

NON-COMPLIANCE MECHANISMS AND THE PROPOSED CENTER FOR THE PREVENTION AND MANAGEMENT OF ENVIRONMENTAL DISPUTES

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1. INTRODUCTION

In recent years, a number of non-compliance procedures have been adopted in the context of multilateral environmental treaties to address the risk of non-fulfilment of treaty obligations by Contracting Parties. The primary objective of these procedures is to encourage or assist States in the implementation of their obligations and, in the event of non-compliance, to avoid the confrontation that might result from resort to means such as dispute settlement procedures, invocation of State responsibility, countermeasures¹.

1. On the development of non-compliance mechanisms and procedures in international environmental law see in particular: CHAYES, A. and CHAYES, A. H.: "On Compliance", *International Organization*, 1993, pp. 175 ff.; KUMMER: "Providing Incentives to Comply with Multilateral Environmental Agreements: An Alternative to Sanctions?", *European Environmental Law Review*, 1994, pp. 256 ff.; BOISSON DE CHAZOURNES: "La mise en oeuvre du droit international dans le domaine de la protection de l'environnement: enjeux et défis", *Revue Générale de Droit Int. Public*, 1995, pp. 37 ff.; SZELL: "The Development of Multilateral Mechanisms for Monitoring Compliance", in LANG (ed.): *Sustainable Development and International Law*, London, 1995, pp. 97 ff.; BOTHE: "The Evaluation of Enforcement Mechanisms in International Environmental Law", in WOLFRUM (ed.): *Enforcing Environmental Standards: Economic Mechanisms as Viable Means?*, Berlin, 1996, p. 13 ff.; CAMERON, WERKSMAN and RODERICK (eds.): *Improving Compliance with International Environmental Law*, London, 1996; LANG: "Compliance Control in International Environmental Law: Institutional Necessities", *ZAÖRV*, 1996, p. 685 ff.; KOSKENNIEMI: "New Institutions and Procedures for Implementation Control and Reaction", in WERKSMAN (ed.): *Greening International Institutions*, London, 1996, p. 236 ff.; MARAUHN: "Towards a Procedural Law of Compliance Control in International Environmental Relations", *ZAÖRV*, 1996, p. 696 ff.; SAND: "Institution-Building to Assist Compliance with International Environmental Law: Perspectives", *ZAÖRV*, 1996, p. 774 ff.; SANDS: "Compliance with International Environmental Obligations: Existing International Legal Arrangements", in CAMERON, WERKSMAN and RODERICK (eds.): *Improving Compliance*, cit. p. 48 ff.; "Implementation, Compliance and Effectiveness", *ASIL Proceedings of the 91st Annual Meeting*, 1997,

The establishment of these procedures is becoming a frequent practice in the context of certain global environmental treaties which are binding on a large number of States with non-comparable economic, social and cultural conditions. Where the cause of non-implementation is rooted in lack of capacity or inadvertence, co-operation and amicable solutions are thought to be particularly well suited to help a party to come into compliance with its commitments while the integrity of the environmental treaty regime is fully protected.

The proliferation of new procedures on non-compliance is hardly peculiar to global environmental treaties. During the last decade, a significant development of non-compliance procedures has been taking place within the sphere of regional environmental agreements. Some of them operate with success and do serve their purpose, i.e., to counteract, by means of co-operative approaches, the symptoms and causes of failure by Parties in the implementation of, and compliance with, their obligations.

The following survey is an updated version of a report that the author drafted in 2003 for the Italian Ministry of Foreign Affairs to examine the relationship between the non-compliance regimes which already operate or will shortly come into operation under global and regional environmental

p. 50 ff.; “Compliance with International Environmental Treaties: The Empirical Evidence”, *ibidem*, p. 234 ff.; HANDL: “Compliance Control Mechanisms and International Environmental Obligations”, *Tulane Journal of International and Comparative Law*, 1997, p. 29 ff.; SZELL: “Compliance Regimes for Multilateral Environmental Agreements – A Progress Report”, *Environmental Policy and Law*, 1997, p. 304 ff.; CHINKIN: “Alternative Dispute Resolution under International Law”, in EVANS (ed.): *Remedies in International Law: The Institutional Dilemma*, Oxford, 1998, p. 123 ff.; VICTOR, RAUSTIALA and SKOLNIKOFF (eds.): *The Implementation and Effectiveness of International Environmental Commitments*, Cambridge, 1998; WOLFRUM: *Means of Ensuring Compliance with and Enforcement of International Environmental Law, Recueil des Cours*, 1998, Vol. 272, p. 25 ff.; BROWN WEISS: “Understanding Compliance with International Environmental Agreements: The Baker’s Dozen Myths”, *University of Richmond Law Review*, 1999, p. 1555 ff.; CHURCHILL and UFSTEIN: “Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law”, *American Journal of International Law*, 2000, p. 623, 643-647; FITZMAURICE and REDGWELL: “Environmental Non-Compliance Procedures and International Law”, *Netherlands Yearbook of International Law*, 2000, p. 35 ff.; RÖBEN: “Institutional Developments under Modern International Environmental Agreements”, *MPYUNL*, 2000, p. 363 ff.; EHRMANN: “Procedures of Compliance Control in International Environmental Treaties”, *Colorado Journal of International Environmental Law and Policy*, 2002, p. 117 ff.; NOLLKAEMPER: “Compliance Control in International Environmental Law: Traversing the Limits of the National Legal Order”, *Yearbook of International Environmental Law*, 2002, p. 165 ff.; CROSSEN: “Multilateral Environmental Agreements and the Compliance Continuum”, *The Georgetown Int. Environmental Law Review*, 2004, p. 473 ff.

treaties and the proposed Centre for the Prevention and Management of Environmental Disputes, whose establishment was officially proposed by Italy in some European Community fora during the same year².

The survey is composed of two parts. Part one contains: 1) a short description of the relevant precedents and progressive developments in the context of global and regional environmental treaties, with a short description of the related institutional and procedural aspects of the regimes concerned (paras. 2-4); 2) a concise analysis of the Italian proposal (para. 5). The purpose of Part two (para. 6) is twofold: 1) to explore possible conflicts and overlappings between existing non-compliance procedures and the functions of the proposed Centre for the Prevention and Management of Environmental Disputes; 2) to check whether the tasks performed by the proposed Centre might fill one or more gaps in the present regime of compliance with international environmental treaties.

2. NON-COMPLIANCE MECHANISMS AND PROCEDURES ESTABLISHED WITHIN GLOBAL ENVIRONMENTAL AGREEMENTS

The development of new mechanisms to deal with non-compliance in multilateral environmental treaties includes, at the world level, the following instances:

- the Protocol on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987), hereinafter: Montreal Protocol³, entered into force on 1st January 1989;
- the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel, 22 March 1989), hereinafter: Basel Convention⁴, entered into force on 5 May 1992;
- the Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997), hereinafter: Kyoto Protocol⁵, not yet in force.

2. See *infra*, para. 5

3. The text of the Protocol is reproduced in BURHENNE (ed.): *Beiträge zur Umweltgestaltung, International Environmental Law – Multilateral Treaties*, Berlin, from 1974 (loose-leaf) (hereinafter: *BU*); *BU*: 985:22/A.

4. The text of the Convention is reproduced in *BU*, 989:22.

5. For the text of the Kyoto Protocol see *BU*, 992:35/A.

The procedural mechanisms and the institutional framework of non-compliance regimes envisaged under these instruments will be briefly reviewed under the following scheme: aim of the procedure, institutional framework, triggering mechanism, gathering of information, outcome of the procedure and operation of the non-compliance regime in practice. Restrictions are inevitably brought about by this schematization, which obviously prevents any exhaustive description and analysis of different non-compliance procedures. The articulation of the survey under few headings, however, aims at a specific purpose: i.e., to grasp the essential features of different mechanisms and facilitate their comparison.

2.1. *The Montreal Protocol on Substances that Deplete the Ozone Layer*

The Montreal Protocol, to which 185 States and the European Union are bound (information updated as at 8 March 2004), establishes precise quantitative restrictions in the production and use of chlorofluorocarbons (CFCs) and other ozone-depleting substances. The non-compliance procedure of the Montreal Protocol is the first mechanism of this kind in international environmental law and is still widely regarded as a model for other multilateral environmental agreements⁶.

“Procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance”, as requested by Art. 8 of the Montreal Protocol, were agreed by the fourth meeting of the Parties to the Montreal Protocol in 1992 (decision IV/5⁷) and slightly modified in 1998 (decision

6. On the non-compliance procedure under the Montreal Protocol see: KOSKENNIEMI: “Breach of Treaty or Non-Compliance? Reflections on the Enforcement of the Montreal Protocol”, *Yearbook of International Environmental Law*, 1992, p. 123 ff.; LANG: “Compliance-Control in Respect of the Montreal Protocol”, *ASIL Proceedings of the 89th Annual Meeting* (April 5-8, 1995), p. 206 ff.; WERKSMAN: “Compliance and Transition: Russia’s Non-Compliance Tests the Ozone Regime”, *ZAÖRV*, 1996, p. 750 ff.; EHRMANN: *Procedures* cit., p. 129-154; YOSHIDA: “Soft Enforcement of Treaties: The Montreal Protocol’s Noncompliance Procedure and the Functions of Internal International Institutions”, *Colorado Journal of International Environmental Law and Policy*, 1999, p. 95 ff.

7. *Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer* (Copenhagen, 23-25 November 1992), decision IV/5, <http://www.unep.org/ozone/mop/04mop/4mop-15.e.shtml>.

X/10⁸). During this last meeting the Parties decided to revise the non-compliance procedure under the Montreal Protocol not later than 2003. In 2002 the representative of the United States proposed amendments to the non-compliance procedure in order to enable the Implementation Committee to meet its obligations to the Parties in a more timely and effective manner. However, taking into account the lack of agreement of the other Parties on all elements of the proposal, the United States' delegation decided to withdraw it⁹.

Objectives: The aim of the procedure is to secure an amicable solution of matters of possible non-compliance.

Institutional mechanisms: An Implementation Committee (hereinafter: ImpCom, consisting of 10 Parties elected by the meeting of the Parties for two years on the basis of equitable geographical distribution¹⁰) is entrusted with the task to identify the facts and possible causes relating to cases of non-compliance referred to it and to report to the Meeting of the Parties with appropriate recommendations. The ImpCom has also the task to report and make appropriate recommendations to the Meeting of the Parties in situations where there has been a persistent pattern of non-compliance by a Party.

Methods of triggering the non-compliance procedure: The non-compliance procedure may be invoked by:

- one or more Parties to the Montreal Protocol in respect of another Party's implementation of its obligations;
- a Party in respect to itself (despite its best, bona fide efforts, a Party that concludes it is unable to comply fully with its own obligations under the Protocol);
- the Secretariat in respect to any Party to the Montreal Protocol (during the preparation of its reports under the Protocol, if the Secretariat becomes aware of possible non-compliance by any Party with the Protocol's provisions).

8. *Report of the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer* (Cairo, 23-24 November 1998), <http://www.unep.org/ozone/mop/10mop/10mop-9.e.shtml>.

9. *Report of the Fourteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer* (Rome, 25-29 November 2002), <http://www.unep.org/ozone/mop/14mop/14mop-9.e.pdf>.

10. From 1 January 2003, Austria, Bangladesh, Bulgaria, Ghana and Jamaica will be members of the Implementation Committee for a one year period; from the same date Honduras, Italy, Lithuania, Maldives and Tunisia will be members for a two year period, *Fourteenth Meeting of the Parties* (Rome, 25-29 November 2002), decision XIV-12.

Information gathering: The ImpCom bases its deliberations on information submitted by the Parties and any other information forwarded by the Secretariat. It can also request further information on matters under its consideration through the Secretariat and, with the authorization of the Party concerned, collect information in the territory of that Party. The ImpCom has also the duty to maintain an exchange of information with the Executive Committee of the Multilateral Fund in relation to the provision of financial and technical assistance to Parties. As far as developing countries are concerned, in 1994 the Parties to the Montreal Protocol decided to strengthen the reporting requirements on developing countries classified under Art. 5 of the Montreal Protocol. A developing country that enjoys this status will lose it “if it does not report baseyear data as required by the Protocol within one year of the approval of its country programme and its institutional strengthening by the Executive Committee, unless otherwise decided by a Meeting of the Parties”¹¹.

Outcome: The indicative list of measures that might be taken by a Meeting of the Parties after receiving a report by the ImpCom includes: “A) appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training; B) issuing cautions; C) suspension, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, of specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements” (Annex V to decision IV/5 of 1992).

Practice: The non-compliance procedure of the Montreal Protocol is fully operational. Since 1995 several cases have been reported by the ImpCom to the Meeting of the Parties. The first cases involved eastern European countries, the so-called countries with economies in transition (Belarus, Bulgaria, Latvia and Lithuania, the Russian Federation, Ukraine). The Russian Federation was found in non-compliance with the phase out benchmarks for 1999 and 2000 for the production and consumption of ozone-depleting substances in Annex A to the Montreal Protocol. After successive recommendations of the ImpCom and decisions of the Meeting of the Parties,

11. Decision VI/5, adopted during the Sixth meeting of the Parties (Nairobi, 6-7 October 1994), para. (a) (iii), Doc. UNEP/OzL.Pro.6/7 of 10 October 1994, <http://www.unep.org/ozone/mop/06mop/6mop/6mop-7e.shtml>.

in 2002 the Parties declared that the Russian Federation had returned to compliance with its obligations¹².

The grace period for the developing countries provided for by Art. 5 of the Protocol ended in 1999. Since that year, also these countries have to comply with the control measures. In 2002, in accordance with item B of the indicative list of measures, the Parties cautioned Albania, Bahamas, Bangladesh, Belize, Bolivia, Bosnia-Herzegovina, Cameroon, Ethiopia, Libya, Maldive, Namibia, Nepal, Nigeria and Saint Vincent and the Grenadines that in the event they had failed to return to compliance in a timely manner with regard to the phase-out of ozone depleting substances, the Parties would have considered measures consistent with item C of the indicative list of measures. "These measures may include the possibility of actions available under Article 4, such as ensuring that the supply of CFCs (that is the subject of non-compliance) is ceased and that the exporting parties are not contributing to a continuing situation of non-compliance"¹³. In 2003 the ImpCom acknowledged that Saint Vincent and the Grenadines had failed to provide a plan of action despite an explicit request to do so¹⁴. However, the Committee "understood the pressing environmental problems faced by such small islands States, and noted with appreciation the work done by UNEP in working with the country on a plan of action"¹⁵. The progress of Albania, Bolivia, Bosnia and Herzegovina, Cameroon, Guatemala, Honduras, Libya, Maldives, Namibia, Papua New Guinea, Uganda and Uruguay in the implementation of their plan of actions is closely monitored¹⁶.

12. Fourteenth Meeting of the Parties (Rome, 25-29 November 2002), decision XIX/35. On the case of the Russian Federation see WERKSMAN: "Compliance and Transition: Russia's Non-Compliance Tests the Ozone Regime", *ZAÖRV*, 1996, p. 750 ff.

13. Fourteenth Meeting of the Parties (Rome, 25-29 November 2002), decisions XIV/18-26; XIV/30; XIV/32-34.

14. *Report of the Fiftieth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Nairobi, 10-14 November 2003)*, Doc. UNEP/OzL.Pro.15/9 of 11 November 2003, <http://www.unep.org/ozone/mop/15mop/15mop-9.eadvancedcopy.pdf>, para. 140.

15. *Ibidem*, para. 141.

16. See *Report of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol on the Work of Its Thirty-First Meeting*, Doc. UNEP/OzL.Pro/ImpCom/31/3 of 13 November 2003, Annex, p. 32 ff.

2.2. *Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*

The Basel Convention is principally devoted to the control of the movements of hazardous wastes across international frontiers. It is based on the principle that States should take necessary measures to ensure that transboundary movements of hazardous wastes are consistent with the protection of human health and the environment, whatever the place of their disposal. 158 States and the European Union are currently bound to this Convention (information updated as at 8 March 2003).

Art. 19 of the Basel Convention regulates a “verification procedure”, according to which if a Party has reason to believe that another Party is infringing its obligations under the Convention it may inform the Secretariat and the Party against whom the allegations are made. The Secretariat is under the duty to transmit the Parties all the relevant information received under this provision, but Art. 19 is silent about any further action that can be undertaken by the Parties to secure implementation of and compliance with the Convention.

In December 1999, while the negotiations for the adoption of a Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal were under conclusion¹⁷, the Fifth Conference of the Parties decided to establish a Legal Working Group (LWG) with the mandate, inter alia, to finalize a proposal for establishing a mechanism on implementation of and compliance with the obligations of the Basel Convention. The revised text of a draft decision prepared by the LWG was adopted by the Sixth Conference of the Parties to the Basel Convention (COP 6) on 14 December 2002¹⁸. The mechanism operates without prejudice to the procedure on settlement of disputes established by the Basel Convention.

Objectives: The Mechanism for Promoting Implementation and Compliance pursues the aim “to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure

17. The Protocol was adopted by the Fifth Conference of the Parties to the Basel Convention on 10th December 1999. For the text of the Protocol see *BU*, 989:22/B.

18. Doc. UNEP/CHW.6/CRP.12 of 11 December 2002. On the non-compliance procedure under the Basel Convention see: SHIBATA: *The Basel Compliance Mechanism, Review of European Community and International Environmental Law*, 2003, p. 183 ff.

the implementation of and compliance with the obligations under the Convention". The mechanism is non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible and not-binding.

Institutional mechanisms: The mechanism is administered by a Committee, the Committee for Implementation and Compliance (hereinafter: the Committee), consisting of 15 experts in different subject matters (i.e., scientific, technical, socio-economic, or legal fields) covered by the Convention. The members of the Committee are elected by the Conference of the Parties on the basis of equitable geographical distribution. The Committee is entrusted with the task to identify the facts and possible causes relating to cases of non-compliance referred to it and give assistance to Parties in their resolution.

Methods of triggering the non-compliance procedure: The non-compliance procedure may be invoked by:

- a Party to the Basel Convention that has concerns or is affected by a failure to comply with and implement the Convention's obligation by another Party with whom it is directly involved under the Convention;
- a Party in respect to itself (despite its best, bona fide efforts, the Party concludes it is unable to fully implement or comply with its own obligations under the Convention);
- the Secretariat in respect to any Party to the Basel Convention, if it becomes aware that a Party is incurring difficulties in complying with its reporting obligations under Art. 13, para. 3, of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.

Information gathering: The Committee shall base its deliberations on information provided by:

- the national reports submitted by the Parties under Art. 13 of the Basel Convention;
- the Party concerned;
- all the Parties through the Secretariat;
- other bodies of the Convention and the Secretariat;
- any sources and outside expertise, either with the consent of the Party concerned or as directed by the Conference of the Parties.

With the authorization of the Party concerned, the Committee can also collect information in the territory of that Party.

Outcome: The mechanism under review envisages two different sets of measures which can be adopted by the Committee: the “facilitation procedure” and “additional measures”. Under the “facilitation procedure”, the Committee may assist a Party with advice, non-binding recommendations and information relating to, for instance:

- the establishment or the strengthening of national or regional regulatory regimes;
- facilitation of financial and technical assistance, including technology transfer and capacity building, in particular to developing countries and countries with economies in transition;
- elaboration with the co-operation of the Party concerned, voluntary compliance action plans and review their implementation.

Measures other than those listed above should be adopted in agreement with the Party concerned.

In addition to the measures envisaged under the facilitation procedure, “additional measures” may be recommended by the Committee to the Conference of the Parties to address a Party’s compliance difficulties. Such measures include:

- further support for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources;
- issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote co-operation between all Parties.

The Committee may also decide not to proceed with a submission which it considers *de minimis* or manifestly ill-founded.

Practice: The first meeting of the Committee was held in Geneva on 19 October 2003, but the report was not made publicly available¹⁹.

19. The Implementation and Compliance Committee is not open to all Parties. Therefore, the report is made available only to the members of the Committee. Information provided by the Secretariat of the Basel Convention to the author on 5th December 2003.

2.3. *Protocol to the United Nations Framework Convention on Climate Change*

The Kyoto Protocol supplements and strengthens the United Nations Framework Convention on Climate Change (New York, 9 May 1992), hereinafter: UNFCCC²⁰, whose basic aim is “to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Art. 2). The Kyoto Protocol establishes a set of general commitments for all Parties and detailed legally binding emission reduction targets for certain greenhouse gases for Annex I Parties. The Protocol is not yet entered into force²¹.

Art. 18 of the Kyoto Protocol calls on the Conference of the Parties to the UNFCCC, serving as the meeting of the Parties to the Kyoto Protocol (hereinafter: COP), to approve, at its first session: “appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance”. At COP 4 (Buenos Aires, November 1998), Parties established a joint working group to develop a compliance system under the Protocol. At COP 7 (Marrakesh, 29 October – 10 November 2001), the Parties reached agreement on the Kyoto Protocol's compliance mechanism (decision 24/CP.7)²².

20. BU, 992:35.

21. The Kyoto Protocol shall enter into force when two conditions have been met: 1) ratification by 55 States; 2) ratifying governments must include developed countries representing at least 55% of that group's 1990 carbon dioxide emissions. The first requirement is met: 102 States and the European Union have ratified, accepted or approved the Protocol (situation updated at 31st January 2003). However, at the same date, developed countries ratifications accounted for 43,7% of 1990 CO2 emissions as determined when the Protocol was adopted. The ratification of the Russian Federation (with its 17,4% of emissions) will be essential for the entry into force of the Protocol.

22. *Report of the Conference of the Parties on Its Seventh Session (Marrakesh, 29 October – 10 November 2001)*, Doc. FCCC/CP/2001/13/Add.3 of 21 January 2002, p. 64 ff., <http://maindb.unfccc.int/library/?screen=list&FLDO=%25T&OPRO=contains&VALO=24/CP.7>. On the non-compliance procedure under the Kyoto Protocol see: OTT: “Elements of a Supervisory Procedure for the Climate Regime”, ZAÖRV, 1996, p. 732 ff.; WERKSMAN: “Compliance and the Kyoto Protocol: Building a Backbone into a “Flexible” Regime”, *Yearbook of International Environmental Law*, 1998, p. 48 ff.; WISER: “Kyoto Protocol Packs Powerful Compliance Punch”, *International Environment Reporter Current Report*, 16 January 2002, http://www.ciel.org/Publications/INER_Compliance.pdf; WANG and WISER: “The Implementation and Compliance Regimes under the Climate Change Convention and

Objectives: The aim of the procedure is to provide “early-warning” of cases where a Party is in danger of not complying with: (i) its emission targets; (ii) its monitoring and reporting requirements; or (iii) its eligibility requirements for participating in the international emissions trading system among different Parties to the Protocol and secure an amicable solution of matters of possible non-compliance. The non-compliance procedure operates without prejudice to the procedure on settlement of disputes established by the UNFCCC.

Institutional mechanisms: The compliance regime consists of a Compliance Committee (composed by 20 members, serving in their individual capacities) made up of two branches: a Facilitative Branch and an Enforcement Branch. The Facilitative Branch aims to provide advice and assistance to Parties in implementing the Protocol and for promoting compliance with the Protocol. It also provides “early-warning” of cases where a Party is in danger of not complying with its emission targets. The Enforcement Branch has the power to determine whether Parties are not complying with their emission target or reporting requirements. Both branches are composed of 10 members, including one representative from each of the five regional groups of the United Nations (Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe, and Western Europe and Others), one from the small island developing States, two members from Parties included in Annex I and two members from non-Annex I Parties.

Methods of triggering the non-compliance procedure. A potential compliance problem (“questions of implementation”) can be raised by:

- an expert review team entrusted by Art. 8 of the Kyoto Protocol to review information submitted the Parties;
- a Party with respect to another Party;
- a Party with respect to itself.

Information gathering: Each branch of the Compliance Committee shall base its deliberations on information provided by:

- the reports of the expert review teams;
- the Party concerned;

its Kyoto Protocol”, *RECIEL*, 2002, p. 181 ff.; BRUNNÉE: “The Kyoto Protocol: Testing Ground for Compliance Theories?”, *ZAÖRV*, 2003, p. 255 ff.; URBINATI: “Non-Compliance Procedure under the Kyoto Protocol”, *Baltic Yearbook of International Law*, 2003, p. 229 ff.

- the Party that has submitted a question of implementation with respect to another Party;
- reports of the COPs and the subsidiary bodies of the UNFCCC and the Kyoto Protocol;
- the other branch;
- intergovernmental and non-governmental organisations;
- experts invited to give their advice.

Outcome: The Facilitative Branch can decide on the adoption of one or more of the following measures:

- give advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;
- mobilize financial and technical assistance to any Party concerned;
- formulate recommendations.

The Enforcement Branch can adopt different measures according to the commitments which have not been met by the Party concerned. If the Enforcement Branch determines that a Party has not complied with Art. 5, para. 1 or 2, or Art. 7, para. 1 or 4, of the Protocol, it can adopt the following measures:

- declaration of non-compliance;
- development of a plan, which includes: an analysis of the cause of non-compliance, measures that the Party intends to implement in order to remedy the non-compliance and a timetable for implementing such measures.

If the Enforcement Branch determines that a Party included in Annex I does not meet one or more of the eligibility requirements under Arts. 6, 12 and 17 of the Protocol, it can suspend the eligibility of that Party.

If the Enforcement Branch determines that the emissions of a Party have exceeded its assigned amount, the following consequences can occur:

- deduction from the Party's assigned amount for the second commitment period of a number of tonnes equal to 1.3 times the amount in tonnes of excess emissions;
- development of a compliance action plan, which includes: an analysis of the cause of non-compliance, the action that the Party intends to implement in order to meet its quantified emission limitation or reduction commitment in the subsequent committing period; and a timetable for implementing such measures;

- suspension of the eligibility to make transfers under Art. 17 of the Protocol until the Enforcement Branch has reinstated that eligibility.

In the case of non-compliance with emission targets, the Party can lodge an appeal to the COP if that Party believes it has been denied due process. If the COP agrees to override the decision of the Enforcement Branch, the matter of the appeal shall be referred back to the Enforcement Branch.

Practice: As the Kyoto Protocol has not yet entered into force, the impact of its non-compliance procedure remains to be seen.

3. NON-COMPLIANCE MECHANISMS AND PROCEDURES ESTABLISHED WITHIN REGIONAL ENVIRONMENTAL AGREEMENTS

The development of new mechanisms to deal with non-compliance in multilateral environmental treaties include, at the regional level, the following instances:

- the Convention on Long-Range Transboundary Air Pollution (Geneva, 13 November 1979), hereinafter: LRTAP Convention²³, entered into force on 16 March 1983;
- the Convention on the Protection of the Alps (Salzburg, 7 November 1991), hereinafter: Alpine Convention²⁴, entered into force on 6 March 1995;
- the Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 22 September 1992), hereinafter: OSPAR Convention²⁵, entered into force on 25 March 1998;
- the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Århus, 25 June 1998), hereinafter: Århus Convention²⁶, entered into force on 30 October 2001.

23. *BU*, 979:84.

24. *BU*, 991:83.

25. *BU*, 992:71.

26. *BU*, 998:48.

3.1. *Convention on Long-Range Transboundary Air Pollution*

The scope of the LRTAP Convention is to limit emissions of polluting substances into the atmosphere in the European and North American regions covered by the United Nations Economic Commission (UNECE). LRTAP, which binds 48 States and the European Union (information updated as at 18 February 2004), is a framework convention completed by eight Protocols: the Protocol on Long-Term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (Geneva, 28 September 1984), hereinafter: EMEP Protocol²⁷, entered into force on 28 January 1988; the Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent (Helsinki, 8 July 1985), hereinafter: First Sulphur Protocol²⁸, entered into force on 2 September 1987; the Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes (Sofia, 31 October 1988), hereinafter: Nox Protocol²⁹, entered into force on 14 February 1991; the Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (Geneva, 18 November 1991), hereinafter: VOC Protocol³⁰, entered into force on 29 September 1997; the Protocol on Further Reduction of Sulphur Emissions (Oslo, 14 June 1994), hereinafter: Second Sulphur Protocol³¹, entered into force on 5 August 1998; the Protocol on Heavy Metals (Århus, 24 June 1998)³², entered into force on 29 December 2003; the Protocol on Persistent Organic Pollutants (Århus, 25 June 1998) hereinafter: POPs Protocol³³, entered into force on 23 October 2003; the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg, 30 November 1999)³⁴, not yet in force.

The establishment of a non-compliance procedure was decided by the Executive Body of the LRTAP Convention in 1997 (Decision 1997/2)³⁵, in

27. BU, 979:84/A.

28. BU, 979:84/B.

29. BU, 979:84/C.

30. BU, 979:84/D.

31. BU, 979:84/E.

32. BU, 979:84/F.

33. BU, 979:84/G.

34. BU, 979:84/H.

35. Decision 1997/2 concerning the Implementation Committee, Its Structure and Functions and Procedures for Review of Compliance, *Report of the Fifteenth Session of the Executive Body*, Doc. ECE/EB.AIR/53, Annex III, <http://www.unece.org/env/>

accordance with Art. 10, para. 2, of the Convention (which confers to the Executive Body the mandate to review the implementation of the Convention), Art. 3, para. 3, of the VOC Protocol (which requires the Parties to establish a mechanism for monitoring compliance with their commitments under the Protocol), and Art. 7 of the 1994 Second Sulphur Protocol. The latter provides for the establishment of an Implementation Committee with the power to review implementation and compliance by the Parties with their obligations under the Protocol. This body “may decide upon and call for action to bring about full compliance with the present Protocol, including measures to assist a Party's compliance with the Protocol”. The non-compliance procedure regulated by Decision 1997/2 applies to all the LRTAP Protocols. Amendments to Decision 1997/2 were approved by the Executive Body in 2002 to bring the text of the decision into line with established practice³⁶.

Objectives: The 1997 Procedures for Review of Compliance of the LRTAP Convention aim to bring about full compliance with the Protocols to the Convention and assist Parties in the implementation of and compliance with their commitments. The Procedures operate with no prejudice to the provisions of the Protocols on settlement of disputes.

Institutional mechanisms: The mechanism is administered by the Implementation Committee, consisting of 9 Parties to the LRTAP Convention. Each member of the Committee is a Party to, at least, one Protocol. The members of the Committee are elected by the Parties to the LRTAP Convention for two years. The Implementation Committee has the task to review periodically compliance by the Parties with their reporting requirements under the Protocols and to secure “a constructive solution”³⁷ to cases of non-compliance referred to it.

Methods of triggering the non-compliance procedure: The non-compliance procedure may be invoked by:

- one or more Parties to a Protocol in respect of another Party's implementation of its obligations under that instrument;

lrtap/conv/report/eb53_a3.htm. On the non-compliance procedure under the LRTAP Convention see: SZELL: *Compliance Regimes* cit., p. 304 ff.

36. *Report of the Nineteenth Session of the Executive Body*, Doc. ECE/EB.AIR/75 of 16 January 2002, Annex.

37. Decision 1997/2, Annex, para. 3 b).

- a Party in respect to itself (despite its best endeavours, a Party concludes it is unable to comply fully with its obligations under a Protocol);
- the Secretariat in respect to any Party to a Protocol (during the revision of the reports submitted by the Parties in accordance with a Protocol's reporting requirements, the Secretariat becomes aware of possible non-compliance by a Party with its obligations).

Information gathering: The Implementation Committee bases its deliberations on the information provided by the Secretariat. It can also request further information on matters under its consideration through the Secretariat and, subject to the authorization of the Party concerned, collect information in the territory of that Party.

Outcome: The Implementation Committee reports and makes appropriate recommendations to the Executive Body. The Parties to the Protocol concerned, meeting within the Executive Body, decide upon measures to bring about full compliance with the Protocol in question, including measures to assist a Party in the effective compliance with its obligations.

Practice: The Procedures for Review of Compliance under the LRTAP Convention is fully operational. For illustrative purposes only, a few cases shall be mentioned.

The first submission was received by the Implementation Committee in 2000. It concerned the compliance by Slovenia with the 1994 Second Sulphur Protocol: sulphur emissions rates originating from the Trbovlje plant (a coal-fired power plant) could be in violation of a sulphur emission limit value required under the Protocol as of 2004. In 2000 the Executive Body adopted the recommendations of the Implementation Committee. It noted the intention of Slovenia to adopt an ecological action programme to reduce the sulphur emissions of the Trbovlje power plant and to shut down that plant. The Executive Body invited the Parties to the 1994 Protocol to examine ways in which they could assist Slovenia in reducing emissions from the Trbovlje plant (for instance, through the provision of equipment). Slovenia was invited to consider applying timely measures to reduce sulphur emissions from the plant (for instance, using coal with a lower sulphur content, coal cleaning or establishing time restrictions on the operation of the plant over a year)³⁸.

38. Decision 2000/1, *Report of the Eighteenth Session of the Executive Body*, Doc. ECE/EB.AIR/71, Annex I.

In 2001 further decisions were adopted by the Executive Body on compliance by Finland, Italy and Norway with the 1991 VOC Protocol. In relation to Norway, the Executive Body noted that the country was not fulfilling its obligations to take effective measures to reduce its annual emissions within the limits specified under Art. 2, para. 2 b), and Annex I of the VOC Protocol. In particular, Norway would have been in non-compliance for seven years, because its licensing system for offshore oil loading facilities would not be brought into compliance before 2005 or 2006³⁹. In 2002, the Implementation Committee, expressing disappointment on the fact that Norway had not been able to shorten the period of seven years it will remain in non-compliance, recommended to the Executive Body to ask Norway to submit by 31 March 2003 “a report describing the progress it has made towards compliance and setting out a timetable that specifies the year by which Norway expects to be in compliance, lists the specific measures taken or scheduled to fulfil its emission reduction obligations under the VOC Protocol and sets out the projected effects of each of these measures on its VOC emissions up to and including the year of compliance”⁴⁰. Similar measures have been recommended to the Executive Committee in relation to Finland and Italy⁴¹. In 2004 Italy and Norway were still declared to be in non-compliance with their obligations, while Finland was acknowledged to fulfil its obligations under the VOC Protocol⁴².

In 2002 the Implementation Committee has also considered a situation submitted by Sweden in relation to itself. The inability of Sweden to fully comply with the VOC Protocol is essentially caused by combustion in small residential stoves that give a significant contribution to VOC emissions⁴³. During the same year, situations concerning compliance with the 1988 NOx

39. Decision 2001/1, *Report of the Nineteenth Session* cit., *supra* note 36, Annex I.

40. *The Fifth Report of the Implementation Committee*, Doc. EB.AIR/2002/2 of 30 September 2002, p. 3.

41. *Ibidem*, p. 5 and 6. All the recommendations submitted by the Implementation Committee were accepted by the Executive Body; see: Decisions 2002/2, 2002/3 and 2002/4, in *Report of the Twentieth Session of the Executive Body*, Doc. ECE/EB.AIR/77 of 17 January 2003, Annexes III, IV and V.

42. See *Report of the Twenty-First Session of the Executive Body for the Convention on Long-Range Transboundary Air Pollution*, Doc. ECE/EB.AIR/79 of 21 January 2004 and decisions 2003/1, 2003/2 and 2003/3 in Doc. ECE/EB.AIR/79/Add.1 of 6 January 2004.

43. In 2004 the Implementation Committee recognized that Sweden had returned to compliance with its obligations under the VOC Protocol, see *Report* cit., *supra* note 42, para. 26 and Decision 2003/4, adopted by the Executive Body on 6 January 2004, Doc. ECE/EB.AIR/79/Add.1 of 6 January 2004.

Protocol by Greece, Ireland and Spain were referred to the Implementation Committee by the Secretariat⁴⁴. In 2004 these States were still considered to be in non-compliance with their obligations⁴⁵.

As far as compliance by the Parties with their reporting obligations is concerned, in 2002 a very serious concern was expressed by the Executive Committee for non-compliance, inter alia, by the European Community with its obligations under the 1988 NOx Protocol⁴⁶. During the meeting of the Executive Committee, the delegate of the European Community promised to submit all available data in early 2002, “but noted that this would not cover all its member States” and recognized that more pressure on the Member States that had not provided the required emission would be necessary⁴⁷.

3.2. *Convention on the Protection of the Alps*

The Alpine Convention is the first multilateral treaty specifically devoted to the organisation of regional co-operation in one mountain area with its distinct environmental, economic, cultural and social features. The Alpine Convention binds eight States (Austria, France, Germany, Italy, Liechtenstein, Monaco, Slovenia and Switzerland) and the European Union and is completed by nine Protocols: Protocol on Nature Protection and Landscape Conservation (Chambéry, 20 December 1994)⁴⁸, Protocol on Mountain Agriculture (Chambéry, 20 December 1994)⁴⁹, Protocol on Regional Planning and Sustainable Development (Chambéry, 20 December 1994)⁵⁰, Protocol on Mountain Forests (Brdo, 27 February 1996)⁵¹, Protocol on Tourism (Bled, 16 October 1998)⁵², Protocol on Soil Protection (Bled, 16

44. See *The Fifth Report of the Implementation Committee*, Doc. EB.AIR/2002/2 of 30 September 2002, p. 8 ff.

45. See *Report* cit., *supra* note 42, para. 26 and Decisions 2003/4-8, adopted by the Executive Body on 6 January 2004, Doc. Doc. ECE/EB.AIR/79/Add.1 of 6 January 2004.

46. Decision 2001/4, *Report of the Nineteenth Session* cit., *supra* note 36, Annex IV.

47. *Ibidem*, para. 47.

48. BU, 991:83/D.

49. BU, 991:83/C.

50. BU, 991:83/B.

51. BU, 991:83/E.

52. BU, 991:83/H.

October 1998)⁵³, Protocol on Energy (Bled, 16 October 1998)⁵⁴, Protocol on Transport (Lucern, 31 October 2000)⁵⁵ and Protocol on Settlement of Disputes (Lucerne, 31 October 2000)⁵⁶. All the protocols entered into force at the international level on 18 December 2002, but only Austria, Germany, Liechtenstein and Slovenia are currently bound by all these instruments⁵⁷ (information updated as at 8 March 2004).

The establishment of a non compliance-procedure is not explicitly envisaged under the Alpine Convention. A reporting system, based on the information given by the contracting Parties about their progress in implementing the Convention and its Protocols, is regulated by Art. 5, para. 4, 6 g), and Art. 8, para. 6 a), of the Convention. The information is “analysed” by the Standing Committee (consisting of delegates of the Contracting Parties) and “reported” to the Conference of the Parties (the Alpine Conference) (Art. 8, para. 6), which “shall take note” (“prend connaissance”) of the information (Art. 6, para. g)).

In November 2002, the VIIth Alpine Conference adopted a decision providing for the establishment of a Monitoring Mechanism on the Compliance of the Alpine Convention and its Implementing Protocols (Mécanisme de verification du respect de la Convention alpine et de ses protocols d’application)⁵⁸.

Objectives: The aim of the procedure is to ensure the effective implementation of the obligations undertaken by the Parties to the Convention and its implementing Protocols. The mechanism has a consultative, non-confrontational, non-judicial and non-discriminatory nature and operates with no

53. BU, 991:83/F.

54. BU, 991:83/G.

55. BU, 991:83/I.

56. BU, 991:83/J.

57. All the Protocols entered into force for Austria, Germany and Liechtenstein on 18 December 2002, for Slovenia on 28 January 2004. The Protocols on Agriculture and on Settlement of Disputes entered into force for France on 15 February 2003. The Protocols on Regional Planning, Tourism, Soil Protection and Settlement of Disputes entered into force for Monaco on 27 April 2003.

58. On the non-compliance procedure under the Alpine Convention and its protocols see: ENDERLIN: “A Compliance Mechanism within the Alpine Convention”, in TREVES, PINESCHI and FODELLA (eds.): *International Law and Protection of Mountain Areas*, Milan, 2002, p. 159 ff.; ENDERLIN: “A Different Compliance Mechanism”, *EPL*, 2003, p. 155 ff.; PINESCHI: “The Convention for the Protection of the Alps and Its Protocols: Evaluation and Expectations”, in TREVES, PINESCHI and FODELLA (eds.): *Sustainable Development of Mountain Areas. Legal Perspectives beyond Rio and Johannesburg*, Milan, 2004, p. 191 ff.

prejudice for the procedure established by the Protocol on Peaceful Settlement of Disputes.

Institutional mechanisms: The decision of the Alpine Conference provides for the establishment of a Reviewing Committee (Comité de vérification), which considers issues of implementation and compliance and makes appropriate recommendations to the Alpine Conference. In particular, the tasks of the Committee include: a) consideration of situations of possible non-compliance by the Parties with their obligations under the Convention and its implementing Protocols; b) preparation of a report on the state of implementation of the Convention and its Protocols with draft decisions and recommendations; c) assistance to the Parties, at their request, in the implementation of the Convention and its Protocols.

The Reviewing Committee is composed of delegates of the Parties to the Convention and delegates of the observers which are admitted to take part in the meetings of the Standing Committee.

Methods of triggering the non-compliance procedure: Situations may be referred to the Reviewing Committee by contracting Parties and observers (para. 2.3). The provision is sufficiently vague to allow a Party to trigger the procedure against itself. Not having been mentioned by the decision under consideration, territorial authorities cannot refer situations to the Reviewing Committee. However, nothing prevents territorial authorities from acting through a Contracting Party or authorized observers.

Information gathering: In order to perform its functions, the Reviewing Committee bases its deliberations on information at its disposal. It may request supplementary information to the Parties, consider information from other sources and, with the authorization of the Party concerned, collect information in the territory of that Party.

Outcome: On the basis of the reports of the Reviewing Committee, the Alpine Conference may adopt decisions or recommendations. Measures include:

- a) advice and assistance to a Party on issues of compliance with the Convention and its Protocols;
- b) support to a Party in the formulation of a strategy of compliance with the Convention and its Protocols;
- c) appointment of experts to give assistance to the Party concerned;

- d) with the consent of the Party concerned, collection of information in its territory in order to single out problems of implementation and possible measures;
- e) adoption of measures aimed at promoting co-operation among interested Parties, intergovernmental organisations and non-governmental organisations;
- f) call to the Party concerned to adopt a strategy of compliance;
- g) request for a timetable on the implementation of the Convention and its Protocols.

Practice: The first meeting of the Reviewing Committee was held in Berlin on 6 and 7 October 2003⁵⁹. During the meeting the attention was focussed on the drafting of a standard model for the periodic reports submitted by the Parties. It was agreed that the model, drafted in the form of a questionnaire, should be approved before the end of 2004 in order to allow the Parties to submit their reports, expected at the end of August 2005, in accordance with the standard model.

3.3. *Convention for the Protection of the Marine Environment of the North-East Atlantic*

The purpose of the OSPAR Convention is to protect the maritime area of the North-East Atlantic against the adverse effects of human activities so as to prevent and eliminate pollution, safeguard human health, conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected. Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the European Union are Parties to the Convention.

Under Art. 23 of the OSPAR Convention, the Commission (a body composed of one representative for each contracting Party) shall “(a) on the basis of the periodical reports referred in Article 22 and any other report

59. See *Report of the Presidency of the Reviewing Committee to the 27th Meeting of the Standing Committee* (Innsbruck, 25-27 February 2004). Delegates of eight Parties to the Alpine Convention (Austria, European Community, France, Germany, Italy, Liechtenstein, Slovenia and Switzerland) attended the meeting; delegates of four NGOs (ARGE ALP, CIPRA, Club Arc Alpin and IUCN) attended the meeting as observers.

submitted by the Contracting Parties, assess their compliance with the Convention and the decisions and recommendations adopted thereunder; (b) when appropriate, decide upon and call for steps to bring about full compliance with the Convention, and decisions adopted thereunder, and promote the implementation of recommendations, including measures to assist a Contracting Party to carry its obligations”.

With a view to implementing these obligations, the OSPAR Commission adopted an Action Plan for 1997-1998 during its first annual meeting (Sintra, 20-24 July 1998). The Action Plan included the goal of establishing a compliance mechanism and a revised Standard Implementation Reporting and Assessment Procedure. The Action Plan for 1998-2003 adopted at the Ministerial Meeting of the Ospar Commission (Sintra, 22-23 July 1998) includes a section on “Compliance and effectiveness”, which states that the Commission will assess reports of contracting Parties on the implementation of programmes and measures adopted under the Convention and assess the effectiveness of these programmes and measures⁶⁰.

Objectives: The aim of the procedure is to review compliance and assist Parties in the implementation of, and compliance with, the Convention and the decisions and recommendations adopted thereunder.

Institutional mechanisms: The OSPAR Commission shall assess compliance and take measures to assist Parties in carrying out their obligations.

Methods of triggering the non-compliance procedure: A periodical review on Contracting Parties’ activities is made by the OSPAR Commission.

Information gathering: Compliance with the Convention and further decisions and recommendations is assessed by the OSPAR Commission on the basis of the periodical reports submitted by the Contracting Parties.

Outcome: The wording of Art. 23 of the OSPAR Convention is rather vague. In the end, it is up to the Commission to decide on the substance of the measures which shall be adopted to promote compliance.

Practice: In accordance with the timetable specified in the Standard Implementation Reporting and Assessment Procedure, Contracting Parties submit reports on their implementation of OSPAR Decisions and Recommendations. Most decisions and recommendations applicable under the OSPAR Convention have, in addition to a format for reporting on com-

60. On the mechanism of reporting and compliance under the OSPAR Convention, see WOLFRUM: *Means* cit., p. 40-41; LA FAYETTE: “The OSPAR Convention Comes into Force: Continuity and Progress”, *The International Journal of Marine and Coastal Law*, 1999, p. 247 ff., at p. 258-259.

pliance, an implementation report format to assess their effectiveness. In 2000 the OSPAR Commission decided to publish an assessment of implementation reports for three decisions and four recommendations⁶¹.

3.4. *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*

The Århus Convention was concluded in 1998 with aim to grant the public rights and impose on Parties and public authorities obligations on access to information, public participation in decision-making and access to justice in environmental matters. Twenty-seven States are currently Parties to the Convention (information updated as at 8 March 2004).

Procedures for the review of compliance of the Århus Convention were agreed by the Parties in 2002, during their first meeting (decision I/7⁶²). The Parties acted under the mandate of Art. 15 of the Århus Convention, which requires the Meeting of the Parties to establish “optional arrangements of a non-confrontational, non judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention”.

Objectives: The aim of the procedure is to review compliance by Parties with their obligations under the Convention by means of non-confrontational, non-judicial and consultative measures.

Institutional mechanisms: A Compliance Committee has been established with the task to examine compliance issues and make appropriate recommendations to the Meeting of the Parties. In particular, the tasks of the Committee include: a) consideration of submissions, referral or communications on Parties compliance with their obligations under the Convention; b) preparation, at the request of the Meeting of the Parties, of a report on compliance with or implementation of the provisions of the Convention;

61. OSPAR Annual Report 1998/1999, para. 7.2.

62. *Report of the First Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Lucca, 21-23 October 2002), Doc. ECE/MP.PP/2 of 17 December 2002. Decision I/7 (31 October 2002) is also available on the web-site: <http://www.unece.org/env/pp/mop1/decision.1.7.e.doc>.

c) monitoring, assessment and facilitation of the implementation of and compliance with the reporting requirements under Art. 10, para. 2, of the Convention. The reports of the Committee are available to the public.

The Compliance Committee is composed of eight members, nationals of the Parties and Signatories of the Convention, nominated by the Meeting of the Parties. The members of the Committee serve in their personal capacity. They are elected on the basis of nominations made by the Parties and the Signatories of the Convention and by the non-governmental organizations which are entitled to participate as observers at the meetings of the Parties.

Methods of triggering the non-compliance procedure: The non-compliance procedure may be invoked by:

- one or more Parties to the Århus Convention in respect of another Party's compliance with its obligations;
- a Party in respect to itself (despite its best endeavours, the Party concludes that it is unable to comply fully with its obligations under the Convention);
- the Secretariat in respect to any Party to the Århus Convention (during the preparation of its reports submitted in accordance with the Convention's reporting requirements, the Secretariat becomes aware of possible non-compliance by any Party with its obligations);
- one or more members of the public⁶³ in respect of a Party's compliance, unless that Party has notified the Depositary that it is unable to accept, for a period of not more than four years, the consideration of such communications by the Committee.

Information gathering: In order to perform its functions, the Compliance Committee may request further information on matters under its consideration and consider any relevant information submitted to it. It can also seek the services of experts and advisers as appropriate and, with the authorization of the Party concerned, to collect information in the territory of that Party.

Outcome: The Meeting of the Parties may adopt one or more of the following measures:

- a) provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- b) make recommendations to the Parties concerned;

63. Under Art. 2, para. 4, of the Århus Convention "public" means: "one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups".

- c) request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- d) in cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- e) issue declarations of non-compliance;
- f) issue cautions;
- g) suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- h) take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

Practice: During its first three meetings (17-18 March and 18-19 September 2003, 22-23 January 2004), the Compliance Committee did not address concrete cases of non-compliance, as its attention was focussed on the elaboration of its internal procedures.

4. NON-COMPLIANCE MECHANISMS AND PROCEDURES CURRENTLY UNDER NEGOTIATION

The adoption of non-compliance procedures is currently under negotiation within a number of multilateral environmental treaties. The relevant examples include:

- the Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 17 June 1994), hereinafter: Desertification Convention⁶⁴, entered into force on 26 December 1996;
- the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

64. *BU*, 994:76.

- (Rotterdam, 10 September 1998), hereinafter: PIC Convention⁶⁵, entered into force on 24 February 2004;
- the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, 29 January 2000), hereinafter: Protocol on Biosafety⁶⁶, entered into force on 11 September 2003⁶⁷;
 - the Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001), hereinafter: POP's Convention⁶⁸, shall enter into force on 17 May 2004.

4.1. *The Convention to Combat Desertification*

The purpose of the Desertification Convention is to prevent and mitigate the effects of drought and desertification as well as to achieve sustainable development in affected areas by means of an integrated approach, addressing the physical, biological and socio-economic aspects of the process of desertification and drought. By 8 March 2004, 189 States and the European Union had become Parties to the Convention.

Art. 27 of the Desertification Convention states that: "The Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard the implementation of the Convention". At its fifth session (Geneva, 1-12 October 2001), the Conference of the Parties (COP) decided to establish the Committee for the Review of the Implementation of the Convention (CRIC), as a subsidiary body entrusted with the function of regularly reviewing the implementation of the Convention (decision 1/COP.5). During the same Conference, an Ad Hoc Group of Experts (AHGE) agreed that any procedure and institutional mechanism to resolve questions on implementation of the Desertification

65. BU, 998:68.

66. BU, 992:42/A.

67. 86 States and the European Community are currently bound to the Protocol (8 March 2004). Procedures and mechanisms on compliance under the Cartagena Protocol were adopted by the Conference of the Parties during its first meeting (Kuala Lumpur, Malaysia, 23-27 February 2004); unfortunately, the Decision of the Parties was made publicly available after the conclusion of the present contribution (8 March 2004). See Decision BS-I/7, *Report of the First Meeting of the Conference of the Parties Serving as the Meeting of the Parties to the Protocol on Biosafety*, Doc. UNEP/CBD/BS/COP-MOP/1/15 of 14 April 2004, p. 98.

68. BU, 2001:39/001.

Convention should be facilitative and non-confrontational in character. It was also noted, however, that further consideration would be required of the scope of Art. 27, “which could be understood as relating either to problems of implementation faced by the Parties to the Convention as a whole, or to difficulties experienced by individual Parties in fulfilling their obligations”⁶⁹. The situation is still unresolved as substantive decisions have not yet been adopted on the matter. The sixth COP (Havana, 25 August – 5 September 2003) simply decided to reconvene the AHGE during its seventh session “to examine further and make recommendations on procedures and institutional mechanisms for the resolution of questions on implementation”⁷⁰.

4.2. *The PIC Convention*

The primary aim of the PIC Convention is to establish a legally binding regime giving importing countries the information they need to identify potential hazards and exclude chemicals they cannot manage safely. By 3 March 2004, 60 States and the European Union had become Parties to the Convention.

Under Art. 17 of the PIC Convention, “The Conference of the Parties, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance”. In August 2003, during the tenth session of the Intergovernmental Negotiating Committee for an Internationally Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC), the Chair of the working group on compliance recommended a draft text, containing Procedures and Institutional Mechanisms for Handling Cases of Non-Compliance, to the Conference of the Parties for its consideration⁷¹. The First Meeting of the Conference of the Parties to the PIC Convention will be held in Geneva, from 20 to 24 September 2004.

69. *Report of the Conference of the Parties on Its Fifth Session* (Geneva, 1-12 October 2001), Doc. ICCD/COP (5)/11 of 5 April 2002, Annex VI, p. 28.

70. *Report of the Conference of the Parties on Its Sixth Session*, Doc. ICDD/COP(6)/11/Add.1 of 7 November 2003.

71. For the draft procedure see Doc. UNEP/FAO/PIC/INC.10/20 of 21 August 2003.

4.3. *The Cartagena Protocol on Biosafety to the Convention on Biological Diversity*

The purpose of the Cartagena Protocol is to protect biological diversity from the potential risk posed by transfer, handling and use of living modified organisms. Art. 34 of the Protocol provides for the development of procedures and mechanisms to ensure compliance with its provisions. According to this rule, the Conference of the Parties to the Convention on Biological Diversity, serving as the meeting of the Parties to this Protocol shall, at its first meeting “consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate”. As stated in the same article, the compliance procedure shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms envisaged by Art. 27 of the Biodiversity Convention⁷².

The first meeting of the Conference of the Parties will be held from 23 to 27 February 2004 in Kuala Lumpur, Malaysia. During this meeting, the COP shall consider the draft procedures and mechanisms on compliance that the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP)⁷³ discussed and developed in 2001 and 2002, at its second and third meeting⁷⁴.

4.4. *The POPs Convention*

Persistent organic pollutant (POPs) are chemical substances that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of living organisms and are toxic to human beings and wildlife. The 2001 Stockholm Convention is a

72. On the procedures for ensuring implementation of the Cartagena Protocol see: BURGIEL: “The Cartagena Protocol on Biosafety: Taking the Steps from Negotiation to Implementation”, *RECIEL*, 2002, p. 53 ss. at p. 57-58.

73. The ICCP is entrusted with the mandate to undertake the preparations necessary for the first meeting of the Parties to the Protocol. The establishment of this provisional body was decided by the Conference of Parties to the Biodiversity Convention when the Protocol on Biosafety was adopted.

74. For the text of the draft procedures see Doc. UNEP/CBD/BS/COP-MOP/1/8 of 18 November 2003, Annex I.

global treaty aimed at setting out control measures covering the production, import, export, disposal and use of POPs. Fifty instruments of ratification, acceptance, approval or adhesion are requested by the Convention for its entry into force. By 8 March 2004, 51 instruments had been deposited.

Under Art. 17 of the POPs Convention, “the Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for the treatment of Parties found to be in non-compliance”.

In June 2002, the Intergovernmental Negotiating Committee (INC) drafted a note, containing a summary of issues addressed in the development of non-compliance regimes adopted or still under development under multi-lateral environmental agreements. It called for comments from its members on the elements identified in its note and requested the Secretariat to develop a draft model for a non-compliance procedure under the POPs Convention⁷⁵. During its next meeting, with the documentation prepared by the Secretariat on the subject, the INC invited the delegations interested to exchange views on issues on possible non-compliance regime and to set up an informal group to work on it⁷⁶. However, any decision was left to the first Conference of the Parties.

5. THE PROPOSED CENTRE FOR THE PREVENTION AND MANAGEMENT OF ENVIRONMENTAL DISPUTES

In 2001 the Italian Ministry of Foreign Affairs established a Group of Experts⁷⁷ with the aim of studying possible ways to improve and facilitate the prevention and solution of environmental disputes at the international level. On the basis of a feasibility study drafted by a sub-group of experts⁷⁸, in September 2003 the Italian Government proposed the establishment of a “Centre for the Prevention and Management of Environmental Disputes”

75. Doc. UNEP/POPS/INC.6/17 of 31 January 2002.

76. Doc. UNEP/POPS/INC.7/28 of 18 July 2003, para. 126-131. For a detailed survey of the seventh session of the INC, see “Preparing for Entry into Force”, *EPL*, 2003, p. 249 ff.

77. Prof. Domenico Da Empoli, Francesco Francioni, Sergio Marchisio, Tullio Scovazzi, Attila Tanzi and Tullio Treves are members of the Group of experts.

78. The feasibility study was drafted by a sub-group of experts composed by Tullio Scovazzi, Attila Tanzi, Laura Pineschi and Roberta Garabello.

(hereinafter: the Centre) during different meetings of two working groups of the European Council, COJUR (Committee “International Law”) and COMAR (Committee “Maritime Law”). The proposal aims to strengthen European and international mechanisms for the prevention and management of environmental disputes through the establishment of a multi-purpose institution entrusted with the tasks of assistance, fact-finding and mediation.

5.1. *The Functions of the Centre*

The Italian proposal arises from the assumption that the concept of prevention and management of environmental disputes includes three different functions: assistance, fact-finding and mediation. Taking into account the peculiarities of each given case, one or two or even all the above functions should be performed.

Assistance “would be provided upon request by any State or international organisation which needs help in facing a question related to the protection of the environment or use of natural resources. The question may require specific scientific, technical or legal expertise. It may also involve monitoring. After the request is received, an assistance-team composed of experts included in the lists kept by the Centre would be established to work in close co-operation with the representatives of the requesting party. If the question has a transboundary relevance, all the States concerned should be informed of it and invited to participate on an equal basis in the work of the assistance-team. When appropriate, the assistance-team could elaborate a report, containing its advice and recommendations. The assistance-team could also directly participate in the carrying out of certain activities, such as environmental impact statements or the training of local personnel”⁷⁹.

A fact-finding body would be established upon request by any affected State or international organisation “that desires to determine the existence and characters of a situation of fact relevant to the protection of the environment or use of natural resources. If the question has a transboundary relevance, all the States concerned should be informed of it and invited to present on an

79. Italian Government’s proposal for the settlement of a Centre for the Prevention and Management of Environment Disputes, para. 11. The full text of the proposal can be read in CICIRIELLO (a cura di): *La protezione del mare Mediterraneo dall’inquinamento. Problemi vecchi e nuovi*, Napoli, 2003, p. 291 ff.

equal footing their views to the fact-finding body. Such body submits a report to the parties concerned, setting forth its findings and the reasons thereof⁸⁰.

Finally, the Centre might be used to perform a mediation/good offices function "if requested by all the parties involved in a dispute relevant to the protection of the environment or use of natural resources. The aims of mediation/good offices are, inter alia, to facilitate communication between the disputants, to encourage them to re-evaluate their positions and to offer compromise suggestions or solutions. The body in charge of mediation/good offices would rely on the co-operation of the parties in order to perform in the most expeditious and effective way its task of promoting an agreement settling the dispute"⁸¹.

In principle access to the Centre should be allowed to States and international organisations. However, the opportunity to allow free access to territorial entities, such as German Länder and Italian Regions, non-governmental organisations and corporations is also taken into consideration in the proposal and recommended for further discussion⁸².

In the establishment of the Centre a central role should be played by the European Union. The Centre could be envisaged as a body operating within the European Union legal framework⁸³. Member States and the European Union itself could take advantage of the services of the Centre. But the proposal is particularly addressed to meet the concerns of developing countries and countries in transition to a market economy at a moment when the European Union becomes a regional organisation composed of 25 Member States. The Centre might be established either under a European Community legal instrument or under an international treaty.

The financial effort deriving from the establishment of the Centre would be modest. Italy proposes "a 'light' and low-cost structure which would have limited staff and budget and would draw from expertise already existing within the European Union institutions and its Member States"⁸⁴.

80. *Ibidem*, para. 12.

81. *Ibidem*, para. 13.

82. *Ibidem*, para. 9.

83. For an assessment of possible conflicts and overlappings with European environmental policy and European institutions, see para. 7-11 of the Italian Proposal.

84. *Ibidem*, para. 7. See also Annex III of the Italian Proposal, CICIRIELLO (a cura di): *La protezione cit.*, p. 315.

5.2. *Relationship between Non-Compliance Mechanisms and Procedures under Multilateral Environmental Agreements and the Proposed Centre for the Prevention and Management of Environmental Disputes*

Any conflict between the proposed Centre and existing institutions or mechanisms, such as the Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, as well as the corresponding Draft Optional Rules for Conciliation, both adopted within the framework of the Permanent Court of Arbitration of the Hague⁸⁵, is to be excluded. In fact, competences in the field of conciliation and arbitration would not be given to the Centre.

Possible conflicts and overlappings between existing non-compliance procedures and the functions of the proposed Centre for the Prevention and Management of Environmental Problems may occur and should be carefully taken into consideration. Nevertheless, it is believed that the establishment of the proposed Centre might fill a gap in international environmental law. The following reasons may be put forward.

- a) The non-compliance procedures which have been examined in the preceding paragraphs purport the same aim: to ensure the achievement of common environmental goals by means of prevention and strengthened co-operation, rather than by means of sanction. It would be improper, however, to think that the proliferation of non-compliance procedures is evolving towards the progressive establishment of a uniform regime on compliance with environmental treaty obligations. While non-compliance procedures and mechanisms are very similar in their nature and content, remarkable (or, at least, not minor) discrepancies are evident, because procedural and institutional mechanisms are tailored to serve the purpose of individual treaties. Nothing prevents the establishment of a new non-compliance mechanism aimed at achieving a broader scope. In any event, the proposed Centre is not going to replace existing non-compliance

85. These rules are available on the Permanent Court of Arbitration's website, <http://www.pca-cpa.org>. For an examination of this system see RATLIFF: "The PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment", *Leiden Journal of International Law*, 2001, p. 887 ff. and VESPA: "An Alternative to an International Environmental Court? The PCA's Optional Arbitration Rules for Natural Resources and/or the Environment", *The Law and Practice of International Courts and Tribunals*, 2003, p. 295 ff.

regimes; it will simply provide an additional procedure for preventing and managing international disputes on the environment with due attention to all the interests involved and on the basis of the international obligation to co-operate for the fulfilment of common objectives.

- b) The primary aim of existing non-compliance procedures is to ensure a return to compliance with treaty obligations. The proposed Centre would be able to provide a forum offering a wider choice of mechanisms available to the entities concerned. Three functions, namely assistance, fact-finding and mediation will be carried out by the Centre. According to the peculiarities of each given case, one or two or even all the functions might be performed.
- c) Each treaty is a "self-contained" regime, with specific limits *ratione personae* and *ratione materiae*. As a consequence, existing non-compliance procedures strictly operate within the scope of the individual treaty under which they have been established and can only give assistance to, and address non-compliance of, Contracting Parties to that single treaty. If a broad consensus exists in international environmental law towards the development of non-compliance procedures, it is also true that the number of mechanisms and procedures which have been established is still quite small. Many of these mechanisms have not yet become operative. Gaps need still to be filled. No non-compliance procedures have been established within treaties regulating important sectors of international environmental law, such as the prevention of industrial hazards, or the regulation of international watercourses. As far as the prevention of marine pollution is concerned, the non-compliance procedure under Art. 23 of the OSPAR Convention remains the sole precedent. The proposed Centre does not serve the interest of a single treaty. Its functions are to be performed with reference to questions which are related to the protection of the environment or use of natural resources in general. A specific case may involve the scope of two or more different environmental treaties. In such a situation, the establishment of the proposed Centre would be able to bring about further advantages: intersectoral issues could come into consideration; the interaction between obligations arising from different environmental treaties could be appraised; synergies could be

developed on the basis of the experience gained in different environmental fields.

- d) The bodies operating the non-compliance system within different environmental treaties are, with few exceptions, political bodies composed of States parties. The principle of impartiality is not assured⁸⁶. The proposed Centre – which in the exercise of its functions will be guided by the principle of impartiality – will provide to States and other entities having access to it the services of experts acting in their personal capacity. This could contribute to the progressive building of confidence in the functions performed by the Centre.
- e) Measures may be taken to assist Parties in carrying out their obligations within certain non-compliance regimes adopted or still under development under multilateral environmental agreements. However, the effective undertaking of activities of assistance on behalf of interested parties depends on the readiness and capacity of the other contracting Parties to co-operate. The proposed Centre will assist all the Parties concerned at the highest level of expertise, without discrimination. As they are offered by a pre-established body, the services of the Centre will not be subject to further formalities and conditions which could delay its effectiveness.
- f) A critical issue that has been raised about certain non-compliance procedures is the question of the legal consequences of these

86. For instance, as far as the Montreal Protocol non-compliance procedure is concerned, it has been correctly observed: "It is questionable whether such political institutions [the Implementation Committee and the Meeting of the Parties] consisting of governmental representatives can always act impartially. More importantly, it still is unclear whether such bodies can responsibly act as a sincere trusteeship of the global commons – the stratospheric ozone layer. Unlike international judicial institutions or human rights committees, NCP regime operators are not independent and do not necessarily have professional prestige. In addition, we should not overlook the confidential aspects of the Montreal NCP regime's decision-making process, which are often crucial in understanding the hidden meaning of the internal regime institutions' decisions", YOSHIDA: *Soft Enforcement* cit., p. 140. In general, see also SZELL: *The Development* cit., p. 108: "(...) it has been suggested that these Committees would be more efficient if they were composed of elected individuals rather than elected countries. Such nominations, it is said, would result in increased objectivity, greater expertise and more consistent attendance at meetings of the Committee. Some countries, however, have been nervous of recommending such a step, although it has been shown to work well in other contexts. Such a change is unlikely in the immediate future. Parties will remain cautious about the risk that the committees will have too much independence, at least until they have acquired greater familiarity with, and confidence in, their work".

procedures on the Parties concerned⁸⁷. A clear-cut solution on this issue could be clearly envisaged by the instruments providing for the establishment of the proposed Centre.

6. CONCLUSIONS

The prevention and solution of international disputes, a fundamental aim of the United Nations Charter, assumes particular importance in the field of the environment, whose protection transcends the level of mere reciprocal relations between States. The risk that environmental degradation can produce new international conflicts is sharply underscored already in the Brundtland's Report⁸⁸. But the perception that certain environmental risks can be the source of detrimental consequences very close to (or even worse than) those produced by armed conflicts emerges also in an Agenda of Peace, the report that the United Nations Secretary-General drafted in 1992 to suggest new ways for strengthening and making more efficient the capacity of the Organization to prevent new conflicts by means of preventive diplomacy, peace-making and peace-keeping⁸⁹ ("A porous ozone shield could pose a greater threat to an exposed population than a hostile army")⁹⁰.

It is also generally acknowledged, however, that traditional dispute settlement mechanisms cannot function to address the material breach by States of international environmental obligations. Different organs of the United Nations have raised the issue on several occasions. Agenda 21 clearly suggests that new methods should be developed ("In the area of avoidance and settlement of disputes, States should further study and consider methods to broaden and make more effective the range of techniques available at present, taking into account, among others, relevant experience under existing

87. See WERKSMAN: *Compliance* cit., p. 73 ff. and BRUNNÉE: *The Kyoto Protocol* cit., p. 278.

88. *Report of the World Commission on Environment and Development, "Our Common Future"*, U.N. Doc. A/42/427 of 4 August 1987, Chapter 11.

89. U.N. Doc. A/47/277-S/24111 of 17 June 1992, para. 1.

90. *Ibidem*, para. 13. See also the Report of the Secretary-General on Prevention of Armed Conflict, U.N. Doc. A/55/985-S/2001/574 of 7 June 2001 ("An investment in long-term structural prevention is ultimately an investment in sustainable development (...) Effective conflict prevention is a pre-requisite for achieving and maintaining sustainable peace, which in turn is a pre-requisite for sustainable development", para. 10).

international agreements, instruments or institutions and, where appropriate, their implementing mechanisms such as modalities for dispute avoidance and settlement (...)”⁹¹. Similar assertions can be found as well in more recent documents of the United Nations, where new imaginative solutions are warmly recommended (“The times call for thinking afresh, for striving together and for creating new ways to overcome crisis (...) The changed face of conflict today requires us to be perceptive, adaptive, creative and courageous, and to address simultaneously the immediate as well as the root causes of conflict”⁹²; “Sustainable development requires new ways of making public policy decisions (...) This includes changing institutional and legal frameworks”⁹³). In principle, however, as far as the prevention, management and solution of international environmental disputes are concerned, no concrete proposals and solutions can be found in these instruments.

States practice shows that the warning of the United Nations, despite its vagueness, has been taken seriously and new solutions are presently being devised. In particular implementation and enforcement of certain multilateral environmental agreements have been significantly improved by means of the adoption of specific non-compliance mechanisms and procedures. The most prominent examples have been reviewed in the previous paragraphs, but other initiatives in support of these developments (see, e.g., the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements⁹⁴ and the ECE Guidelines for Strengthening Compliance with and Implementation of Multilateral Environmental Agreements (MEAS) in the ECE Region⁹⁵) have also been undertaken at global and regional levels.

States practice also shows, however, that non-compliance mechanisms and procedures produce practical, but also limited and, sometimes, not-

91. Agenda 21, Chapter 39, para. 10. The text of Agenda 21 is available on the web at the following site: <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>.

92. *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. Doc. A/50/60 – S/1995/1 of 3 January 1995, para. 103.

93. *Information and Institutions for Decision-Making*, Report of the Secretary-General, U.N. Doc. E/CN.17/2001/PC/3 of 2 March 2001, par. 1.

94. The Guidelines were adopted by the Governing Council of UNEP on 15 February 2002. See Decision SS.VII/4, in *Report of the Seventh Session of the Governing Council of UNEP* (Cartagena, 13-15 February 2002), Doc. UNEP/GC/SS.VII/6 of 5 March 2002, p. 43.

95. The Guidelines were adopted by the Fifth Ministerial Conference of the United Nations Economic Commission for Europe on 20 March 2003. See Doc. ECE/CEP/107 of 20 March 2003.

completely satisfactory advantages. The lack of impartiality and the character of “self-contained” regime, with specific limits *ratione personae* and *ratione materiae* of each non-compliance mechanism, are the most evident aspects of these limits.

The Italian proposal which has been previously reviewed is far from being perfect. At the present stage it is a simple suggestion that needs to be refined. Obviously, a more accurate development of the characteristic features of the proposed Center has been deliberately postponed to a later stage, in consideration of the reactions to the project in different international fora. It would be fallacious, however, to ignore or to underestimate the proposal on the assumption that new methods of prevention, management and settlement of international environmental disputes would be an unnecessary duplication of (or interference with) existing non-compliance procedures. The primary objective of these mechanisms and the proposed Center is the same, i.e. to ensure compliance with treaty obligations rather than reparation for a breach of an international obligation by the defaulting State, but the ways to achieve this result are different and do not necessarily overlap. The protection of the environment can only benefit from a proposal which tries to safeguard different interests at stake by means of a new form of international co-operation: a pre-established multi-purpose institution, offering a wide choice of available mechanisms (assistance, fact-finding and mediation/good offices) and providing services of high-level experts acting in their personal capacity in an effective way and without unnecessary formalities and conditions.