
1	Introduction	<p>Session 1 (Theory) Review/primer on international environmental law, including:</p> <ul style="list-style-type: none"> • Global environmental challenges and reasons for international environmental law (to motivate the class); could use some or all of the PowerPoint presentation developed from UNEP's One Planet, Many People: Atlas of Global Environmental Change (http://www.na.unep.net/OnePlanetManyPeople/index.php); also may use materials drawing on UNEP's Global Environmental Outlook (maps, PPT presentations, etc.) • Primer on international environmental law (signature, ratification, etc.) (from UNEP Manual on Compliance with and Enforcement of Multilateral Environmental Agreements) • Brief review of MEAs: provide a broad historic overview, and highlight the 10 MEAs on which the class will focus <p>Session 2 (Examples and Cases)</p> <ul style="list-style-type: none"> • Brief discussion of compliance and enforcement, illustrating the theory at a practical level (shift from developing treaties to implementation) • Identify cross-cutting themes (e.g., benefits of compliance and enforcement; transition to compliance and enforcement; relationship between regulatory models and compliance and enforcement; coordination and cooperation; synergies) • Highlight role of different actors • Compare effective and problematic examples of compliance and enforcement <p>General comment: This unit could be optional (self-study) or shortened, if your program already offers a course on international environmental law.</p>

Unit	Theme/topic of class	Comments
Compliance and Enforcement at the International Level		
2	Preparing for and participating in negotiations	<p>Introduction to Compliance: Overview of considerations before negotiations, during negotiations, and after negotiations. Emphasize that after the negotiations – often difficult – have concluded that much of the work has only started.</p> <p>Case studies of effective negotiations: What worked? Why?</p> <p>Contrast effective v. ineffective negotiations. Why have some worked and some not worked?</p> <p>A brief review of different processes and procedures for ratifying, adopting, etc. MEAs (incorporation into domestic law) (to be addressed in more detail in Units 8 and 9).</p> <p>Highlight the relationship between MEAs and national processes and plans, including development plans.</p> <p>Guidelines 5-12</p>
3	Role-playing Exercise for Participation in Negotiations	<p>Role-playing. Experience with past similar role-playing exercises has shown that to be effective, these exercises usually take at least ½ day (~4 hours).</p> <p>Preparation for the exercise may be done outside formal classes (e.g., done during the break between two class days).</p> <p>Alternatively, documents may be distributed earlier and there could be instructions for students to review and prepare independent or groups on their own time before formal classes which will then focus on actual simulated negotiation. Independent preparation could be analogous to pre-negotiation preparations at national level.</p>
4	Implementation	<p>International Cooperation and Coordination</p> <p>Capacity Building and Tech Transfer</p> <p>Information on Compliance Status</p> <p>Experience Sharing and Networking</p> <p>Guidance Materials on Implementing MEAs</p> <p>Regional Action Plans</p> <p>Increased Awareness of MEAs to Enhance Participation</p> <p>Enhancing Cooperation among MEA Secretariats</p> <p>COPs/MOPs</p> <p>The Role of the Convention Secretariats, Committees, etc.</p> <p>Guidelines 13-17; also touch on 18, 19, 21, 24, 33, 34</p>
5	Compliance Processes	<p>Monitoring, Verification, and Reporting</p> <p>Dispute Resolution Measures</p> <p>Effectiveness Review</p> <p>Guidelines 14(c), 15, 17, and 34(d)</p>

Unit	Theme/topic of class	Comments
6	Non-Compliance Mechanisms	Compliance Committees, etc. Dispute Resolution Guidelines 14(d), 16, and 17
7	Case Studies on International Institutions and Processes	As a conclusion to the International portion of the course and a transition to the National portion, briefly discuss synergies and interlinkages: What do you think about there being so many treaties? Are there more effective and efficient ways to implement them?
Compliance and Enforcement at the National Level		
8	Introduction to National Approaches to Environmental Implementation and Enforcement	Incorporation of International Environmental Law in domestic legal systems (inc. explanation of monist/dualist systems); consideration of different legal systems (consider INECE two-volume Making Law Work); explanation of concepts of compliance and enforcement in domestic legal systems; use of reflexive law approaches Guidelines 35-39, 41(d), (e).
9	Implementation of MEAs in National Law	Legislation, regulations, etc. Approaches other than command-and-control (inc. certification). Include a discussion of instruments recognizing public/diffuse interests. Consideration of different legal systems (Common law, Roman law, Dutch law, Islamic law, ... as appropriate) (which may be particularly relevant for those universities that draw from multiple jurisdictions). Also start discussion of enforcement modalities, which will continue in Units 11-13. Guidelines 40, 41(g), (h), (n)
10	Institutional Arrangements	Specific institutions: customs, police, courts Including capacity-building for enforcement personnel; these can entail multidisciplinary arrangements such as National Environmental Councils, information infrastructure (GIS, EIONET), inspection Guidelines 41 (a), (c), (b), (f), (l), (o), 43

Unit	Theme/topic of class	Comments
11	Enforcement Mechanisms	<p>Tools, variety of tools, and strategies for using tools.</p> <p>Variety of tools include a range of administrative penalties, civil and criminal sanctions, liability, etc. (administrative, civil, criminal, constitutional actions)</p> <p>Role of different actors in enforcement (prosecutors, environmental agencies, courts, public, etc.) (inc. government coordination and NGO networks)</p> <p>Address transboundary cooperation and coordination</p> <p>How to use traditional (non-environmental) compliance and enforcement administrative and judicial tools in a creative way (with national examples, illustrating how countries without compliance and enforcement tools that are specifically tailored to the environmental context can still use existing tools successfully in an environmental context)</p> <p>Guidelines 41 (a) – (o) (especially (g), (h), (n), (m)), 43, 45-49</p>
12	Role of the Public: Access to Information, Public Participation, and Access to Justice	Guidelines 41(i) – (k)
13	Public Education and Working with the Media	Guidelines 41(m), 44
14	Case Studies on National Institutions and Processes	
Conclusion and Wrap-up		
15	Wrap-up	<p>Explore cross-cutting themes and emerging issues, including:</p> <ul style="list-style-type: none"> • role of different actors, especially the public and NGOs • institutional coordination (both horizontal (between sectors and Ministries) and vertical (between national and sub-national governmental units)) • synergies

APPENDIX II:

Unit 1 Class Survey

UNIT 1 CLASS SURVEY

[NOTE TO LECTURERS (to be deleted from the survey that is distributed to the class): This survey is intended to facilitate discussion on cross-cutting issues. It should be distributed in Unit 1 (ideally before any substantive presentations or discussions to capture the views of the incoming students) and then at the end of Unit 14 of the Course (to capture the revised views). The results will be compared and form the basis for discussions in Unit 15. The survey can be completed by individuals or in small groups, although individual is preferable. In the discussion in Unit 15, students may be asked to give reasons for their answers.]

Scale for answering questions 2, 4 and 5: 1 (not at all) // 2 (barely) // 3 (to some extent) // 4 (reasonably well) // 5 (very well)

1. What is the most important environmental challenge facing [MY COUNTRY]?

2. On a scale of 1-5, how likely do you think that [MY COUNTRY] will be able to address this challenge? -----
3. What is the most important environmental challenge facing the world?

4. On a scale of 1-5, how likely to you think that the world will be able to address this challenge? -----
5. On a scale of 1-5 (see above), please indicate the extent to which you agree with the following statements:
"Globally, the environmental situation is generally improving." -----
"The international community has made significant strides in addressing environmental issues."-----
"There are not enough multilateral environmental agreements to respond to the environmental challenges." -----
"The existing multilateral environmental agreements need to be strengthened."

"Implementation of multilateral environmental agreements depends on effective negotiation." -----

"[MY COUNTRY] lives up to its international environmental commitments."

"Generally speaking, developing countries are not fulfilling their international environmental responsibilities." -----

"Generally speaking, developed countries are not fulfilling their international environmental responsibilities." -----

"There are numerous examples around the world of innovative and effective implementation of multilateral environmental agreements." -----

"I am confident that the world will overcome current and future global environmental challenges." -----

APPENDIX III:

Unit 14 Class Survey

[NOTE TO LECTURERS (to be deleted from the survey that is distributed to the class): This survey is identical to the one administered in Unit 1 of the Course. It is intended to be distributed at the end of Unit 15, with the assembled results to facilitate discussion of cross-cutting issues in Unit 15 of the Course. The survey can be completed by individuals or in small groups, as in Unit 1. In the discussion, students may be asked to give reasons for their answers.]

Scale for answering questions 2, 4 and 5: 1 (not at all) // 2 (barely) // 3 (to some extent) // 4 (reasonably well) // 5 (very well)

1. What is the most important environmental challenge facing [MY COUNTRY]? -----
2. On a scale of 1-5, how likely do you think that [MY COUNTRY] will be able to address this challenge? -----
3. What is the most important environmental challenge facing the world?

4. On a scale of 1-5, how likely do you think that the world will be able to address this challenge? -----
5. On a scale of 1-5 (see above), please indicate the extent to which you agree with the following statements:
"Globally, the environmental situation is generally improving." -----
"The international community has made significant strides in addressing environmental issues." -----
"There are not enough multilateral environmental agreements to respond to the environmental challenges." -----
"The existing multilateral environmental agreements need to be strengthened." -----
"Implementation of multilateral environmental agreements depends on effective negotiation." -----
"[MY COUNTRY] lives up to its international environmental commitments." -
"Generally speaking, developing countries are not fulfilling their international environmental responsibilities." -----

“Generally speaking, developed countries are not fulfilling their international environmental responsibilities.” -----

“There are numerous examples around the world of innovative and effective implementation of multilateral environmental agreements.”-----

“I am confident that the world will overcome current and future global environmental challenges.”-----

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