



CHAPTER THREE

MULTILATERAL ENVIRONMENTAL AGREEMENTS IN ACTION

INTRODUCTION

This chapter introduces a selection of the best literature on compliance with Multilateral Environmental Agreements (MEAs). The articles in this chapter describe MEAs in action, emphasizing case studies and empirical data.

There are more than 900 international legal instruments that either focus on the environment or contain one or more important provisions concerned with the environment. MEAs are clearly the tool of choice for the international community for addressing global environmental problems, including climate change, ozone depletion, hazardous waste, and loss of biodiversity and endangered species. Collectively, the community of states invests considerable time studying the underlying environmental problems and then negotiating MEAs, generally over many years and at times over decades.

Yet many global environmental problems are continuing to deteriorate, even as new threats are emerging, such as rapid climate change events. Under these circumstances, we need to learn whether these MEAs are solving, or playing a significant role in solving, the problems they were designed to solve. We need to learn what works, what does not, and why, and we need to learn it quickly and adjust as appropriate.

The previous chapter explored various theories that attempt to explain why states do or do not comply with international law and why firms do or do not comply with national laws, including those implementing MEAs.¹ This chapter begins to put those theories to the test. Can sanctions be used effectively to enforce compliance with MEAs? What sorts of agreements and strategies are most effective? When are more cooperative and assistance-based mechanisms appropriate? In short, what makes a

¹ See Chapter Two: Compliance Theories.



given MEA work? There are no simple or easy answers to these questions, and the process of answering them requires a considerable investment in gathering and analyzing relevant data. The articles in this chapter describe progress to date and contribute to a better appreciation of challenges faced by key MEAs, as well as the concerns of the different players involved.

The chapter begins by broadly exploring MEA compliance and effectiveness, often relating the analysis to theories of compliance discussed in the previous chapter. In the first excerpt, Edith Brown Weiss and Harold K. Jacobson argue that the two critical factors explaining MEA compliance are the state's intent and its capacity to comply, and that negative incentives (deterrence strategies such as sanctions, penalties, and withdrawal of privileges), positive incentives (cooperative strategies such as financial assistance, technical assistance, and training), and "sunshine" methods (monitoring, reporting, transparency, and NGO participation) all can play roles in affecting states' compliance intent and capacity.² With respect to positive incentives, particularly financial and technical assistance, Weiss and Jacobson highlight the increasingly important role played by the Global Environmental Facility (GEF) – a role that has expanded to cover not only the initial subjects of biodiversity, climate change, ozone, and international waters, but more recently the subjects of desertification and global chemical issues in the Prior Informed Consent and Persistent Organic Pollutants Conventions.

The second excerpt, by Oran Young, takes a similarly comprehensive view of MEAs. Young explores why some MEAs are more effective than others, assessing the causal mechanisms through which these arrangements influence the behavior of state and non-state actors. Young concludes that successful regimes produce results through a combination of three types of causal mechanisms: collective-action mechanisms that operate through the logic of consequences, social-practice mechanisms that emphasize appropriateness, and realignment mechanisms that influence policy processes within individual actors.³

The third excerpt takes a more empirical turn, testing these broad analyses. The excerpt presents some of the key findings from the

² Edith Brown Weiss and Harold K Jacobson, *Strengthening National Compliance with International Environmental Agreements*, in *PARTNERSHIPS FOR GLOBAL ECOSYSTEM MANAGEMENT: SCIENCE, ECONOMICS AND LAW* (Ismail Serageldin & Joan Martin-Brown eds., 1999).

³ Oran R. Young, *Hitting the Mark: Why Are Some International Environmental Agreements More Successful Than Others?*, 41(8) *ENV'T*, 20 (1999). For more on the "logic of consequences" and the "logic of appropriateness", see Chapter Two: Compliance Theories.



International Regimes Database (IRD) that Young has created with Helmut Breitmeier, Michael Zürn, and others to empirically analyze MEAs. The results from the IRD show that specific regimes make a difference in collective outcomes, that sanctions in these regimes have important effects on the compliance rate, and that capacity building does not seem to play a powerful role – results that sometimes confirm and sometimes contradict theoretical expectations.⁴

The fourth excerpt, by Peter Sand, looks at the institutional innovations that have been and will be needed as MEAs adopt more cooperative strategies to address what Sand sees as the three primary reasons for MEA non-compliance: treaty ambiguity, lack of state capacity, and changing circumstances.⁵

The fifth excerpt, by Kal Raustiala, narrows the scope a bit, analyzing only the “review institutions” – reporting mechanisms, implementation reviews, compliance reviews, and effectiveness reviews – that review state behavior with respect to the 10 major MEAs covered in the UNEP GEO-2000 Report. Raustiala reports that compliance review institutions have strong “managerial” characteristics, that review institutions are most developed where MEA commitments are most specific, and that MEA reporting systems do not operate as comprehensively or effectively as they should.⁶

The next six articles in this chapter provide case studies of compliance with specific MEAs. These MEAs have arisen under different circumstances to address diverse problems with a variety of strategies,

⁴ HELMUT BREITMEIER, ORAN R. YOUNG & MICHAEL ZÜRN, *ANALYZING INTERNATIONAL ENVIRONMENTAL REGIMES: FROM CASE STUDY TO DATABASE*, Chapter 6 (forthcoming 2005). The IRD contains information for more than 50 states and the European Union. More than half of the entries involve industrialized countries or countries with economies in transition. *Id.* at Chapter 2, 33. The IRD includes 23 regimes: Antarctic, Baltic Sea, Barents Sea Fisheries, Biodiversity, CITES, Climate Change, Danube River Protection, Desertification, Great Lakes Management, Hazardous Waste, Inter-American Tropical Tuna Convention, Conservation of Atlantic Tunas, International Regulation of Whaling, London Convention, ECE Long-Range Transboundary Air Pollution, North Sea, Oil Pollution, Protection of the Rhine Against Pollution, Ramsar (Wetlands), Protection of the Black Sea, South Pacific Fisheries Forum Agency, Stratospheric Ozone, and Tropical Timber Trade. *Id.* at 19-21.

⁵ Peter H. Sand, *Institution-Building to Assist Compliance with International Environmental Law: Perspectives*, first published in 56(3) *ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT* (HEIDELBERG J. INT’L L.), 774 (1996).

⁶ KAL RAUSTIALA, *REPORTING AND REVIEW INSTITUTIONS IN 10 MULTILATERAL ENVIRONMENTAL AGREEMENTS* (2001).



and have led to varying degrees of compliance and effectiveness. As such, it is difficult to generalize about these MEAs. The six excerpts provide a mere snapshot of the range of experiences with MEAs:

The excerpt from Svitlana Kravchenko explores the compliance mechanism established under the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, and its “ambitious effort to bring democracy and participation to the very heart of compliance itself.”⁷

The excerpt from Kal Raustiala then provides a quick review of Ron Mitchell’s comprehensive analysis of why equipment standards worked so much better than discharge standards in securing compliance under the international rules governing intentional marine oil pollution.⁸

The excerpts by Peter H. Sand and Rosalind Reeve provide two viewpoints of compliance with the Convention on the International Trade in Endangered Species (CITES). Sand argues that CITES has very effectively used coercive trade sanctions to bring about compliance, while Reeve details numerous weaknesses in the CITES compliance system.⁹

The article by K. Madhava Sarma reviews compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer, focusing particularly on the experiences with the Protocol’s Non-Compliance Procedure.¹⁰

The excerpt by Jon Hovi, Olav Schram Stokke, and Geir Ulfstein then provides an overview of the compliance approaches employed in the

⁷ Svitlana Kravchenko, *Strengthening Implementation of MEAs: The Innovative Aarhus Compliance Mechanism*, 7th INECE Conference Proceedings (forthcoming 2005)

⁸ Kal Raustiala, *Compliance & Effectiveness in International Regulatory Cooperation*, 32 CASE W. RES. J. INT’L L. 387, 413-15 (2000). See also Ronald Mitchell *et al.*, *International Vessel-Source Oil Pollution*, in THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL REGIMES: CAUSAL CONNECTIONS AND BEHAVIORAL MECHANISMS 33-90 (Oran R. Young ed., 1999); RONALD B. MITCHELL, INTENTIONAL OIL POLLUTION AT SEA: ENVIRONMENTAL POLICY AND TREATY COMPLIANCE (1994); Ronald B. Mitchell, *Regime Design Matters: Intentional Oil Pollution and Treaty Compliance*, 48(3) INT’L ORG. 425 (1994).

⁹ Peter H. Sand, *Sanctions in case of non-compliance and state responsibility: pacta sunt servanda— or else?* (forthcoming from ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VOLKERRECHT (HEIDELBERG J. INT’L L.) 2005); ROSALIND REEVE, POLICING INTERNATIONAL TRADE IN ENDANGERED SPECIES: THE CITES TREATY AND COMPLIANCE, Chapter 10 (2002). For a discussion on Lusaka Agreement which assists regional implementation of CITES, see Elizabeth M. Mrema, *Lusaka Agreement as a Mechanism for Enforcement of CITES*, 7th INECE Conference Proceedings (forthcoming 2005).



newly in-force (as of February 2005) Kyoto Protocol to the UN Framework Convention on Climate Change.¹¹

Negotiators can create a theoretically powerful MEA, but if states do not or cannot implement it, then the agreement will remain “just paper”. The next two articles in this chapter provide case studies of state implementation of MEAs:

The excerpt by Piers Blaikie and John Mope Simo describes Cameroon’s experiences implementing various environmental accords (the excerpt focuses on the Montreal Protocol), noting in particular how the combination of economic decline and a crumbling government apparatus have hobbled Cameroon’s capacity to meaningfully implement the MEAs.¹²

The excerpt by Murillo de Aragão and Stephen Bunker explains how Brazil’s implementation of various MEAs (the excerpt focuses on CITES) depends primarily on the geographic, economic, and political realities involved in each case.¹³

The final article in this chapter returns to a broad perspective on MEA compliance and enforcement. Elizabeth Mrema and Carl Bruch’s piece reviews the UNEP Guidelines on Compliance with and Enforcement of MEAs, and the Manual that UNEP is developing to facilitate use of the Guidelines.¹⁴ They also provide a useful appendix of other MEA guidelines and capacity building efforts.

¹⁰ K. Madhava Sarma, *Compliance with the Montreal Protocol*, 7th INECE Conference Proceedings (forthcoming 2005).

¹¹ Jon Hovi, Olav Schram Stokke, & Geir Ulfstein, *Introduction and Main Findings*, in *IMPLEMENTING THE CLIMATE REGIME: INTERNATIONAL COMPLIANCE 1-14* (Olav Schram Stokke, Jon Hovi & Geir Ulfstein, eds., 2005). See also Xueman Wang and Glenn Wiser, *The Implementation and Compliance Regimes under the Climate Change Convention and its Kyoto Protocol*, 11(2) *RECIEL* (2002); Jon Hovi, Camilla Bretteville Froyn & Guri Bang, *Enforcing the Kyoto Protocol: Can Punitive Consequences Restore Compliance?*, available at <http://www.statsvitenskap.uio.no/konferanser/nfkis/ip/Hovi-Froyn-Bang.pdf>.

¹² Piers Blaikie and John Mope Simo, *Cameroon’s Environmental Accords: Signed, Sealed, but Undelivered*, in *ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS* (Edith Brown Weiss & Harold K. Jacobson, eds., 1998).

¹³ Murillo de Aragão & Stephen Bunker, *Brazil: Regional Inequalities and Ecological Diversity in a Federal System*, in *ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS* (Edith Brown Weiss & Harold K. Jacobson, eds., 1998).

¹⁴ Elizabeth Mrema and Carl Bruch, *UNEP Guidelines and Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (MEAs)*, 7th INECE Conference Proceedings (forthcoming 2005). See also Donald Kaniaru, *UNEP Governing Council Adopts Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements*, INECE 6th Conference Proceedings Vol. 2 (2002), available at <http://www.inece.org>.

