COMPLIANCE SYSTEMS UNDER MULTILATERAL AGREEMENTS

A Survey for the Benefit of Kyoto Protocol Policy Makers

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I. INTRODUCTION

By seeking to curtail the net production of greenhouse gases, which are endemic to nearly all human industrial activities, the Kyoto Protocol promises to be among the most complicated and far-reaching of environmental treaties to date. Parties consequently desire reassurance that their efforts to fulfill their obligations will be met by similar efforts on behalf of those Parties with similar obligations. A well-crafted *compliance system* can provide such reassurance. Because the scope of the Protocol is unprecedented, its success may depend on an entirely new, "*sui generis*" compliance system. International institutions, however, are rarely created out of a void—even novel ones. Accordingly, we offer this survey paper to policy makers and negotiators on the belief that Parties, particularly those who have relatively little practical experience with environmental compliance systems, can benefit by reviewing how states have dealt with compliance issues in other multilateral venues.

We survey agreements targeting pollution and the use of natural resources. We also review regimes that regulate other activities, including arms control, human rights, labor relations, commodities, international trade, and multilateral finance. We do not purport to provide an overview of *all* multilateral environmental agreements—most of them do not contain provisions for meaningful compliance systems. Instead, we review those agreements that we believe can provide useful lessons and examples for Kyoto policy makers. (For a list of the agreements included in the survey, please refer to Appendix II.)

We stress that none of these examples alone can likely serve as a complete compliance template for the climate change arena. However, we believe they can provide useful lessons. The survey will examine the rules, procedures, and institutions established under the various agreements. The technical aspects and methodologies of monitoring, reporting, and verification will be beyond the survey's scope.

We organize the paper around the *information* and *response systems* that collectively comprise a compliance system. Part II reviews compliance information systems in multilateral agreements. These systems generally encompass those actors, rules, and processes that collect, analyze and disseminate information revealing treaty violations and

the state of compliance of individual parties and the regime as a whole.[1] Our survey of information systems is limited to the oversight functions conducted by treaty institutions and other entities; it does not examine the specific rules and procedures under which states report details of their national implementation. The Part thus begins with a few observations about state reporting we believe bear mentioning. Next, the Part surveys the ways numerous agreements review implementation of their parties' obligations, beginning with a few key environmental treaties, and then several agreements in the areas of human rights, labor relations, and arms control. We conclude the Part with several observations of ways the reviewed agreements may be particularly relevant to the Kyoto Protocol.

Part III surveys compliance response systems. These systems are constituted by those actors, rules, and processes that govern the formal and informal responses intended to induce or assist parties that are out of compliance—or anticipate having difficulty complying—to alter their behavior and bring it into conformance with treaty norms.[2] We organize the Part around the three steps of *initiation*, *determination*, and *response measures*. *Initiation* involves the means by which the compliance response process is triggered. It includes how the process starts and who is able to start it. The Part begins by noting the Kyoto Protocol's provisions that provide the legal framework for the initiation step. It then surveys the ways compliance procedures are initiated in multilateral environmental agreements, and other agreements in the areas of labor, human rights, and international finance.

Next, the Part examines *determination* mechanisms—how treaty institutions make decisions to do something about a party's compliance difficulties. It begins with a brief discussion of the facilitative and enforcement approaches to non-compliance response. Both of these approaches are used in multilateral agreements, and both are authorized under the Kyoto Protocol's Articles 16 and 18. It then surveys determination mechanisms under the Montreal Protocol, as well as labor, arms control, and the Dispute Settlement Understanding of the World Trade Organization (WTO).

Finally, the Part concludes with a review of the *response measures* treaty regimes use to bring about a breeching party's compliance. After a brief discussion of the relation between facilitative and punitive response measures, we survey the facilitative response approaches of the Montreal Protocol and International Monetary Fund. We then examine agreements that use other response measures such as issuing reports, suspending treaty privileges (including suspension for failure to pay financial contributions), trade-related measures, and monetary assessments and related penalties. As in Part II, we close each section of this Part with observations noting aspects of the surveyed agreements that we believe may be particularly salient for the Kyoto Protocol.

II. COMPLIANCE INFORMATION SYSTEMS

Compliance information systems typically entail reporting of information by the parties, and review of that information by treaty institutions and other interested entities.

[1] *See* RONALD B. MITCHELL, INTENTIONAL OIL POLLUTION AT SEA: ENVIRONMENTAL POLICY AND TREATY COMPLIANCE 57 (1994).
[2] *See id.*

Review may extend to questioning parties directly, acquiring additional data from other sources, or carrying out in-country inspections.

The main function of compliance information systems is to *maximize transparency*.[3] Transparency reflects the degree to which knowledge and information about state parties' performance and adherence to their treaty commitments are adequate, accurate, and available for review and evaluation by treaty institutions, other parties, and civil society as a whole.[4] Accurate knowledge of what others are doing enhances the ability of an agreement's parties to coordinate their efforts and more effectively achieve the goals of the agreement. Moreover, it serves to reassure parties that their own compliance efforts will not be undercut by "free riders."

A. REPORTING

Due to the technical nature of most reporting systems, we consider a full review and analysis of reporting rules and guidelines to be beyond the scope of this paper. Nevertheless, a few observations about reporting under multilateral agreements bear mentioning.

First, reporting is an integral aspect of compliance, in the sense that the very requirement to report can function as an incentive to comply (or as a deterrent to non-compliance). States that are inclined to comply with their obligations need to know whether others are doing the same, and they gain this knowledge through access to information. Accordingly, they apply political, diplomatic, and economic persuasion so that fellow parties supply their information, which in turn increases a party's propensity to show, via its reports, that it is living up to its commitments.

Second, self-reporting is the rule for most agreements. For multilateral environmental agreements (MEAs) like the Montreal Protocol on Substances that Deplete the Ozone Layer[5]—which rely substantially on a facilitative approach to implementation and compliance—self-reporting can induce parties to provide information cooperatively, without fears that they will be subject to intrusive scrutiny or verification. Such freely provided, self-reported information can be useful for evaluating overall treaty effectiveness. There can be tension, however, between the goal of inducing actors to self-report and the role of a compliance information system in identifying parties who may be in non-compliance.[6] Where there is a possibility that self-reported information will lead to sanctions against a party for its failure to adhere to a treaty standard, some parties may be reluctant to provide it. For example, parties to the International Whaling Convention have been known to skip reporting altogether rather than reveal a serious treaty violation.[7]

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[3] *See id*.
[4] *See* Abram Chayes, Antonia Handler Chayes & Ronald B. Mitchell, *Managing Compliance: A Comparative Perspective*, *in* ENGAGING COUNTRIES; STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS 39, 43-44 (Edith Brown Weiss & Harold K. Jacobson eds., 1998).
[5] Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, composite text including 1990 amendments, 21 INT'L ENV'T REP. (BNA) 3151 (1993).
[6] *See* Mitchell, *supra* note 1, at 320; LAWRENCE E. SUSSKIND, ENVIRONMENTAL DIPLOMACY: NEGOTIATING MORE EFFECTIVE GLOBAL AGREEMENTS 104 (1994).
[7] *See* Chayes, Chayes & Mitchell, *supra* note 4, at 46.

Third, compliance with reporting requirements can be enhanced when the results are useful to those entities responsible for reporting. MARPOL is one of the treaties administered by the International Maritime Organization (IMO) to control marine oil pollution caused by ships.[8] Parties are obligated to report on their enforcement efforts against ships that violate treaty requirements. However, the IMO's analysis of reports over the years has often been cursory and sporadic, with a correspondingly poor rate of reporting by parties.[9] By contrast, the Memorandum of Understanding (MOU) on Port State Control, promulgated by fourteen European member states and designed to increase their enforcement efforts of IMO conventions, requires members to inspect twenty-five percent of the ships that enter their ports and then provide on a daily basis data on the inspections to a centralized data base.[10] Using telex and computer links, the information is promptly compiled so that it is readily accessible to port authorities, allowing them to know in advance which ships visiting their ports have been inspected, and what the results of the inspections were. This allows them to deploy their inspection resources more efficiently and effectively. The usefulness of this information to port authorities makes them more inclined to conscientiously file their own daily reports.[11]

Fourth, in some treaty regimes, non-governmental organizations (NGOs) perform a reporting role by supplementing the parties' national reports or by providing information directly to the treaty institution. For example, the Committee on Economic, Social and Cultural Rights, a United Nations body charged with monitoring the International Covenant on Economic, Social and Cultural Rights, officially invites "all concerned bodies and individuals to submit relevant and appropriate documentation" in addition to the information provided by state parties.[12] Representatives of NGOs may give oral presentations at the beginning of each Committee session.[13] The Committee has requested ad hoc reports from governments in response to the information NGOs provide. Consequently, the supervisory system can in practice be initiated on the basis of information submitted by NGOs, rather than only by the national reports.[14]

Finally, reports are useful to the extent that treaty institutions have sufficient resources and capacity to review and verify the reported information. The International Labor Organization (ILO) Constitution requires each state member to make an annual report to the International Labor Office on the measures it has taken to give effect to the

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[8] International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, *reprinted in* INT'L MAR. ORG., MARPOL 73/78, CONSOLIDATED EDITION, 1991 (1992), as amended by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, Feb. 17, 1978 [hereinafter MARPOL].

[9] *See* Mitchell, *supra* note 1, at 133-34.

[10] *See id.* at 135.

[11] *See id.* at 136.

[12] U.N. ESCOR, Supp. No. 3, at 100, ¶ 386, U.N. Doc. E/1992/23 (1992). The Committee's authority to involve NGOs stems from the terms by which it was created in the Charter of the United Nations, art. 71.

[13] *See* Committee on Economic, Social and Cultural Rights, Rules of Procedure, rule 69.3, *in* U.N. Doc. E/C/12/1990/4/Rev. I. (1993).

[14] *See* Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights, in* AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 99, 113 (Raija Hanski & Markku Suksi eds., 1997).

Conventions to which it is party.[15] Over the years, however, the Office has had continual difficulty facing the glut of reports that have resulted from increases in the numbers of member states and the numbers of conventions and ratifications.[16]

Rather than commit to the considerably higher Office staff and funding that would be necessary to cope with the rising workload, the ILO Governing Body has periodically elected to reduce the frequency of required reports.[17] Now, detailed reports are requested in the year following a convention's entry into force. A second detailed report is requested two years later. For ten priority conventions, subsequent reports continue to be automatically requested every two years, while the remaining conventions are subject to a simplified reporting cycle of five years, divided into five equal groups. As before, detailed reports can be required in special cases in which the Committee of Experts or employers' or workers' groups believe a member state has failed to properly adhere to its commitments.[18]

B. COMPLIANCE REVIEW

Article 8 of the Kyoto Protocol establishes a review process that "shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol." Expert review teams will prepare reports that assess the Parties' implementation and identify potential compliance problems.[19] Beyond those requirements, the actual extent of the review will be established by guidelines that the COP/MOP adopts.[20]

The agreements surveyed in this paper assess their parties' implementation in a variety of ways that might have relevance to the Article 8 process. These include examining reports submitted by parties, questioning parties directly, acquiring additional data from other sources, and carrying out in-country inspections.

1. Multilateral Environmental Agreements

- *The Convention on Long-Range Transboundary Air Pollution: Effective data monitoring, but limited review of parties' actual performance*

The 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP) strives to protect human health, property, living resources and ecosystems from those forms of air pollution whose sources are so distant that it is not generally possible to distinguish the contribution of individual emissions sources or groups of sources.[21] Like the UNFCCC[22] and

[15] *See* Constitution of the International Labor Organization, art. 22, Oct. 9, 1946, 15 U.N.T.S. 35.
[16] *See Second Report*, International Labor Organization, 258th Sess., Agenda Item 6, at app. I ¶ 4, GB.258/6/19 (1993).
[17] *Id.* ¶¶ 5-6.
[18] *Id.* ¶ 12.
[19] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Conference of the Parties, 3rd Sess., Agenda Item 5, art. 8.3, U.N. Doc. FCCC/CP/1997/L.7/Add.1, *adopted* Dec. 10, 1997, *opened for signature* Mar. 16, 1998.
[20] Rules and guidelines adopted pursuant to articles 6 and 12 will also likely govern review of joint implementation and clean development mechanism activities.
[21] Convention on Long-Range Transboundary Air Pollution, Nov. 13, 1979, 18 I.L.M 1442 (1979) [hereinafter LRTAP].

the Vienna Convention for the Protection of the Ozone Layer,[23] LRTAP is a framework convention, under which parties identify problems caused by transboundary air pollution and then adopt specific protocols to address them.[24] Adopted protocols regulate SO_2, NO_x, and volatile organic compounds (VOCs).

The first LRTAP protocol incorporated a pre-existing monitoring program into the Convention, the Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP).[25] EMEP's main function is to supply state parties with information on the deposition and concentration of targeted pollutants, and on the quantity and significance of the fluxes of those pollutants across international borders.[26] EMEP supervises a continuous, daily monitoring program that measures the deposition of targeted substances and takes samples collected throughout Europe.[27]

LRTAP parties committed to exchange "available" information relating to their emissions, national policies and industrial development, control technologies, costs of implementation, and control policies and strategies.[28] EMEP collates and evaluates the emission data reported by the parties, and has worked to develop common methodologies to calculate emissions.[29] Paradoxically, the greatest challenge to producing useful compilations of data from national reports has not been the low technical capacity of parties, but the resistance to harmonization of reporting methodologies from those states with highly developed, well-entrenched national data collection and collation systems.[30]

The Steering Committee of EMEP is a primary source of information for the LRTAP Executive Body.[31] The Executive Body, comprised of representatives of each contracting party, is charged with reviewing implementation of the Convention.[32] However, the main focus of the regime has been on improving data quality and developing an institutional structure, not on review or verification of implementation by individual parties.[33] Consequently, despite EMEP's potential for providing a verification system, most data on national performance is self-reported by the parties, and is not subject to independent corroboration.[34] This is due in part to the perception that LRTAP is a "high-compliance"

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[22] United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (1992) [hereinafter UNFCCC].
[23] Vienna Convention for the Protection of the Ozone Layer, Mar. 22, 1985, 26 I.L.M. 1516 (1987).
[24] *See* Juan Carlos di Primio, *Data Quality and Compliance Control in the European Air Pollution Regime*, *in* THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE 283, 286 (David G. Victor, Kal Raustiala, and Eugene B. Skolnikoff eds., 1998).
[25] *See id.* at 284.
[26] *See id.* at 286.
[27] *See id.* at 294-95.
[28] LRTAP, *supra* note 21, art. 8.
[29] *See* di Primio, *supra* note 24, at 289.
[30] *See id.* at 284.
[31] LRTAP, *supra* note 21, art. 10.
[32] *Id.* art. 10.
[33] *See* di Primio, *supra* note 24, at 297.
[34] *See id.* at 291. Chayes and Chayes posit that the EMEP "produces such a comprehensive matrix of information that states are not tempted to report inaccurate national data, and this provides both reassurance and deterrence." ABRAM CHAYES & ANTONIA H. CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS 185 (1995).

regime for which compliance procedures have not been needed. In fact, there have never been any disputes about compliance in LRTAP's history.[35] Because the regulatory commitments have been modest, parties have generally had little apparent difficulty honoring them.[36]

- *The Oslo Protocol: A more aggressive approach to review*

As more protocols entered into force and the problems of transboundary air pollution continued, LRTAP parties decided that a more formalized compliance system would improve the regime's effectiveness. The Oslo Protocol to LRTAP establishes a compliance system that will be applicable to all other LRTAP protocols.[37] When fully adopted, the compliance system will rely upon an Implementation Committee which, significantly, will have the power to review the compliance of parties with their reporting requirements.[38] Coupled with the EMEP's role in monitoring data, the LRTAP Implementation Committee could lead to a strong system for reviewing and verifying parties' compliance with their treaty commitments.

LRTAP's Implementation Committee is composed of eight Convention parties, each of whom must be party to at least one protocol to the Convention. Four Committee members are elected by the Parties (meeting within the Executive Body) for a term of one year, and four others for a term of two years. Thereafter, the Executive Body elects four new members every year. The Implementation Committee elects its own Chairman and Vice-Chairman.[39]

The Implementation Committee will be charged with both a role in monitoring the compliance of parties and administering the Convention's non-compliance response procedure. In its monitoring role, it will review the compliance of parties with their reporting requirements.[40] The Committee will be able to gather additional information on matters under its consideration by requesting it through the secretariat, gathering it in the party's territory (but only upon invitation by the party), or by receiving it from the secretariat.[41]

At the request of the Executive Body, the Committee will prepare reports on compliance with an individual protocol or on implementation of specified obligations under a protocol.[42] A party under review will be entitled to participate in the Committee's considerations, but it will not be able to take part in the preparation or adoption of the

[35] Telephone Interview with Mr. Norbert, LRTAP secretariat (July 29, 1999).
[36] *See* di Primio, *supra* note 24, at 296.
[37] *See* Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, art. 7, June 14, 1994, UN Doc. EB.AIR/R.84 [hereinafter Oslo Protocol]; Report of the Fifteenth Session of the Executive Body, annex III, Decision 1997/2, annex, ¶ 1 (1997), *available at* <http://www.unece.org/env/conv/report/eb53_a3.htm> [hereinafter Dec. 1997/2].
[38] Dec. 1997/2, *supra* note 37, annex, ¶ 3(a).
[39] *Id.* ¶ 1.
[40] *Id.*¶ 3.
[41] *Id.* ¶ 6.
[42] *Id.* ¶ 3(d).

Committee report.[43] Moreover, the Committee must assure the confidentiality of any information that is given to it in confidence.[44]

- *Convention on International Trade in Endangered Species of Wild Fauna and Flora: Utilizing the monitoring and verification capabilities of independent and non-governmental organizations*

Most MEAs that allow in-country inspection do so in the context of a facilitative, non-confrontational compliance approach that stresses "information gathering" rather than actual verification. For example, the Implementation Committees established under the Non-Compliance Procedure of the Montreal Protocol and proposed for the Convention on Long-Range Transboundary Air Pollution (LRTAP) may gather information relating to a party's compliance in its territory—but only if the party invites it to do so.[45]

Some notable exceptions exist including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA).

CITES regulates international trade in endangered wildlife, plants, and products made from them by requiring parties to maintain and enforce a detailed permitting system for imports and exports.[46] CITES heavily relies upon the monitoring and verification functions of two nominally independent organizations, the Wildlife Trade Monitoring Unit (WTMU) and the Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC), as well as upon non-governmental organizations with significant expertise in wildlife conservation.

Both WTMU and TRAFFIC monitor trade in flora and fauna and have extensive networks of NGOs working for them at the national level.[47] They manage data bases of trade records that allow the import and export records of CITES parties to be cross-matched. When records do not match, they report the anomaly to the CITES secretariat.[48] A major deficiency of this system, however, is that the computerized correlations are not available in a timely manner.[49]

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[43] *Id.* ¶ 8.
[44] *Id.* ¶ 7.
[45] *See Report on the Work of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance with the Montreal Protocol*, appendix, ¶ 7 (e), UNEP/OzL.Pro/WG.4/1/3 (1998), *adopted in Report of the Tenth Meeting of the P©arties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, decision X/10, UNEP/OzL.Pro1.10/9 (1998) [hereinafter Montreal Protocol Non-Compliance Procedure]; Oslo Protocol, Dec. 1997/2, *supra* note 37, annex ¶ 6.
[46] Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 12 I.L.M. 1085 (1973) [hereinafter CITES].
[47] *See* John Lanchbery, *Long-Term Trends in Systems for Implementation Review in International Agreements on Fauna and Flora, in* THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE 57, 71 (David G. Victor, Kal Raustiala, and Eugene B. Skolnikoff eds., 1998).
[48] *See id.*
[49] *See* Edith Brown Weiss, *The Five International Treaties: A Living History, in* ENGAGING COUNTRIES: STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS 89, 113 (Edith B. Weiss & Harold K. Jacobson eds., 1998).

The text of CITES provides that "suitable" NGOs may assist the secretariat "to the extent and in the manner [the secretariat] deems appropriate."[50] Such NGOs may attend meetings of the parties, express opinions directly to the Conference of the Parties, and essentially do anything parties can, with the exception of voting.[51] The NGOs provide a considerable amount of compliance information by reporting directly to the secretariat or supplying information to state parties.[52] But the most important role they play is as watchdogs: alerting governments to infractions, investigating illegal operations, and pressuring state authorities to improve their domestic laws and enforcement.[53]

- *The Convention on the Regulation of Antarctic Mineral Resource Activities: Opening facilities to inspection at any time by any party*

In the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), parties agreed to open all of their mineral-related stations, installations and equipment in the Antarctic to inspection at any time.[54] Ships, aircraft, and personnel supporting mineral resource-related activities are also subject to inspection when they are in the Antarctic Treaty area. Inspections may be conducted from the air, by "observers" designated by any state party who are nationals of that party, or by observers designated by the parties as a whole.[55] Observers are subject only to the jurisdiction of their national governments.[56]

The Convention requires observers to avoid interference with the normal operations of the facilities they inspect, and to protect the confidentiality of data and information they may acquire.[57] The inspections must be "compatible and reinforce each other," and must not impose an undue burden on the operation of the inspected facility. No advance notice is required. Finally, neither exploration nor development is permitted to take place in a treaty area until "effective provision" has been made for inspection of that area.[58]

[50] CITES, *supra* note 46, art. 12.1. The World Heritage Convention, 1037 U.N.T.S. 151 (1972), contains a similar provision.
[51] *See* Weiss, *supra* note 49, at 110.
[52] *See* Lanchbery, *supra* note 47, at 71.
[53] *See* WORLD WILDLIFE FUND, INTERNATIONAL WILDLIFE TRADE: A CITES SOURCEBOOK 6-7 (Ginette Hemley, ed., 1994).
[54] Convention on the Regulation of Antarctic Mineral Resource Activities, art. 12, June 2, 1988, 27 I.L.M. 859 (1988), not yet entered into force as of August 1999 [hereinafter CRAMRA].
[55] *Id.* art. 12.1-2.
[56] *Id.* art. 12.7.
[57] *Id.* art. 12.5
[58] *Id.* art. 12.8.

2. Compliance Review in Other Multilateral Agreements: Human Rights, Labor Relations, Arms Control

- *International Covenants on Human Rights: An active NGO role in verifying and supplementing reported information*

The International Covenant on Civil and Political Rights (ICCPR)[59] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[60] grew out of the 1948 United Nations Declaration for Human Rights. The ICCPR prescribes fundamental rights and freedoms such as the right to life, liberty, and security, while prohibiting torture, cruel or inhuman punishment, slavery, and forced labor. The original intent of the framers was to adopt one treaty guaranteeing not only civil and political rights, but economic, social, and cultural rights as well. However, because of the ideological conflict between east and west during the Cold War, negotiators were unable to agree on a common framework. The original idea was accordingly divided into the two separate covenants.[61]

In both covenants, non-government organizations can play an important role in verifying the information contained in state parties' reports. For the ICCPR, international and local NGOs provide the Human Rights Committee[62] members with comments on the reports and assessments of the human rights situation in the respective countries.[63] Additionally, some governments involve NGOs and independent research institutes in the drafting of their reports to help enhance their accuracy and objectivity.[64] Under the ICESCR, NGOs play an official, active role in presenting a balanced picture of a state's treaty performance.

For each treaty regime, limited in-country inspection may be conducted by the respective oversight committees, though only by invitation from the state party. The drafters of the ICCPR did not specifically authorize the Human Rights Committee to carry out on-site inspections. However, the Committee unilaterally expanded its powers by deciding that where a grave human rights situation may exist, it will request the state to receive a mission consisting of a limited number of Committee members.[65]

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[59] Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].
[60] Dec. 16, 1966, 999 U.N.T.S. 3 [hereinafter ICESCR].
[61] *See* Craven, *supra* note 14, at 101.
[62] The Human Rights Committee is a standing institution comprised of eighteen independent experts elected by the state parties.
[63] *See* Manfred Nowak, *The Covenant on Civil and Political Rights, in* AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 79, 92 (Raija Hanski et al., eds. 1997).
[64] *See id.* at 91.
[65] R. Andrew Painter, *Human Rights Monitoring: Universal and Regional Treaty Bodies, in* ADMINISTRATIVE AND EXPERT MONITORING OF INTERNATIONAL TREATIES 49, 72 (Paul C. Szasz et al ed., 1999); Craven, *supra* note 14, at 114 (describing similar situation under the ICESCR).

- *The International Labor Organization: Inclusion of non-state actors in the review process, and a Committee of Experts empowered to make a finding of non-compliance*

The International Labor Organization (ILO) is tasked with improving labor conditions throughout the world by adopting international standards in the form of labor conventions and recommendations.[66] Member states implement the standards through their domestic labor laws.[67] The ILO is characterized most notably by its tripartite structure, which provides for the formal involvement of employer and worker organizations, who participate in ILO business on a par with state governments. State parties must submit periodic reports detailing the measures they have taken to give effect to the Conventions to which they are parties.[68]

National reports are examined by the Committee of Experts on the Application of Conventions and Recommendations. The Committee of Experts consists of twenty persons acting in their independent capacity.[69] Each Committee member must be of "the highest standing," with eminent qualifications in the legal or social fields, and possessing an intimate knowledge of labor conditions or administration. Members are drawn from all parts of the world, and are appointed for a period of three years by the ILO Governing Body, based upon the proposals of the ILO Director-General.[70]

The review process begins when the Committee of Experts examines reports from state parties, official gazettes and other publications in which laws and regulations are printed, texts of collective agreements or court decisions, and any comments made by employers or workers organizations. These latter, non-government comments may be included in the official government report, or they may be addressed directly to the ILO. For NGO comments that are not part of the official government report, the Committee of Experts may also consider any comments the government may wish to add in reply.

If the Committee of Experts finds that a government is not fully complying with the requirements of a Convention, it addresses a *comment* to that government. A comment draws attention to the state party's compliance shortcomings, and requests that the state take steps

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[66] ILO standards have been promulgated in over 180 conventions and 185 recommendations covering subjects ranging from freedom of association, abolition of forced labor, and equality. *See* International Labor Organization, *What are International Labour Standards?* (visited July 8, 1999) <www.ilo.org/public/english/50 normes/whatare/index.htm>.

[67] ILO Constitution, *supra* note 15, art. 19.5-6.

[68] *Id.* art. 22. *See supra* p. 5 for a discussion of ILO reporting requirements.

[69] International Labor Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations, Title VI* (visited September 29, 1999) <http://www.ilo.org/public/english/50normes/sources/handbook/hb7.htm>.

[70] The Governing Body is the executive body of the International Labor Office, which functions as the ILO's secretariat. It is composed of 56 titular members (28 governments, 14 employer representatives, and 14 workers representatives) and 66 deputy members (28 governments, 19 employers representatives, and 19 workers representatives). Ten of the titular government seats are permanently held by the chief industrial states. The other government members are elected by the ILO Conference for a term of three years. Employer and worker members are elected in their individual capacity. *See* ILO Constitution, *supra* note 15, art. 7; International Labor Organization, *Governing Body* (visited Aug. 5, 1999) <http://www.ilo.org/public/english/20gb/index.htm>.

to eliminate them. Comments may take the form of either "direct requests" or "observations." The Committee usually makes direct requests when a minor discrepancy is involved. Requests may merely seek clarification, or they may relate to matters of secondary importance or to technical questions. They are sent directly to the governments concerned, and are not published.

Observations are reserved for more serious cases. The Committee of Experts publishes them in a report that it submits to the International Labor Conference Committee on the Application of Conventions and Recommendations. The Conference Committee is usually made up of over 150 members from the governments, employers and workers organizations that constitute the ILO.[71]

The Conference Committee invites those governments that are subject to an observation to appear before the Committee and make a statement. The government spokespersons who make the statements usually explain frankly their difficulties in applying the standard in question, and they indicate the steps their governments propose to take to solve the problem. The Conference Committee then adopts a report that notes the most serious cases of non-compliance, and includes the explanations provided by the governments concerned.

- *Nuclear Non-Proliferation Treaty: In-country inspections by an independent agency*

Under the Nuclear Non-Proliferation Treaty, non-nuclear states accepted wide-reaching inspection powers.[72] The treaty is administered by the International Atomic Energy Agency (IAEA), an independent entity of the United Nations.[73] The IAEA conducts on-site inspections pursuant to "safeguards" agreements, which each treaty party concludes with the Agency.[74] The agreements list all fissionable nuclear materials under a party's control. Inspectors are authorized to verify that all such materials are treated in accordance with the safeguards agreement.[75] States must be given at least twenty-four hours' notice before inspections, and they have the right to approve inspectors and accompany them during their

[71] International Labor Organization, *Explanation of the Regular System of Supervision* (visited July 9, 1999) <http://ilo.org/public/english/50normes/supervis/regsys2.htm>.
[72] Treaty on the Non-Proliferation of Nuclear Weapons, 21 U.S.T. 483, 729 U.N.T.S. 161 (1968) [hereinafter Nuclear Non-Proliferation Treaty]. In exchange for accepting inspections, non-nuclear states are eligible to receive technical assistance from the IAEA and other state parties, and may gain access to nuclear materials for peaceful purposes. *See* Paolo M. Barretto, *IAEA Technical Co-operation: Strengthening Technology Transfer* (visited Sept. 29, 1999) <http://www.iaea.org/worldatom/inforesource/bulletin/bull371/barretto.html>.
[73] *See* Nuclear Non-Proliferation Treaty, *supra* note 72, art. III.1; Statute of the International Atomic Energy Agency, July 29, 1957, 8 U.S.T. 1095, 276 U.N.T.S. 3, *as amended* May 22, 1961, 14 U.S.T. 135, 471 U.N.T.S. 334.
[74] *See* Nuclear Non-Proliferation Treaty, *supra* note 72, art. VII; *The Structure and Content of Agreements Between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, IAEA Doc. INFCIRC/153 (May 1971) [hereinafter INFCIRC/153].
[75] Martti Koskenniemi, *New Institutions and Procedures For Implementation Control and Reaction, in* GREENING INTERNATIONAL INSTITUTIONS 236, 242 (Jacob Werksman et al ed., 1996).

inspections. Should a state party deny access to IAEA inspectors, the IAEA Board of Governors can respond by suspending the party's treaty or IAEA privileges.[76]

- *Chemical Weapons Convention: Inspections carried out by the secretariat, triggered by challenges from parties*

The Chemical Weapons Convention strives to eradicate the possibility of the use of chemical weapons, and to promote free trade in chemicals and exchange of information in the field of chemical activities for peaceful purposes.[77] The inspection and verification provisions of the Convention are among the most vigorous in any multilateral agreement.

Although the Convention's Conference of the Parties holds the final power to decide cases of non-compliance, an Executive Council is charged with general oversight of matters affecting the Convention and its implementation, including concerns regarding compliance and cases of non-compliance.[78] The Executive Council consists of forty-one seats, with each geographic region represented by a fixed number of seats, and a specified number of quasi-permanent seats allocated to the states with the most significant chemical industries in the region.[79]

Among its duties, the Executive Council supervises the Technical Secretariat, which in turn administers the Convention's verification procedures.[80] The Technical Secretariat includes an Inspectorate that conducts on-site inspections. Inspectors are international civil servants, and must "not seek or receive instructions from any Government or from any other source external to the Organization. They shall refrain from any action that might reflect on their positions as international officers responsible only to the Conference and the Executive Council."[81]

The rules governing inspections appear in the Convention and in a detailed "Verification Annex."[82] All parties must file declarations with the Technical Secretariat that reveal precise details of any existing chemical weapons or dual-use chemicals they may possess, and the facilities where they are housed.[83] Parties must annually or periodically update their declarations to account for changes in their weapons or regulated chemical stocks.[84]

Inspections are made promptly after a party declares a facility. After that, on-going systematic inspections are periodically made at randomly chosen sites and other sites chosen

[76] INFCIRC/153, *supra* note 74.
[77] The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, preamble, 32 I.L.M. 800 (1993) [hereinafter Chemical Weapons Convention].
[78] *Id.* art. VIII C.35.
[79] *Id.* C.23, 29.
[80] *Id.* C. 31; D.37.
[81] *Id.* D. 46.
[82] *See* Chemical Weapons Convention, Annex on Implementation and Verification [hereinafter Verification Annex].
[83] Chemical Weapons Convention, *supra* note 77, art. III.1.
[84] *Id.* art. VI.8.

by the Technical Secretariat, based upon the parties' declarations and reports. Inspectors have the right of unimpeded access to an inspection site, as well as the power to choose what items they will inspect.[85] For certain types of installations, cameras and other on-site monitoring devices may be installed.[86]

Challenge inspections are one of the Convention's key compliance tools. They entitle a party to request on-site inspections of any area or facility in the territory of another party.[87] The Technical Secretariat must initiate the challenge inspection process immediately upon receiving a request for one. The challenged party must allow the inspection unless the Executive Council elects to prohibit it by a three-fourths majority vote.[88] However, the party may invoke the "managed access" method, which allows it to impose some restrictions on the inspection, including measures that are necessary to protect national security.[89] The party is generally entitled to five days advance notice, although the exact length of notice can vary depending on the inspection method the party elects to allow.[90]

3. Observations

- *The ability of review teams to request additional information and conduct in-country fact-finding can increase the reassurance level of other parties.* Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Treaty, and CITES have all agreed to some form of on-site inspections as a way of reassuring others that they are honoring their commitments. Because of the degree to which non-compliance under the Kyoto Protocol may threaten the environmental and economic integrity of Parties, they may wish to consider including such measures in the review process.

- *Review may be more effective if review teams can raise compliance concerns with parties and identify cases of non-compliance.* Under the ILO, review committees may raise formal "comments" that note a state party's compliance problems and request the party to correct them. For more serious cases, the ILO review committees publish the comments and forward them to the ILO's Conference Committee. Such powers for the Kyoto Protocol's Article 8 expert review teams—including the ability to publish its findings—could expedite the overall compliance process by giving Parties an early opportunity to remedy their potential non-compliance, and by alerting other Parties and civil society that a problem exists. This in turn could, in many cases, help Parties avoid the necessity of triggering a formal non-compliance procedure.

- *Where civil society (including business organizations and environmental NGOs) has specific expertise, its monitoring capabilities can enhance transparency, increase certainty, and promote compliance.* Under the World Trade Organization and Montreal Protocol, state parties rely upon their domestic industries to identify and report to them potential acts of non-compliance that might compromise the party's competitive position

[85] Verification Annex, Pt. II, E.45.
[86] Chemical Weapons Convention art. V-VI; Verification Annex.
[87] *See* Chemical Weapons Convention, art. IX, ¶ 8; *see also* Martti Koskenniemi, *supra* note 75, at 242.
[88] Chemical Weapons Convention, art. IX.17.
[89] Verification Annex, pt. X, C.
[90] *Id.* Pt. X, B.

in international trade. For MEAs such as CITES, human rights treaties like the ICCPR and ICESCR, or the International Labor Organization, where some states may not believe they have as great a self-interest in guaranteeing the integrity of the treaty regime, NGOs can be instrumental in supplementing or corroborating information to enhance the effectiveness of the review process.

- *A parties' failure to report should not be taken lightly nor be grounds for delaying the review process*. Timeliness, reliability, and predictability are among the many factors necessary for an effective compliance system. Those regimes that do not have established procedures for responding to parties' failure or tardiness in reporting can experience significant backlogs in their review schedules. Under the ICESCR, the Committee on Economic, Social and Cultural Rights now goes forward with a review even if the party has not submitted its report. For CITES parties, failure to provide an annual report is considered a violation that can trigger action by the parties, including sanctions. Both of these regimes have experienced more timely submissions after adopting these policies.

III. COMPLIANCE RESPONSE SYSTEMS

Compliance response systems are constituted by those actors, rules, and processes that govern the formal and informal responses intended to induce or assist parties that are out of compliance to alter their behavior and bring it into conformance with treaty norms.[91] Response systems can be analyzed by examining the three steps of *initiation*, *determination*, and *response measures*. *Initiation* involves the means by which the compliance response process is triggered. It includes how the process starts and who is able to start it. *Determination* concerns the way a decision is made to do something about a party's compliance difficulties. *Response measures* entail the actual means by which the treaty regime tries to bring about the party's compliance.

A. INITIATION

For the Kyoto Protocol, the Article 8 review process may constitute the legal framework under which a response to non-compliance is initiated. Article 8.3 authorizes the expert review teams to prepare a report "assessing" a Party's implementation and "identifying" any potential problems. The secretariat then will list any implementation questions indicated in the reports, and circulate the reports and list among the COP/MOP, which shall be assisted by the SBI and, as appropriate, the SBSTA.[92] The COP/MOP will then "take decisions on any matter required for the implementation" of the Protocol.

A plain reading of these provisions does not indicate exactly which entity or entities will have the legal capacity to initiate a non-compliance response procedure. All of these bodies—the review teams, secretariat, SBI, SBSTA, and COP/MOP—could arguably hold the power. Or the provisions could be read narrowly to give only the COP/MOP the right to trigger the procedure.

[91] *See* Mitchell, *supra* note 1, at 53.
[92] Kyoto Protocol, *supra* note 19, art. 8.5.

Alternatively, Article 18's broad mandate for the COP/MOP to "approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance" may provide a more flexible framework for establishing how the response procedure will be triggered. Under this authority, the COP/MOP would be free to establish any compliance response procedures it deemed appropriate, and could extend the right to initiate them to any entity it wished.[93]

1. Multilateral Environmental Agreements

- *Montreal Protocol: Initiation by other parties, the secretariat, and non-complying parties themselves*

Similarly to the compliance response system proposed for LRTAP, the Montreal Protocol relies on an Implementation Committee to secure "amicable solutions" to non-compliance and implementation problems.[94] However, the Montreal Protocol's Implementation Committee does not have the power to initiate the non-compliance procedure on its own. Instead, it is limited to receiving, considering, and reporting upon submissions from parties or the secretariat.[95]

If one or more parties have a reservation about any aspect of another party's implementation, they can make a submission to the secretariat. Submissions must be in writing and must be supported by corroborating information.[96] The secretariat forwards a copy of the submission to the party whose implementation is in question. That party then has the opportunity to respond in writing within three months. After the secretariat receives the response, it forwards it—along with the original submission and related information—to the Implementation Committee, which must consider it as soon as practicable.[97]

Alternatively, the secretariat can request information from a party it believes is failing to comply with its commitments. If the matter cannot be resolved through administrative action or diplomatic contacts, then the secretariat must include it in a report to the Meeting of the Parties (MOP), as well as to the Implementation Committee for its consideration.[98]

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[93] Compliance response procedures relating to the flexible mechanisms might also be adopted under the authority of their respective Kyoto Protocol articles.

[94] Montreal Protocol Non-Compliance Procedure, *supra* note 45, ¶ 8. The Montreal Protocol's Implementation Committee is a standing body that meets twice yearly, unless it decides upon a different schedule. *Id.* ¶ 6. It is composed of ten parties elected for a term of two years by the meeting of the parties (MOP), based upon equitable geographical distribution. *Id.* ¶ 5. No Party involved in a matter under consideration by the Implementation Committee can take part in the "elaboration or adoption of recommendations on that matter." Some have proposed that the process would be more objective if the Implementation Committee was comprised of individuals acting in their independent capacities, rather than being composed of parties. The parties have not accepted these proposals. *See* Sasha Thomas-Nuruddin, *Protection of the Ozone Layer: The Vienna Convention and the Montreal Protocol, in* ADMINISTRATIVE AND EXPERT MONITORING OF INTERNATIONAL TREATIES 113, 126 (Paul C. Szasz et al ed., 1999).

[95] Montreal Protocol Non-Compliance Procedure, *supra* note 45, ¶ 7(a)-(b).

[96] *Id.* ¶ 1.

[97] *Id.* ¶2.

[98] *Id.* ¶ 3.

A party may also report *itself* to the secretariat if, despite "its best, bona fide efforts, it believes it will be unable to fully comply with its obligations.[99] Because parties and the secretariat have been reluctant to initiate the non-compliance procedure against other parties, most reports of non-compliance have been made in this manner, after the party has been pressured by others to self-report.[100]

Neither non-governmental organizations (NGOs) nor individuals may make submissions against a party. Instead, such groups must rely upon their home governments to initiate the non-compliance procedure.

- *LRTAP: Initiation by parties, secretariat, and the Implementation Committee*

LRTAP's new non-compliance procedures establish the right of LRTAP parties to make submissions to the Implementation Committee should they have reservations about other parties'—or their own—implementation.[101] The secretariat may make referrals when it suspects a party might be out of compliance.

These triggering procedures are similar to those of the Montreal Protocol, with the exception that the LRTAP Implementation Committee will be able to review on its own initiative the compliance of Parties with their reporting requirements.[102] The Implementation Committee must report at least once a year to the Executive Body, which is charged with making actual determinations of non-compliance. Depending on how aggressively it decides to interpret its mandate, the Implementation Committee could thus use its reviewing powers as a vehicle for identifying a wide range of deficiencies in a party's periodic reporting, and in turn could use its own obligation to report to the Executive Body as a means of initiating non-compliance proceedings. Such a procedure would constitute a fourth way of triggering the non-compliance process, in addition to submissions by other parties, submissions by one's self, and referrals from the secretariat.[103]

- *The North American Agreement on Environmental Cooperation: Petitions to the secretariat by NGOs and private citizens*

The North American Free Trade Agreement (NAFTA) established a free-trade bloc comprised of Canada, Mexico, and the United States.[104] During the treaty negotiations, some constituents were concerned that lax enforcement of environmental laws in a member country could give industries there a competitive advantage over those sited in member countries where enforcement was more vigorous. Other groups feared that such

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[99] *Id.* ¶ 4.
[100] *See* Weiss, *supra* note 49, at 147. This same phenomenon has been evident in the human rights context, in which individual communications under the ICCPR have been widely used to identify violations, while the inter-state complaints procedure has never been invoked. *See* discussion *infra* p. 20.
[101] Decision 1997/2, *supra* note 37, annex, ¶ 4.
[102] *See id.* ¶ 3(a).
[103] Note that, because the LRTAP Implementation Committee will—as in the Montreal Protocol—essentially be a political body comprised of parties, not individuals acting in their independent capacity, this additional power may make no practical difference compared to how non-compliance procedures are usually initiated under the Montreal Protocol—by the non-complying party itself.
[104] North American Free Trade Agreement, Dec. 17, 1992, 32 I.L.M. 289 (1993) [hereinafter NAFTA].

competitiveness concerns could lead to domestic political pressures to relax the environmental laws in the stricter countries. The North American Agreement on Environmental Cooperation (NAAEC) was adopted as a side agreement to NAFTA to address these worries.[105] Simply, NAAEC works by requiring each party to ensure that it will effectively enforce its environmental laws, insofar as they might affect international trade between parties, and to ensure that legal proceedings will be available for sanctioning or remedying violations.[106]

NAAEC is exceptional in its provisions empowering non-governmental organizations (NGOs) or private persons to petition the secretariat if they believe a party is failing to effectively enforce its environmental laws.[107] These "submissions on enforcement matters" are part of the NAAEC's facilitative approach to compliance, whereby problems are identified with an eye towards finding cooperative solutions rather than coercing non-compliers with punitive enforcement responses.[108] If a citizen submission is accepted, it can at most lead to an exchange of views between the parties, and to the Council of the Commission on Environmental Cooperation (CEC) releasing a report on the matter to the public.[109]

Before a submission can be accepted, it must pass a number of hurdles. The person or organization filing it must reside in the territory of the party against whom the submission is directed. The submission must include "sufficient information," including documentary evidence, to allow the secretariat to evaluate its merits. It must state that the matter has been communicated in writing to the relevant authorities of the concerned party, and must indicate any response the party may have made. Additionally, the secretariat must make a finding that the submission "appears to be aimed at promoting enforcement rather than at harassing industry."[110]

If the secretariat finds the submission acceptable, it must then determine whether the submission merits requesting a response from the complained-against party. This decision is made on the basis of several guidelines, including 1) whether the submission alleges harm to the person or organization who filed it; 2) whether it raises matters "whose further study . . . would advance the goals" of the NAAEC; 3) whether the person or organization has pursued any private remedies available to it under the party's domestic law; and 4) whether the submission was drawn exclusively from mass media reports.[111] The complained-against party can halt the process if it notifies the secretariat that the matter in question is subject to a pending judicial or administrative proceeding, was already resolved by such a proceeding, or if domestic legal remedies are available that the person or organization has not pursued.[112]

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[105] North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M. 1480 (1993) [hereinafter NAAEC].
[106] *See id.* art. 5.1-2.
[107] *See id.* art. 14.
[108] Conversation with Darlene Pearson, Head, Law and Policy Program, Commission on Environmental Cooperation (July 14, 1999).
[109] *See* NAAEC, *supra* note 105, art. 15.
[110] *Id.* art. 14.1
[111] *Id.* art. 14.2
[112] *Id.* art. 14.3.

The NAAEC also contains procedures for resolving disputes between parties. These include obligatory, binding arbitral proceedings and the possible award of monetary assessments.[113]

2. Initiation in Other Multilateral Agreements: Labor, Human Rights, Finance

- *International Labor Organization: Representations from NGOs and complaints from other state parties*

As noted earlier in this paper, the ILO's Committee of Experts and Conference Committee may publicize a member's non-compliance through the use of "comments" and "observations," which stem from the review of parties' reports and other sources of information.[114] Non-compliance proceedings can also be triggered by the ILO's "representations" and "complaints" provisions.

Of the two procedures, Article 24 representations are the more frequently used. If an employers' or workers' organization believes a member state is failing to observe one of the ILO conventions, then it may file a representation against that member. The representation must be in writing, be submitted by an industrial association of employers or workers, concern an ILO member, refer to a convention to which the complained-against member is a party, and indicate how the member has allegedly failed to effectively observe or implement the particular convention.[115] If the Governing Body[116] determines that the representation is acceptable, it will set up an Ad Hoc Committee to examine it. The process may ultimately culminate in the Governing Body publicly releasing the representation, or initiating an Article 26 complaint.[117]

Article 26 complaints can lead to in-depth investigations by a Commission of Inquiry, and (theoretically) culminate in a hearing before the International Court of Justice (ICJ). Complaints may be filed by ILO members, or by the Governing Body upon its own initiative or upon receipt of a complaint from a delegate to the ILO General Conference.[118] However, the complaints procedure is not used very often, and ICJ jurisdiction is almost never used, because it can only be triggered upon consent of the complained-against member.[119]

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[113] *See* discussion *infra* p. 36.
[114] *See* discussion *supra* p. 12.
[115] *See* International Labor Organization, *Article 24 Representation Procedure* (visited July 8, 1999) <http://www.ilo.org/public/english/50normes/enforced/reprsnt/index.htm>.
[116] For a description of the Governing Body see *supra* note 70.
[117] *See Article 24 Representation Procedure*, *supra* note 115.
[118] ILO Constitution, *supra* note 15, art. 26.1, .4. The General Conference is comprised of representatives from each ILO member state. Each member is permitted to have four representatives, "of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members." *Id.* art. 3.1.
[119] *See* A. Ivanov, *The International Labour Organisation: Control over Applications of the Conventions and Recommendations on Labour, in* CONTROL OVER COMPLIANCE WITH INTERNATIONAL LAW 153, 157-58 (W.E Butler et al eds., 1991).

In addition to the regular supervisory system, the ILO has an "ad hoc supervisory mechanism" that is facilitative in nature. If a member state so requests, the ad hoc mechanism can stay, or delay, operation of the regular supervisory system (including Article 24 representations and Article 26 complaints) for one year. A country can request "direct contacts" to discuss questions raised by the supervisory bodies. Direct contacts may also be suggested by the Committee of Experts, the Conference Committee, or the Governing Body. The country's full consent is required before direct contacts can be initiated by these bodies.[120]

- *International Covenant on Political and Civil Rights: While state parties have been reluctant to initiate formal complaints against other states, complaints by individuals are essential to effective enforcement*

The ICCPR has a complaints procedure that may be triggered either by state parties or individuals. Under Article 41 of the ICCPR, a state party may declare that it accepts the right of other states to bring claims before the Human Rights Committee alleging that it has violated the Covenant. This procedure has never been invoked, because state parties have apparently been reluctant to jeopardize their political and economic relations with other parties by initiating complaints.[121]

Alternatively, individuals who claim to be victims of human rights abuses may submit "individual communications" to the Human Rights Committee. The alleged violation must be by a state party to the ICCPR that is also party to the Covenant's Optional Protocol.[122] If accepted, the communication can culminate in an official inquiry by the Committee. The Committee receives approximately 1000 communications each year,[123] leading one commentator to describe it as "the most effective human rights complaints system at the universal level."[124]

- *International Monetary Fund: Automatic timetables and broad powers to protect the Fund's assets*

The International Monetary Fund (IMF) strives to foster orderly economic growth by maintaining stable prices and exchange rates in the international monetary system. Members are generally obligated to adhere to monetary policies consistent with the Fund's objectives. Members in good standing have the right to draw upon other members' currencies and the general resources of the Fund to maintain their balance of payments and currency reserves.

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[120] *See* International Labor Organization, *Ad Hoc Supervisory Mechanisms* (visited 7/8/99) <http://www.ilo.org/public/english/50normes/enforced/ad_hoc/index.htm>; International Labor Organization, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (visited 7/23/99) <http://www.ilo.org/public/english/50normes/sources/handbook/hb0.htm#art26>.

[121] *See* Painter, *supra* note 65, at 65.

[122] Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 12, 999 U.N.T.S. 302.

[123] *See* P. R GHANDHI, THE HUMAN RIGHTS COMMITTEE AND THE RIGHT OF INDIVIDUAL COMMUNICATION 78 (1998).

[124] Nowak, *supra* note 63, at 94.

The Fund can react to a member's non-compliance whenever it "is of the opinion that any member is using the general resources of the Fund in a manner contrary to the purposes of the Fund."[125] "Remedial measures" commence when a member country has been in arrears to the Fund for a month.[126] The Managing Director notifies the Board about the situation. These initial notices often result in the member clearing up the arrears.

When a member has been in arrears for six weeks, the Managing Director consults with and recommends to the Board that a communication concerning the situation be sent to all, or selected, IMF Governors.[127] The Fund then presents the member with a report, or complaint, that sets out the Fund's views and prescribes a "suitable time for reply."[128] *The Fund may immediately limit the member's use of the general resources, before the member has responded to the report.*

If the Fund does not receive a timely reply from the member, or if the reply is unsatisfactory, then it may continue limiting the member's use of the general resources if a limit has already been imposed. If a limit has not already been imposed, the Fund may issue a formal declaration of ineligibility to the general resources, after giving the member reasonable notice.[129]

3. Observations

- *In addition to state parties, it may be advantageous for treaty institutions—such as the secretariat and the compliance body—and civil society to have the ability to initiate non-compliance proceedings against other states.* For political reasons, state parties may be reluctant to initiate complaints against other states. Accordingly, if Parties wish to design a strong non-compliance system that can respond to both their environmental and competitiveness concerns, it may be best to establish procedures whereby states, independent treaty institutions, and NGOs can all initiate non-compliance procedures. This balance has been particularly effective in the ILO, where the stakeholders directly affected by the regime's subject matter—employer and worker groups—have an official role in the compliance process.

- *When a party's failure to comply can lead to immediate or irreparable harm, timely action can protect treaty objectives.* Adhering to a predetermined time schedule, the IMF has the power to immediately limit a member's use of general resources of the Fund when the member's continued use threatens the Fund's assets. This suspension can occur *before* the member responds to the Fund's communication. This power to halt a Party's participation could be particularly important for emissions trading under the Kyoto

[125] Articles of Agreement of the International Monetary Fund, art. IV § 5, July 22, 1944, *as amended and modified*, *available at* <http://www.imf.org/external/pubs/ft/aa/index.htm> [hereinafter Articles of Agreement]; *see also* Rules and Regulations of the International Monetary Fund, schedule K, *available at* <http://www.imf.org/external/pubs/ft/bl/rr11.htm>.
[126] *See* INTERNATIONAL MONETARY FUND, ANNUAL REPORT 1998, 92.
[127] *See id.*
[128] Articles of Agreement, *supra* note 125, art. IV § 5.
[129] *Id.*; art. XXVI § 2(a).

Protocol, where a Party's unconstrained overselling of its assigned amounts could threaten the integrity of the entire system.[130]

B. DETERMINATION

For determination and response measures in a Kyoto Protocol compliance system, the authorizing legal framework could depend on whether a given Party was on a facilitative or enforcement response track. For a facilitative track, the relevant legal framework will likely be whatever decisions the COP/MOP takes to implement the Protocol's Article 16 (based upon the multilateral consultative process of FCCC Article 13). For the enforcement track, the legal framework will come from Article 18.[131]

The facilitative track has already been authorized by the FCCC under the multilateral consultative process (MCP).[132] In 1995, the COP created an Ad Hoc Group on Article 13 (AG-13) to study and recommend a form that the MCP might take.[133] AG-13 has patterned its proposals for the MCP's institutional characteristics to a significant degree after the Montreal Protocol implementation procedures. The MCP's objective is to resolve questions regarding the implementation of the Convention by "[p]roviding advice on assistance to Parties to overcome difficulties encountered by Parties in their implementation of the Convention; [p]romoting understanding of the Convention; [and p]reventing disputes from arising."[134] It is to be non-judicial and conducted in a "facilitative, cooperative, non-confrontational, transparent and timely manner."[135] The COP/MOP will consider the application of the MCP to the Kyoto Protocol, modifying it "as appropriate."[136]

For the enforcement track, Article 18 of the Kyoto Protocol directs the COP/MOP to "approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol." These will include an "indicative list of consequences" that takes into account the "cause, type, degree and

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[130] *See generally* Donald Goldberg, Stephen Porter, et al, *Responsibility for Non-Compliance Under the Kyoto Protocol's Mechanisms for Cooperative Implementation, reprinted in* ENVTL REG. & PERMITTING 31 (Autumn 1998) (describing "traffic light" approach to emissions trading).

[131] As in the case of the initiation step, some of the legal authorization for enforcement may also be derived from Kyoto Protocol Articles 6, 12, and 17, at least insofar as a Party's non-compliance pertains to participation in the flexible mechanisms.

[132] *See* FCCC, *supra* note 22, art. 13.

[133] *See* FCCC/CP/1995/7/Add.1, Decision 20/CP.1.

[134] *Report on the Ad Hoc Group on Article 13*, 6th Sess., Agenda Item 3, annex 2, ¶ 2, FCCC/AG13/1998/L.1 (1998).

[135] *Id.* ¶ 3. The process can be triggered in any of four ways: 1) a Party can self-report any difficulties it is having with implementation; 2) a group of parties can self-report their difficulties; 3) a Party or group of parties can report such questions regarding another Party or group of parties' implementation; or 4) the Conference of the Parties may identify questions of implementation on its own. *See id.* ¶ 5. The Multilateral Consultative Committee members will be persons nominated by Parties who are experts in relevant fields. *Id.* ¶ 8. Committee members will not act in their individual capacities; instead they will serve as representatives of the Parties that nominate them. *See Report on the Ad Hoc Group on Article 13*, 6th Sess., Agenda Item 3, ¶ 10(b), FCCC/AG13/1998/L.1 (1998).

[136] Kyoto Protocol, *supra* note 19, art. 16.

frequency of non-compliance."[137] Reflecting the Parties' inability to agree within the confines of the Kyoto negotiations upon specific terms for a binding compliance system, the Article allows procedures and mechanisms entailing "binding consequences" to be adopted only by means of an amendment to the Protocol.

1. Determination in Multilateral Agreements: Montreal Protocol, ILO, Chemical Weapons Convention, WTO

- *Montreal Protocol: Flexible, political approach to determining course of action*

Upon receiving a submission of potential non-compliance from a party or the secretariat, the Implementation Committee studies the matter by identifying the facts and possible causes.[138] The Committee can request further information from the secretariat as necessary, and it can undertake information-gathering in the subject party's territory, if that party invites it to do so.[139] Parties are entitled to participate in the Committee's considerations of their situations; however, they are not entitled to take part in the adoption of recommendations that concern them.[140]

After the Implementation Committee completes its investigation, it prepares a report that includes any recommendations it deems appropriate under the circumstances. In drawing up its recommendations, the Committee maintains an exchange of information with the Multilateral Fund.[141] The report and recommendations are forwarded to the Meeting of the Parties (MOP), which may decide upon or call for any steps to bring about the party's full compliance.[142] Decisions by the MOP on such substantive matters are taken upon a two-thirds majority vote.[143]

There is a tension in these proceedings between transparency and confidentiality. The Implementation Committee and any party involved in non-compliance deliberations must protect the confidentiality of any information they receive in confidence. The Committee's report is available to any "person" upon request. However, it must not contain any information of a confidential nature.[144]

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[137] The "indicative list of consequences" approach has already been used in the non-compliance procedure under the Montreal Protocol. *See Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, annex V, UNEP/OxL.Pro.4/15 (1992) [hereinafter Indicative List].
[138] As observed *supra* note 94, the Implementation Committee is a standing body comprised of ten state parties.
[139] Montreal Protocol Non-Compliance Procedure, *supra* note 45, ¶ 7.
[140] *Id.* ¶¶ 10, 11. The compliance procedures of LRTAP's Oslo Protocol contain similar provisions. *See* Oslo Protocol, Dec. 1997/2, *supra* note 37, annex, ¶ 8.
[141] The Multilateral Fund was established by industrialized countries in June 1990 with the objective of assisting developing country parties implement the Montreal Protocol.
[142] Montreal Protocol Non-Compliance Procedure, *supra* note 45, ¶ 9.
[143] Rules of Procedure for Meetings of the Conference of the parties to the Vienna Convention and Meetings of the parties to the Montreal Protocol, rule 40.1, *adopted in* UNEP/OzL.Pro.1/5, May 6, 1989, *available at* <www.unep.ch/ozone/rules.htm>.
[144] Montreal Protocol Non-Compliance Procedure, *supra* note 45, ¶¶ 15-16.

- *International Labor Organization: Decision-making by an independent Commission of Inquiry*

Non-compliance questions raised under the ILO's Article 26 complaint system are decided by a Commission of Inquiry. The Commission is composed of three "prominent persons" appointed in their personal capacity.[145] The Commission sets its own procedures on a case-by-case basis.

The Commission investigates the complaint by examining statements and documentary evidence obtained from the parties, from trading partners and neighbors, and various non-governmental organizations. The Commission may also hear testimony from witnesses and the parties themselves.

After concluding its investigation, the Commission of Inquiry prepares a report including its findings of fact and any recommendations it may have. The governments concerned have three months to indicate whether they will accept the Commission's recommendations. Any government that elects not to accept the recommendations is entitled to refer the complaint to the International Court of Justice.

- *Chemical Weapons Convention: Super majority vote by the Executive Council, subject to approval by a super majority vote of the Conference of State Parties*

After receiving a referral from the Director-General of the Technical Secretariat, the Executive Council can declare a state party to be out of compliance upon a two-thirds majority vote.[146] The Executive Council then asks the state to cure the problem. The state party has a specific time limit in which it must respond to the Executive Council, during which time it can ask for clarification or the Council's assistance.

The Council then makes a recommendation to the Conference of State Parties. The Conference issues a request to the non-complying party to remedy the problem in a specific time. Although it gives great weight to the Council's recommendations, the Conference must approve the implementation of any response measure by a two-thirds vote.[147]

- *World Trade Organization: Binding decisions by independent panels, automatically adopted by the Dispute Settlement Body unless they are appealed or it decides by consensus not to adopt them*

The WTO's Dispute Settlement Understanding (DSU) created perhaps the most powerful dispute resolution procedure of any multilateral agreement. Although "dispute resolution" under the Kyoto Protocol falls under the auspices of Article 19, lessons learned

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[145] *See* ILO, *Explanation of Article 26 Complaints Procedure* (visited July 8, 1999) <http://www.ilo.org/public/english/50normes/enforced/complnt/index.htm>.

[146] *See* Chemical Weapons Convention, *supra* note 77, art. IX.22. The Executive Council consists of forty-one seats, with each geographic region represented by a fixed number of seats, and a specified number of quasi-permanent seats allocated to the states with the most significant chemical industries in the region. *Id.* art. VIII, C.23, 29.

[147] *Id.* art. VIII B.8.

from the DSU—particularly those relating to the constitution of the decision-making panels, the availability of appellate review, and the Dispute Settlement Body's automatic adoption of panel decisions—could be applicable to any non-compliance procedures that may eventually spring from the Protocol's Article 18.

The WTO General Council, which is comprised of all WTO members, convenes as the Dispute Settlement Body when discharging its responsibilities under the DSU.[148] The DSB is the ultimate decision-making body for dispute matters. It has the power to establish panels when disputants cannot agree on their composition, to adopt panel and Appellate Body reports, and to authorize enforcement responses.[149]

Disputes are decided in the first instance by panels. A panel has three or five panelists, depending on the preference of the disputants. Panelists must be "well-qualified governmental and/or non-governmental individuals."[150] Qualified persons include senior trade policy officials, experts who have taught or published on international trade law or policy, or those who have previously served on or presented a case before a panel.

The WTO secretariat maintains an indicative list of eligible panelists who have been nominated by WTO members. After the complainant to a dispute requests, the secretariat nominates panelists. The Secretariat's choices may be vetoed by the disputants only for "compelling reasons."

Panelists serve in their individual capacity, and not as representatives of any government or organization. They are supposed to be chosen to ensure independent decision-making, and a diverse background and range of experience. When a dispute involves a developing country, at least one panelist must come from a developing country if the country so requests.[151]

The panel process begins when a WTO member engaged in a trade dispute with another member makes a written request for a panel to be established.[152] Unless the disputants agree otherwise, the panel operates under the procedures set out in the Dispute Settlement Understanding.[153] A specific timetable for the process is set by the panel, but as a general rule, it should not exceed six months. The panel consults with the disputants, hears their oral arguments, and receives their written submissions, including rebuttal submissions.

Panels have the right to request additional information or technical advice from any individual or body they deem appropriate.[154] Any third-party WTO member having a

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[148] Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], *in* LEGAL INSTRUMENTS — RESULTS OF THE URUGUAY ROUND, Apr. 15, 1994, 33 I.L.M. 1125 [hereinafter Final Act].
[149] Final Act, annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes, art. 2.1 [hereinafter DSU].
[150] *Id.* art. 8.
[151] *Id.* art. 8.10. Throughout the dispute process, developing countries are given slight, additional considerations. *See, e.g., id.* arts. 12.11; 21.8; 24 (for least-developed countries).
[152] *Id.* art. 6.
[153] *Id.* art. 12.
[154] *Id.* art. 13.

substantial interest in the matter must be given an opportunity to make written submissions and be heard by the panel.[155]

If the parties to the dispute are still unable to find a solution, the panel submits a draft report to them.[156] After a period of comments and revision, the panel issues a final report, which is submitted to the Dispute Settlement Body. The report sets out the panel's findings of fact, the applicability of relevant WTO provisions to the case, and the rationale behind the panel's findings and recommendations.[157] Unless one of the parties to the dispute requests an appeal, the report is *automatically adopted unless the DSB decides by consensus not to adopt it*.[158]

Appeals are made to the standing Appellate Body.[159] The Appellate Body has seven members. They serve on a rotating basis, so that three members serve for each case. Appeals are limited to issues of law and legal interpretation; the facts of a dispute may not be reargued before the Appellate Body.[160] The Appellate Body may uphold, modify, or reverse the legal findings and/or conclusions of the panel. The Appellate Body releases its decision in a report, which—like the original panel report—is automatically adopted by the DSB unless it declines to do so by negative consensus.

2. Observations

- *The Montreal Protocol's facilitative approach may be particularly effective when a party's capacity to comply is at issue.* This approach—sometimes coupled with threats to suspend treaty privileges, in particular, access to the Multilateral Fund[161]—has been effective in assisting and inducing several Montreal Protocol parties to comply with their obligations. These parties have generally been economies in transition (EITs) that have had difficulty fulfilling their reporting requirements. The multilateral consultative process (MCP) envisioned for the FCCC and (presumably) the Kyoto Protocol is very similar, with the exception that it is unclear whether the process as presently iterated will be able to resort to "sticks" such as suspension of privileges if a Party fails to fully cooperate.

- *To incorporate fairness, due process, and certainty into the determination process, decisions by an independent body—subject to appellate review and adopted automatically by the COP/MOP unless rejected by super-majority vote—should be considered for situations in which binding or punitive consequences are possible outcomes.* Due to the unprecedented environmental threat posed by climate change, and the potential costs states may face in adapting their economies to produce fewer

[155] *Id. a*rt. 10.1
[156] *Id. a*rt. 15.
[157] *Id. a*rt. 12.
[158] *Id. a*rt. 16. This "negative consensus" rule represents a major change from the old, pre-WTO process, whereby GATT panel decisions were only adopted if they were approved by a consensus of all GATT members. The old rule allowed any GATT member who lost a case to veto the panel's decision, so that such cases were rarely ratified or officially adopted.
[159] *Id.* art. 17.
[160] *Id. a*rt. 17.
[161] *See* discussion *infra* pp. 31-31.

emissions, many Kyoto Protocol Parties believe an enforcement approach to compliance will be necessary, in addition to a facilitative one. The experiences of the GATT and WTO demonstrate that such an approach will be largely symbolic if non-compliance determination can be made only by consensus. (Under the old GATT, panel decisions were adopted only by a consensus of GATT members. Because the "defendant" member could thus veto adoption, such decisions were rarely adopted. A major advance of the WTO was to make panel decisions automatically adopted unless a consensus of the members decided *not* to adopt them.) The determination systems we reviewed included those in which decisions were made by a super-majority of parties (the Chemical Weapons Convention) or by an independent, expert panel (e.g., the ILO). Perhaps the most independent of these systems is that provided by the WTO's Dispute Settlement Understanding. By incorporating due process considerations and a de-politicized, formal method for making individual compliance decisions, the WTO panel process may provide a useful template for how a decision-making body under a Kyoto Protocol enforcement approach could be patterned.[162]

D. RESPONSE MEASURES

The purpose of compliance response measures is to induce parties that are unable or unwilling to comply to bring their behavior in line with their treaty obligations. There are two basic categories of response measures: 1) facilitative ones, by which the treaty institution assists and manages a party's non-compliance, often with an eye towards building the party's capacity; and 2) punitive measures, by which threats of retaliation serve to deter non-compliance and neutralize any benefit a party might obtain from its violation. The Kyoto Protocol provides for implementation of both kinds of measures, in its Article 16 endorsement of the multilateral consultative process (MCP), and in Article 18's anticipation of "binding consequences" to non-compliance.

A clear line does not always exist between these facilitative and punitive measures. For example, when a party is offered assistance under a facilitative approach, the compliance body or conference of the parties can threaten to suspend the assistance as a way of coercing the party to comply. The Montreal Protocol has successfully used this approach to induce parties to honor their reporting requirements.

Similarly, it is not clear at precisely what point a response to non-compliance might become "binding" and thus trigger the Article 18 amendment requirement. As a purely legal

[162] It bears reiteration here that the WTO panel process is a dispute resolution process intended to resolve cases in which one or more members claim they are being harmed by another member's unfair trade practices. Consequently, the process is triggered by a member that has a particularized claim against another. This reflects the fact that compliance enforcement under the WTO amounts to the collective authorization to an individual state member to retaliate against another that is found to be in violation of WTO rules. *See* discussion *infra* p. 35. Under the Kyoto Protocol, initiation of a compliance response would likely not be accomplished in the same way, and it is not being suggested here that the WTO model will be particularly relevant to any non-compliance initiation procedure adopted under the Protocol. However, the independence of WTO panels and the way they arrive at their decisions, the availability of appellate review, and the automatic adoption of panel decisions unless a consensus of the DSB agrees *not* to adopt them may all provide useful models for a Kyoto Protocol compliance system, should the Parties believe it is advisable to create a formalized determination process that can potentially result in binding decisions that are adverse to non-complying Parties.

matter, a measure is binding if it requires a state party to do something it would otherwise not be obligated to do, or constrains it from doing something it would otherwise be entitled to do.[163] Thus, publishing a report that criticizes the behavior of a party would not be a binding consequence, while levying a fine against it probably would. Suspending a party's treaty privileges could arguably be viewed in either way. Ultimately, whether or not a proposed non-compliance consequence under Article 18 can be adopted by an amendment or simply by an official decision will be a political question answered by the Parties.

1. Facilitative Responses in Multilateral Agreements

- *Montreal Protocol: Widely acclaimed application of the facilitative approach*

The facilitative approach has been elaborated in the ozone regime, under the Montreal Protocol's Non-Compliance Procedure. The Meeting of the Parties (MOP) agreed to an "indicative list" of measures that might be taken in response to a party's non-compliance.[164] The list includes rendering "appropriate assistance," including technical and financial assistance, and assistance in the collection and reporting of data; issuing cautions; and suspension of specific treaty rights.[165] The MOP has issued numerous cautions in response to the ongoing difficulties many of the economies in transition (EITs) have had in honoring their reporting requirements or adhering to their ozone reduction schedules. These cautions have included advising non-complying parties that they could be subject to suspension of treaty privileges if they do not remedy their situation.[166]

The facilitative approach of the Montreal Protocol is generally viewed as a success, insofar as developed countries have made dramatic progress in phasing out ozone depleting substances (ODS). Most economies in transition have made serious efforts to comply, in light of their capacity problems. However, the problem of illegal ODS smuggling across international borders is becoming more serious. The facilitative approach may be less effective against such activity than it has been in altering the behavior of states. Moreover, it is uncertain how well the facilitative approach will work as the commitments of developing country parties enter into force.[167]

- *International Monetary Fund: Cooperative assistance backed up by remedial measures*

The IMF's "strengthened cooperative strategy" has been in effect since 1990.[168] The strategy is designed to prevent member countries from going into arrears in their financial obligations to the IMF and to help overdue countries find solutions to their arrears problems.

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[163] *See* BLACK'S LAW DICTIONARY 153 (5th ed. 1979).
[164] *See* Indicative List, *supra* note 137.
[165] *Id.*
[166] *See generally Report of the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, decisions X/20-28, UNEP/OzL.Pro.10/9 (1998).
[167] *See* Weiss, *supra* note 49, at 153. Developing country "Article 5 parties" may delay their compliance with the Montreal Protocol's control measures for ten years if they annually consume less than .3 kilograms per capita of controlled substances. *See* Montreal Protocol, *supra* note 5, art. 5.
[168] *See* IMF Annual Report, *supra* note 126, at 91.

The strategy relies on three elements: prevention, intensified collaboration, and remedial measures.

The *preventive element* is designed to help members avoid going into arrears. Members adopt macroeconomic adjustment programs with the support of the IMF. The programs include conditional use of IMF resources, technical assistance, and assurances of adequate financial support. They also include assessments of a member's ability to maintain a viable balance of payments and its capacity to repay the IMF.[169]

The *intensified collaboration element* helps cooperating members resolve their arrears problems. It includes the "rights" approach, under which eligible members with protracted arrears establish a track record of performance and payments to the IMF. The member's performance serves as a basis for accumulating "rights" to IMF disbursements under a subsequent arrangement, which commences after the arrears are cleared up. The approach helps such members access bilateral and multilateral financial support for their adjustment efforts.[170]

Finally, the *remedial measures* protect the IMF's resources from further use by members in arrears, and may include suspending a member's rights and privileges. These measures are discussed more fully below in the section on suspension of treaty privileges.

2. Issuing Reports/Public Approbation

The most important response measure for many treaty regimes is public approbation—broadcasting a treaty violation to other parties and/or the public at large. By identifying, publicizing, and making recommendations for those cases in which state parties are failing to comply with their obligations, treaty institutions help maximize transparency, permitting other states, NGOs and the public to bring pressure upon governments, while deterring some states from violating their obligations in the first place. The effectiveness of public reports is often premised on their persuasive, rather than punitive, value in bringing about changes in state behavior. Accordingly, they can be an important component of facilitative or "non-binding" approaches to dealing with non-compliance.

- *International Covenant on Civil and Political Rights: Annual reports designed to "shame" states into changing their behavior*

The ICCPR relies upon publication of annual reports—and the public and political pressure they bring to bear—to induce state parties to change their behavior when they fail to adhere to their treaty obligations. After examining a communication alleging a person is suffering human rights abuses, the Human Rights Committee may find one or more violations of the Covenant. In that case, the Committee requests the state party concerned to provide the victim with an appropriate remedy, or to implement measures so that similar violations do not occur again in the future.

[169] *See id.*
[170] *See id.* at 91-92.

The Committee's final views are not legally binding, but they are structured like the written opinions of a court judgment, and are published in the Committee's annual report.[171] Individual member states may add their dissenting or concurring opinions to the final views.

Because many governments fail to comply with the Committee's requests and recommendations, the Committee appointed a Special Rapporteur for the Follow-Up of Views. The Special Rapporteur is charged with monitoring compliance by recommending additional actions the Committee might take and seeking information on how a state is implementing the Committee's final views.

- *Endangered Species Convention: "Alleged Infractions Report" can provide a basis for more punitive responses*

The text of CITES does not contain provisions for taking enforcement measures against parties that fail to comply with their obligations. However, the "Alleged Infractions Report"—coupled with the willingness of parties to accord great deference to recommendations of the CITES Standing Committee—has been used successfully on numerous occasions to convince non-complying parties to alter their behavior.

Because the CITES Conference of the Parties (COP) generally meets only once every three years, it created the Standing Committee to carry out its activities between meetings.[172] The Standing Committee evaluates compliance and implementation problems that the secretariat reports to it, and then makes non-binding recommendations to the parties on those matters.

Each case of non-compliance confirmed by the Standing Committee is included in the Alleged Infractions Report, which is published and tabled at the COP meetings.[173] Infractions Reports detail the efforts the secretariat and Standing Committee have made to secure the compliance of parties who are failing to adequately regulate trade in CITES-listed, endangered or threatened wildlife species. Ultimately, these reports can form the basis under which the Standing Committee requests parties to restrict trade with non-complying parties.

3. Suspension of Treaty Privileges

Like the use of reports and public approbation, suspension of treaty privileges is a staple of compliance response approaches, including facilitative and "non-binding" ones.

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[171] *See* Nowak, *supra* note 63, at 95.

[172] *See Establishment of the Standing Committee of the Conference of the parties*, Resolution of the Parties, Conf. 9.1, annex I, *available at* <http://www.cites.org/CITES/english/eresol91.htm#9.1>; *see also* Chris Wold, *Multilateral Environmental Agreements and the GATT: Conflict and Resolution?*, 26 ENVIRONMENTAL LAW 841, 895 (1996). The Standing Committee is comprised of parties elected from each of the six major geographic regions, weighted towards those regions with the most parties. *See Establishment of the Standing Committee*, *supra*, annex I.

[173] *See* Lanchbery, *supra* note 47, at 71.

- *Montreal Protocol: The threat of losing substantive treaty privileges lends teeth to the facilitative approach*

As noted above, the Montreal Protocol's indicative list includes the possibility of suspending a party's treaty rights. Should a party's efforts to bring itself into full compliance prove inadequate, it may lose its access to technology transfer or the Protocol's financial mechanism, as well as the right to produce, consume, or trade in controlled ozone depleting substances (ODS).[174]

Suspension of privileges also includes the possibility of a developing country losing its "Article 5" status if it fails to honor its reporting requirements. (Article 5 parties may delay their compliance with the Protocol's control measures for ten years if they annually consume less than .3 kilograms per capita of controlled substances.) In 1998, the Implementation Committee briefly suspended Liberia's Article 5 status, after determining that Liberia had not been forthcoming in supplying its base-year data. Within days after its suspension, Liberia faxed the information to UNEP, allowing it to maintain its status as an Article 5 party.[175]

- *International Monetary Fund: When an institution wields power over the purse, it can exact influence over its beneficiaries*

The remedial measures that comprise the third element of the IMF's "strengthened cooperative strategy" can all be traced to the Fund's Articles of Agreement. They include suspension or revocation of membership rights and, in the most serious situations, compulsory withdrawal from the Fund.

The Fund can suspend a member if, following a declaration of ineligibility, the member persists in its failure to fulfill its obligations.[176] Suspension requires a seventy percent majority vote of the Fund's total voting power, and includes loss of the right to vote and to participate in the adoption of IMF amendments, as well as the loss of office for any Governors, Councillors, or Executive Director that were appointed or elected by the suspended member.[177] The Fund may terminate the suspension at any time, again by a seventy percent vote.[178]

Compulsory withdrawal from Fund membership is the final and most severe sanction of the Fund's remedial measures. If a suspended member fails to satisfactorily address its compliance problem within a reasonable period of time, the Executive Board informs the member of the complaint against it and allows it an adequate opportunity for stating its case,

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[174] *See* Indicative List, *supra* note 137.
[175] *Report of the Implementation Committee Under the Non-Compliance Procedure for the Montreal Protocol on the Work of Its Twenty-First Meeting*, Implementation Committee Under the Non-Compliance Procedure for the Montreal Protocol, UNEP/OzL.Pro/ImpCom/21/3, ¶¶ 12-14 (1998).
[176] IMF Articles of Agreement, *supra* note 125, art. XXVI § 2(b); *see also* Rules and Regulations of the International Monetary Fund, schedule K, *available at* <http://www.imf.org/external/pubs/ft/bl/rr11.htm>.
[177] IMF Articles of Agreement, *supra* note 125, Schedule L.
[178] *See* IMF Annual Report, *supra* note 126, at 92 for discussion of Democratic Republic of the Congo's suspension.

both orally and in writing.[179] The Executive Board submits its recommendations to the Board of Governors. After the member is again given the chance to present its case both orally and in writing, the Board of Governors takes a decision upon an eighty-five percent vote of its total voting power. When a member is required to withdraw from membership, the Fund ceases all normal operations and transactions in the member's currency.

In recent years, these sanctions have been used or threatened against several developing countries, including the Democratic Republic of the Congo, Liberia, and Sudan. In the majority of cases, a member clears up its arrears shortly after receiving a notification of arrears from the Fund.[180] The effectiveness of the IMF's compliance response system (as opposed to those of most multilateral environmental agreements) demonstrates the reality that when an institution can wield power over the purse, it can exact significant influence over its beneficiaries.

- *Chemical Weapons Convention: Loss of right to request a challenge inspection, and right to participate in exchange of information and technology for listed chemicals*

Upon a two-thirds majority vote, the Conference of State Parties may suspend the rights or privileges of a non-complying party.[181] Suspension may include the rights of a state to vote at meetings, request a challenge inspection, choose inspectors assigned to its territory, receive information on other state parties' compliance, or have its sensitive information protected.

Additionally, a suspended party can lose its right to participate without restriction in the exchange of information and technology for listed chemicals. The Convention grants parties special privileges to exchange chemical information and technology among themselves, and requires them to agree not to maintain between themselves restrictions or impediments to trade and development of chemical knowledge. Consequently, loss of these privileges can amount to a form of trade sanction, just as loss of the corresponding CITES and Montreal Protocol privileges to trade in restricted goods or substances are effectively trade sanctions.

4. Suspension for Failure to Pay Financial Contributions

Some multilateral agreements include special provisions for dealing with a party's failure to satisfy its obligations to make financial contributions for maintaining the institution's operating expenses. For example, after approving the annual budget for the Association of Coffee-Producing Countries, the Coffee Council assesses the contributions each member must make.[182] If the member fails to pay the contribution in full within three

[179] Articles of Agreement, *supra* note 125 art. XXVI § 2(c); By-Laws of International Monetary Fund § 22, *available at* <www.imf.org/external/pubs/ft/bl/bl22.htm>.
[180] *See* IMF Annual Report, *supra* note 126, at 92.
[181] Chemical Weapons Convention, *supra* note 77, art. XII.
[182] Agreement on the Creation of the Association of Coffee-Producing Countries, art. 52, Sept. 24, 1993, *found in* INT'L ECON. L. DOCS, doc. I-I (1993).

months of its coming due, then all that member's rights under the Coffee Agreement are suspended until payment is made.[183]

- *The International Labor Organization: Suspension of voting rights*

The ILO may suspend the rights of a member in arrears for its financial contributions to ILO operating expenses. If the arrears equal or exceed the amount of the contributions due from the member for the preceding two full years, then the member loses its vote in the ILO Conference, the Governing Body, all ILO committees, and in the elections of members to the Governing Body. However, the Conference may by a two-thirds majority of the votes cast by the delegates present permit a defaulting member to vote, if it is satisfied that the failure to pay is due to conditions beyond the member's control.[184]

- *The International Monetary Fund: Suspension of special drawing rights*

The IMF has a more specialized requirement. One of the Fund's key functions is its provisions for special drawing rights. These rights permit Fund participants with balance of payments problems to exchange their currencies for equivalent amounts of currency from other participants.[185] To assure that adequate currencies are available, the Fund designates those participants who must provide specified amounts of their currencies.

The Fund has detailed rules for dealing with situations in which a designated provider fails to provide currency to a participant wishing to use its special drawing rights. These include a complaint procedure that can be initiated by a participant. After the Fund's Managing Director receives such a complaint and informs the complained-against participant, that participant may not use its own special drawing rights until the complaint is resolved or dismissed.[186]

5. Trade-Related Measures

As shown above in the Montreal Protocol and CITES examples, those multilateral environmental agreements (MEAs) that resort to trade-related measures as a consequence of non-compliance do so by targeting products or substances that the agreement is specifically designed to regulate. Trade measures under the Montreal Protocol would be directed at prohibiting a party's trade in ozone depleting substances (ODS), while CITES parties (at the behest of the Standing Committee) may refuse to trade in listed wildlife or wildlife products with parties deemed to be in non-compliance.[187] By setting up an international mechanism for regulating trade in ODS or endangered wildlife products, these MEAs naturally create a framework under which multilaterally-enforced trade measures targeting those products can be effectively implemented.

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[183] *Id.* art. 56.
[184] ILO Constitution, *supra* note 15, art. 13.
[185] Articles of Agreement, *supra* note 125, art. XIX.
[186] *See id.* art. XXIII; Rules and Regulations of the International Monetary Fund, Schedule S, <http://www.imf.org/external/pubs/ft/bl/rr19.htm>.
[187] These trade bans also serve the purpose of undercutting potential free riding by non-parties, because they prohibit treaty parties from trading in regulated goods with non-parties who do not adhere to the treaties' requirements. The Chemical Weapons Convention operates in a similar fashion.

By contrast, the multilateral regime most closely associated with trade measures—the WTO—is effective not so much because it sets up an international system for regulating specific goods, but because it provides order to the international trading system by establishing rules under which members may use reciprocity, or retaliation, against other members who engage in unfair trading practices. In other words, the WTO Agreement strives to control the use by members of an enforcement response—retaliation—that has always been available to those countries economically strong enough to use it.

- *Montreal Protocol: Suspension of treaty privileges can lead to a trade ban in regulated substances*

The Montreal Protocol's indicative list of non-compliance response measures includes "trade" as a possible area in which a party's rights and privileges can be suspended. This provision gives the Meeting of the Parties (MOP) wide discretion to authorize trade restrictions against a non-complying party. Suspending a party's treaty rights to trade in ozone depleting substances (ODS) effectively subjects that party to the Protocol's trade measures against *non*-parties. These measures include a ban on trade in controlled substances, in products containing or produced by controlled substances, or on the export of technologies or financial credit that could be used in the production of controlled substances.[188] These measures were adopted to discourage non-party "free-riders" from moving into the markets for ODS left open by the parties. They also discourage parties from withdrawing from the Protocol.[189]

- *Endangered Species Convention: Prohibition against trade in listed wildlife*

CITES Infractions Reports summarize recommendations the Standing Committee makes to the parties. CITES does not limit the rights of parties to implement domestic measures for protecting listed species that are stricter than those required by the treaty.[190] The parties have broadly interpreted this provision as authorizing them to implement trade restrictions against non-complying parties when the Standing Committee recommends they do so.[191] Consequently, when the Standing Committee has requested parties not to issue nor accept CITES documents from a breaching party, trade with that country in products requiring such documentation has been effectively banned until the party has remedied the situation.[192]

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[188] *See* Montreal Protocol, *supra* note 5, art. 4. The ban on products produced by controlled substances has not been implemented.

[189] *See* Harold K. Jacobson & Edith Brown Weiss, *Assessing the Record and Designing Strategies to Engage Countries*, *in* ENGAGING COUNTRIES; STRENGTHENING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL ACCORDS 511, 547 (Edith Brown Weiss & Harold K. Jacobson eds., 1998).

[190] CITES, *supra* note 46, art. XIV.1.

[191] *See* Wold, *supra* note 172, at 895.

[192] *See Review of Alleged Infractions and Other Problems of Implementation of the Convention*, CITES, Report of the Secretariat, Ninth Meeting of the Conference of the Parties, Doc. 9.22, annex, Summaries of Alleged Infractions (1994); *see also* Lanchbery, *supra* note 47, at 71-72. Although there has been speculation as to whether these CITES-inspired trade bans might violate the WTO Agreement, *see, e.g.*, Wold, *supra* note 172, at 894-97; CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, THE USE OF TRADE MEASURES IN SELECT

- *World Trade Organization: Collective authorization to use countermeasures*

After the final report of a WTO panel or appellate body is adopted, the panel recommends that the losing member bring its discriminatory trade measure into conformity with the relevant WTO trade agreement. The panel may also make suggestions as to how the member might implement its recommendations.[193]

The Dispute Settlement Body (DSB) keeps implementation of adopted resolutions and rulings under surveillance until the issue is resolved.[194] If the member does not rectify its violation, then, after expiration of a "reasonable time" (about forty-five days), the winning and losing members must enter into negotiations for mutually acceptable compensation.[195] If those negotiations are not successful, the injured member may request authorization from the DSB to suspend its trade "concessions" toward the non-complying member (i.e., it may retaliate by levying discriminatory tariffs).

The severity of the sanction must be equivalent to the "level of nullification or impairment" the retaliating member has suffered from the other member's unfair trade practice. If possible, the sanction should affect the same economic sector in which the injury occurred. If that is impractical, the sanction should be in a sector covered by the same WTO agreement. If that is still not feasible, then the member may retaliate in any economic sector covered by the other WTO agreements.[196]

6. Monetary Assessments and Other Penalties

A few of the regimes we reviewed contained provisions for levying fines or similar penalties against recalcitrant parties. The Association of Coffee-Producing Countries' Coffee Retention Plan authorized a series of penalties that increased with each subsequent infraction. If the independent audit established that a member had not held back from market its allocated percentage of total coffee exports, then it was obligated to retain a volume equivalent to twice its retention deficit.[197] For a second offense, the member had to retain three times the deficit.[198] Should the member commit a third offense, it had to retain three times the deficit, and its voting rights in the Coffee Retention Committee were suspended. The Committee could also decide to expel the member if it believed the situation warranted.

- *The North American Agreement on Environmental Cooperation: Binding arbitration can lead to monetary enforcement assessments recognized by party's domestic courts*

The North American Agreement on Environmental Cooperation (NAAEC) contains detailed provisions for imposing "monetary enforcement assessments" against non-

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MULTILATERAL ENVIRONMENTAL AGREEMENTS (Robert Housman et al., eds., UNEP Environment and Trade Series No. 10, 1995), no WTO member has ever challenged them.

[193] DSU, *supra* note 149, art. 19.1.

[194] *Id.* art. 21.6.

[195] *Id.* arts. 21.3, 22.2.

[196] *Id.* art. 22.3.

[197] Coffee Retention Plan, art. 27, September 24, 1993, *found in* INT'L ECON. L. DOCS., doc. I-J (1993).

[198] *Id.* art. 28.

complying parties. When a party believes another party has persistently failed to effectively enforce its domestic environmental laws, the party may engage the other in a binding arbitration procedure.[199] The complaint must relate to the effects of commercial enterprises involved in the production of goods or provision of services that are traded between the parties, or that compete in the territory of the complaining party. A third party with a substantial interest in the matter is also entitled to join in the complaint.[200]

If, after making a final judgment against a party, the arbitral panel reconvenes and determines that the party has still failed to remedy the situation, then it may order the party to pay a monetary enforcement assessment.[201] For the first year in which the NAAEC entered into force, such assessments were not to exceed U.S.$20 million. Now, they may be no greater than .007% of the total trade in goods between the parties for the most recent year in which data is available.[202]

The imposition of fines or financial penalties against state parties presumes that states will be inclined to pay them. When negotiating the NAAEC, Canada was concerned that its weak federal system could make it difficult or impossible for the government to pay a monetary enforcement assessment, should an arbitral panel levy one against it.[203] Accordingly, Canada committed to allowing such awards to be enforced directly in its domestic courts.[204] If Canada fails to pay a monetary enforcement assessed against it, the Commission for Environmental Cooperation (CEC) may file a certified copy of the panel determination in a competent Canadian court.[205] For purposes of enforcement, the panel determination becomes an order of the court, which may then be used to enforce the assessment "against the person whom the panel determination is addressed."[206] Neither the panel determination nor the order of the court is subject to review or appeal.[207]

7. Observations

- *The threat to suspend treaty privileges can be particularly effective against states that are receiving a benefit or assistance from the treaty regime; for states that do not rely upon such benefits, suspension may pose a less compelling deterrent.* Suspension of treaty privileges is widely authorized among the regimes we surveyed. However, in the case of regimes such as the Montreal Protocol and the International Monetary Fund, it has been most effective when the institution has extended some form of largesse or benefit (i.e., monetary or technical assistance), and can use the threat of taking the benefit away as a means of inducing the state to change its behavior. Under the Kyoto Protocol, such forms of suspension could be effective when threatened against Parties that are receiving economic or technical assistance. Conversely, they may not be as effective

[199] NAAEC, *supra* note 105, art. 23.
[200] *Id.* art. 24.
[201] *Id.* art. 34.
[202] *Id.* annex 34.
[203] Conversation with Darlene Pearson, Head, Law and Policy Program, Commission on Environmental Cooperation (July 14, 1999).
[204] *See* NAAEC, *supra* note 105, annex 36A.
[205] *Id.* ¶ 2 (a).
[206] *Id.* ¶ 2 (c)-(d).
[207] *Id.* ¶ 2 (g)-(h).

against the politically and economically strongest Parties. For this latter class of Parties, however, sanctions tied to their privilege to participate in joint implementation, the CDM, or international emissions trading may serve as effective deterrents to non-compliance.

- *Trade-related measures may be an effective deterrent or enforcement response if they are carefully tailored to the needs of a treaty regime.* The Montreal Protocol and CITES can ban trade in regulated products and substances, while the WTO authorizes countermeasures against members who engage in unfair trade practices. The rationale behind trade-related measures in the Kyoto Protocol context may lie somewhere in between these two models. Trade measures under the climate regime may thus be most effective and politically feasible if they are designed first to induce a Party to lower its GHG emissions and second, to neutralize any economic or competitive benefits the Party has reaped from its non-compliance.

- *The imaginative use of monetary assessments could be an effective way to make the climate whole and remove the financial benefits of non-compliance.* Monetary assessments will only be as good as a treaty institution's ability to collect them from the non-complying state. By agreeing in advance that any assessment will have the legal status of an arbitral award that can be collected directly in its domestic courts, Canada under the NAAEC has provided an example of how parties can assure others that they will satisfy monetary penalties imposed against them in response to their non-compliance. Under the Kyoto Protocol, monetary assessments could be used in conjunction with a mechanism such as a Compliance Fund.[208] They would thus make the climate whole by underwriting highly reliable projects that remove or mitigate GHG emissions in an amount equal or greater than a Party's overage. A Compliance Fund would permit collected assessments to be used to balance climate registers for the commitment period and bring Parties back into compliance with their Article 3 obligations.

- *The nature of Kyoto Protocol Parties' multifaceted positions and interests may require the availability of a full range of response measures.* The compliance systems we reviewed attempt to regulate a broad range of behaviors impacting the environment, human rights, labor, trade, finance, and military security. Most of the regimes, but particularly human rights and labor, rely on publication of non-compliance ("shaming") to convince states to alter their behavior. For those that regulate international trade in specific substances or products (e.g., ozone depleting substances, wildlife, chemicals) or authorize access to technical and/or financial assistance, suspension of trade or access privileges has often posed an effective deterrent to treaty violators. The WTO's formalized authorization for states to take retaliatory measures when they have been subject to unfair trade measures has proved to be a powerful enforcement response. Very few regimes authorize the use of financial penalties as a non-compliance response; however, monetary assessments may prove to be an important part of the NAAEC compliance system.

[208] *See* Glenn Wiser and Donald Goldberg, *The Compliance Fund: A New Tool for Achieving Compliance Under the Kyoto Protocol* (1999).

Because climate change due to global warming poses a profound threat to human kind's well-being, and because taking meaningful action to counter the threat may impose significant costs on state economies, effective implementation of the Kyoto Protocol may require the availability of a full range of measures, so that Parties may collectively respond to the many different types of compliance problems that could arise. First and foremost, measures must be geared toward making the climate whole in cases where a Party has exceeded its assigned amount. Depending on the Party's economic and technical capacity, this may necessitate facilitative or punitive measures. Additionally, the competitiveness and trade-related concerns of Parties may make monetary assessments or targeted trade measures along the WTO model the most fitting responses to some cases of non-compliance.

APPENDIX I: LIST OF ACRONYMS

AG-13	Ad Hoc Group on Article 13
CDM	Clean Development Mechanism
CEC	Commission for Environmental Cooperation
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
COP/MOP	Conference of the Parties serving as the meeting of the Parties
CRAMRA	Convention on the Regulation of Antarctic Mineral Resource Activities
DRP	dispute resolution procedure
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECOSOC	Economic and Social Council
EIT	economy in transition
EMEP	Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe
FCCC	Framework Convention on Climate Change
FMO	regional fisheries management organization
GHG	greenhouse gas
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDR	in-depth review
ILO	International Labor Organization
IPCC	Intergovernmental Panel on Climate Change
JI	joint implementation
LRTAP	Convention on Long-Range Transboundary Air Pollution
MARPOL	International Convention for the Prevention of Pollution from Ships
MCP	multilateral consultative process
MEA	multilateral environmental agreement
MOP	Meeting of the Parties

NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
NO_x	nitrogen oxide
ODS	ozone depleting substances
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Assessment
SO_2	sulfur dioxide
TRAFFIC	Trade Records Analysis of Fauna and Flora in Commerce
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
VOCs	volatile organic compounds
WTMU	Wildlife Trade Monitoring Unit
WTO	World Trade Organization

APPENDIX II: MULTILATERAL AGREEMENTS REVIEWED

1. Agreement Establishing the World Trade Organization (WTO Agreement), Apr. 15, 1994, LEGAL INSTRUMENTS — RESULTS OF THE URUGUAY ROUND, 33 I.L.M. 1125 (1994).

2. Agreement on the Creation of the Association of Coffee-Producing Countries, Sept. 24, 1993, *found in* INT'L ECON. L. DOCS, doc. I-I (1993).

3. Articles of Agreement of the International Monetary Fund (IMF), July 22, 1944, *as amended and modified, available at* <http://www.imf.org/external/pubs/ft/aa/index.htm>.

4. Coffee Retention Plan, September 24, 1993, *found in* INT'L ECON. L. DOCS., doc. I-J (1993).

5. Constitution of the International Labor Organization, Oct. 9, 1946, 15 U.N.T.S. 35.

6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Mar. 3, 1973, 12 I.L.M. 1085 (1973).

7. Convention on Long-Range Transboundary Air Pollution (LRTAP), Nov. 13, 1979, 18 I.L.M. 1442 (1979).

8. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention), [date], 32 I.L.M. 800 (1993).

9. Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), June 2, 1988, 27 I.L.M. 859 (1988), not yet entered into force as of August 1999.

10. International Convention for the Prevention of Pollution from Ships (MARPOL), Nov. 2, 1973, *reprinted in* INT'L MAR. ORG., MARPOL 73/78, CONSOLIDATED EDITION, 1991 (1992), as amended by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, Feb. 17, 1978.

11. International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171.

12. International Covenant on Economic, Social and Cultural Rights (ICESCR), Dec. 16, 19666, 999 U.N.T.S. 3.

13. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Conference of the Parties, 3rd Sess., Agenda Item 5, U.N. Doc. FCCC/CP/1997/L.7/Add.1, *adopted* Dec. 10, 1997, *opened for signature* Mar. 16, 1998.

14. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, composite text including 1990 amendments, 21 INT'L ENV'T REP. (BNA) 3151 (1993).

15. North American Agreement on Environmental Cooperation (NAAEC), Sept. 14, 1993, 32 I.L.M. 1480 (1993).

16. North American Free Trade Agreement (NAFTA), Dec. 17, 1992, 32 I.L.M. 289 (1993).

17. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (Oslo Protocol), June 14, 1994, UN Doc. EB.AIR/R.84.

18. Statute of the International Atomic Energy Agency, July 29, 1957, 8 U.S.T. 1095, 276 U.N.T.S. 3, amended May 22, 1961, 14 U.S.T. 135, 471 U.N.T.S. 334.

19. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (1968).

20. United Nations Framework Convention on Climate Change (UNFCCC), May 9, 1992, 31 I.L.M. 849 (1992).

21. Vienna Convention for the Protection of the Ozone Layer (Vienna Convention), Mar. 22, 1985, 26 I.L.M. 1516 (1987).

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