



# Envisioning the Next Steps for MEA Compliance and Enforcement

A High-Level Meeting on Compliance with and Enforcement of Multilateral Environmental Agreements

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## Introduction

The last few decades have seen a rapid increase in Multilateral Environmental Agreements (MEAs) addressing a multitude of environmental concerns from climate change, biodiversity, and desertification to hazardous waste and chemicals. As Dr. Klaus Toepfer, UNEP Executive Director, has observed, “the adoption of these instruments is just the beginning of a process, however: full implementation of their provisions is vital to ensure their effectiveness and full value.” While setting out to efficiently combat environmental degradation, alleviate poverty, and enhance intra- as well as inter-generational environmental justice embedded in the concept of sustainable development, there is wide concern within international diplomatic circles that MEAs have not lived up to their promise, that they are neither complied with nor enforced and are inadequately implemented. This is one of the leading causes for the increasing degradation of the environment. However, the truth is more complex. There is a combination of challenges, factors, and problems that converge to create a context that is not conducive to achieving the commitments agreed upon by States in many MEAs. This can be observed at the international level, the national level, and even much earlier at the negotiating stage of these agreements.

## Challenges and Problems

(i) *At the national level*, many practical and technical issues arise concerning compliance and enforcement of MEAs. These issues, while of concern to each party to an MEA, are particularly acute for many developing countries, many of which still lack the capacity and adequate resources for effective implementation of MEAs. As a result, they may wish to comply with their commitments under the respective MEAs, but may not have undertaken the necessary legislative, administrative, technical, or financial measures required to fully implement their commitments within their countries. This compliance may have come by default through the actions of people at the local level, in complete disconnect with the national government or the MEAs. Given the rising numbers of international environmental agreements, it is increasingly difficult for many developing countries to meet even their basic commitments. This situation often results from a lack of assessment of the resources (human, financial, or technical) required to implement an MEA, prior to signing, ratifying, or acceding to it. Increasingly, the Montreal Protocol is heralded as one of the few effective MEAs, due largely to the high level of financial, technical, and personnel resources that have facilitated implementation, compliance, and enforcement. Against this backdrop, it may be asked whether finance- and assistance-driven compliance regimes like the one adopted by the Parties to the Montreal Protocol are sustainable, or if other approaches (such as CITES mechanisms of support and assistance) might

be preferable to address problems at the national level.

The reasons why a State decides to sign and ratify an MEA and thus decides to become a party to an MEA are multifaceted, and they are often blurred by many considerations outside the actual scope of the particular agreement in question. Is it therefore sustainable and justifiable to predominantly resort to a system of financial and technical assistance even where the political commitment may be lacking? And how to make out those cases? Is the inability to fulfil obligations under an MEA always justifiable due to a lack of resources, or might it also be due to a lack of understanding of the nature of commitment made? How can the international community enhance compliance and enforcement at the national level and address the core issues at hand? How can the international community efficiently ease the administrative problems of many countries vis-à-vis the sheer number of obligations stemming from MEAs that have to be implemented? What is and has been the role of stakeholders (NGOs, local communities, judiciaries, parliamentarians, etc.)?

In spite of this, countries have increasingly developed innovative mechanisms for achieving commitments such as market mechanisms, joint implementation strategies, facilitation schemes, and public-private partnerships. Synergies and inter-linkages among MEAs or issue-based implementation of a cluster of related MEAs are also being developed as means of strengthening overall implementation. These new strategies to enhance the effectiveness of MEAs are increasingly being called upon. However, do these mechanisms live up to their promise? In addition to enhancing compliance, do they offer ways to go beyond compliance to enable actions, even when not directly mandated by law? What is the message to be

sent to countries and how are they to employ possible synergies and inter-linkages vis-à-vis MEAs and their respective Secretariats (i.e. clustering of MEAs, common reporting, issue-based implementation, etc.)?

(ii) *At the international level*, it is necessary to consider the various structural, legal, political, and technical issues surrounding the desired full compliance with and enforcement of MEAs. While some international environmental agreements have formal non-compliance provisions, they often rely on “dispute avoidance” and “alternative dispute solution” rather than formal judicial procedures and/or binding third-party procedures. The few formal judicial procedures that are available have yet to be fully utilized. Many States have a general reluctance to go to court due to the costs and technicalities involved as well as due to the need to maintain cooperative relations with the other States. As a result, when compared to other areas of international law (such as human rights law), international environmental jurisprudence has been rather limited. This, in turn, has had little effect on the strengthening and the development of compliance with and enforcement of MEAs.

When environmental principles are applied in the course of international judicial proceedings, it is often done by bodies that are not necessarily versed in environmental matters, such as the World Trade Organization. This may lead to inconsistencies in the application or in the meaning of environmental principles, as found within MEAs and more broadly under international environmental law itself. This phenomenon, however, reflects the broad encompassing nature of environmental issues and international environmental law itself as shown by the *Gabcikovo-Nagymaros* Case, which not only dealt with issues related to shared water resources, but also with the law

of treaties, state responsibility, and state succession. It is also symptomatic of the elusiveness of the problem and of the difficulties one encounters in trying to identify failures or inadequacies to comply with MEAs and in trying to develop ways to address non-compliance, whether it is by facilitating compliance or by sanctioning non-compliance.

To the extent that MEAs adopt two-track compliance procedures (one focusing on facilitation, abilities, and multifaceted assistance in order to help parties to comply, and the other focusing on more substantial penalties for wilful non-compliance), it then becomes important to explore what are the parameters for success and sustainability of each track? What are the essential components to make a compliance regime of this kind work and what are the lessons to be drawn from the status quo? How can the international community create a context that is conducive to achieving the commitments made and enables the Parties to live up to their given promises through the adoption of the necessary measures at the national level?

*(iii) Multilateral negotiations:* Many problems relating to compliance and enforcement result from a lack of assessment of the resources required to effectively implement an MEA, prior to signing and ratifying it. Multilateral negotiations involve many compromises on a broad range of issues, which means that numerical targets or financial commitments are often left ambiguous or relegated to sections of MEAs that require only “best-endeavours” and other soft commitments. Negotiating compliance systems or regimes for MEAs is one of these issues that usually require arduous negotiations. How, might one ask, do you set up a compliance mechanism when the provisions of an MEA are very general, and it might be difficult to as-

sess whether a State is complying with them or not? Moreover, are there particular approaches that countries may wish to consider when deciding whether to become party to an MEA?

### **The High-Level Meeting on Compliance with and Enforcement of MEAs**

In 1972, on the occasion of the Stockholm Conference on the Human Environment, governments had the foresight to begin taking action and create a body of international law that could respond to the burgeoning problems of environmental degradation. But the three decades since then has been living on borrowed time: many of the problems were not adequately understood or even known and thus immediate responses were not always apparent. Despite the number of MEAs that have been negotiated, many environmental problems have steadily worsened rather than improved. International environmental law could be one of the most effective tools at hand to influence the anthropogenic changes that the environment is undergoing. It must be fully deployed and utilized to reverse and mitigate the changes we are undergoing in our environment. But this requires an understanding of the impediments to compliance and enforcement, as well as a vision of how to more effectively implement international environmental law that we already have. It is also worth considering how to strengthen international environmental law beyond its current boundaries and how to move beyond compliance and enforcement.

The High-Level Meeting on Compliance with and Enforcement of MEAs will review these issues in greater detail. It will be the third in a series of high-level meetings that examine some of the most pressing issues facing MEAs. It will gather some of the most highly regarded legal minds, MEA Executive Secretar-

ies, the Chairs of MEA Compliance Committees, government representatives, and representatives of civil society to discuss lessons learned thus far and possible options for the future. The meeting will consider the technical aspects of compliance and enforcement, as well as breaking new ground in the search for potential legal, structural, and institutional innovations that could enhance implementation of MEAs. Among other issues, the meeting will consider the experiences to date of MEA compliance mechanisms. The aim of the meeting is to look afresh at possible ways to enhance the full implementation of MEAs and increase their effectiveness in addressing the environmental problems for which they have been arduously negotiated.

**Key Issues for consideration:**

- The Myths and the Truths about MEA compliance: Are countries meeting their commitments? What are the key constraints limiting compliance and enforcement?
- Negotiating stronger MEAs: Innovations and new models of compliance and enforcement in MEAs
- What are the lessons learned in national implementation, including legislative, regulatory, institutional, and enforcement measures?
- What is the relationship between good governance and MEA implementation?
- Assessment of existing compliance regimes in MEAs and their impacts, including lessons learned from existing compliance mechanisms under MEAs. What is the proper balance between facilitation and enforcement?
- How can synergies and interlinkages improve compliance with MEAs?
- Beyond Compliance and Enforcement of MEAs: What is next?