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Research Article

The Role of Treaty Bodies in Monitoring Compliance with International Environmental Obligations[1]

Anastasia M. Otrashevskaya, Alexander M. Solntsev, Parzad N. Yusifova

Peoples' Friendship University of Russia (RUDN University)

Abstract. A large number of international treaties regulating various spheres of international relations have already entered into force. As current practice shows, the emphasis has shifted from the need to regulate an increasing number of relationships to the importance of improving the efficiency of existing international treaties. The present article analyzes the implementation of this process in international environmental law. The authors show that a number of global and regional environmental agreements have established quasi-judicial procedures (so-called "non-compliance procedures") in the form of implementation and compliance committees serving as international control mechanisms. The purpose of such mechanisms is to identify and resolve both local and systemic theoretical and practical issues of non-compliance arising from the provisions of international treaties.

The article is based on a large amount of material, including internationally binding legal acts, acts of an advisory nature, and modern doctrinal research of Russian and foreign scholars. The methodological basis of the research consists of general scientific methods (logical and systems analysis, the dialectical method, deduction and induction) and private scientific methods (historical and legal, comparative legal, formal-legal methods, the method of legal modelling and forecasting).

In their research, the authors analyze various international binding and non-binding instruments, summarize doctrinal positions made by Russian and Western legal scholars presented in domestic and foreign scientific literature, and identify the main issues of compliance committees of international environmental agreements.

The authors attempt to give answers to the following questions: Is it necessary to fix the provisions contained in the texts of existing international environmental agreements establishing the compliance committee, or can this be done later, at the annual meetings of the conferences of the parties? What should the composition and mandate of the compliance committee be? And how efficiently do these committees function? As a result of the research, the authors draw conclusions about the need for detailed monitoring of changes in the various international environmental agreements in order to improve the effectiveness of compliance committees in exercising their mandates and identify violations of the mandates of these committees.

[1] English translation from the Russian text: Otrashevskaya A. M., Solntsev A. M., Yusifova P. N. 2023. Rol' dogovornykh organov v kontrole za vypolneniem mezhdunarodnykh ekologicheskikh obyazatel'stv. *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 1. P. 47–75. DOI: https://doi.org/10.24833/0869-0049-2023-1-47-75

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Introduction

Improving the effectiveness of international law, and international environmental law in particular, has become an increasingly acute issue in the 21st century. The effective enforcement of international environmental agreements (IEAs) could serve as a form of prevention of international disputes brought before international judicial institutions. A seminal work in this debate is Antonia and Abram Chayes' book *The New Sovereignty* (Chayes, Chayes 1998), which outlines a managerial approach to international relations governed by international treaties. According to these scholars, the most common sources of non-compliance with treaty provisions are: ambiguity and uncertainty in the wording of a treaty; limitations on the capacity of the parties to fulfil their obligations; temporal changes in the social, economic and political relations provided for by treaties (Chayes, Chayes 1998: 10,13,15). The main argument put forward in *The New Sovereignty* is that issues of non-compliance in international law are rarely the result of states deliberately choosing to not act in line with international obligations. On the contrary, non-compliance can in most cases be explained by ambiguity in the nature and extent of obligations, and the lack of sufficient capacity and emergence of unforeseen events that effect the ability to perform them. The compliance framework that is thus proposed in the book aims to promote transparency, resolve disputes, build capacity, and use persuasion to achieve compliance with international obligations. In our opinion, this system of "soft persuasion" works when the obligation in question represents only a slight or moderate deviation from what the state would have done if no agreement were in place. The further the state moves away from its normal mode of operation, this management approach fails and strong enforcement is required to ensure that obligations are fulfilled. It is perhaps important here to talk about the difference between the compliance procedure and the dispute resolution procedure.

It is a well-known fact that, first, it is not always possible to find sufficient jurisdictional grounds for filing a claim in international law, and second, there are no effective measures for monitoring the implementation of decisions of international judicial institutions. The classic example here is the first case of the International Court of Justice "On the Strait of Corfu," where the 1949 decision was not implemented until the 1990s (Albania agreed to pay compensation to the United Kingdom, while the United Kingdom agreed to return gold belonging to Albania that had been stored in the Bank of England vaults since the Second World War). Or the example of

Japan, which, having lost the case in the International Court of Justice "On Whaling in the Antarctic,"[2] withdrew from the International Convention for the Regulation of Whaling in 2019.[3] These are by no means isolated cases highlighting the absence of systemic control over the implementation of the decisions of international courts.

In her doctoral dissertation, Anait Smbatyan brought to light problems of international justice today, which include the limited jurisdiction of international judicial institutions, the lack of effectiveness of international justice, and the growing specialization of courts.[4] In this context, we believe that quasi-judicial bodies, which represent one of the forms on international control, can play a positive role in addressing these issues: in these instances, the consent of the respondent state is not required in order to file a complaint, and efficiency increases because there is a dialogue with the state and because there is a follow-up procedure in place.

Many international treaties today provide for the creation of special mechanisms that are designed to monitor the implementation by states of their international legal obligations. Examples of multilateral agreements that contain provisions on the creation of such bodies (Ulfstein 2007: 877–889) include human rights treaties, the Single Convention on Narcotic Drugs, IEAs, and international disarmament treaties. For the purposes of this study, it is not necessary to consider all the control bodies that have been created on the basis on IEAs. What is important is to understand the trend, to identify how effectively such instruments are implemented if they are not legally binding. Ultimately, the legal consequences of the adopted documents of a given treaty body depend primarily on the application of the international treaty itself. Their legal force is determined by how the rules are applied to the interpretation of contracts under Arts. 31–32 of the Vienna Convention on the Law of Treaties of 1969. The meaning of this term, which is used in contracts to designate a specific type of document, indicates that they are usually not legally binding. Examples include the use of the terms "views," "opinions" (typically found in international human rights treaties) and "recommendations" (Article 76(8) of the 1982 United Nations Convention on the Law of the Sea in relation to the Commission on the Limits of the Continental Shelf) in place of the weightier "solutions." Occasionally, international treaties use terms that make it unclear whether or not they are legally binding, and rely on the context of their use to determine the possible legal meaning (for example, the wording of the

[2] International Court of Justice: Whaling in the Antarctic. Australia v. Japan, New Zealand intervening. Judgement of 31 March 2014. URL: https://www.icj-cij.org/sites/default/files/case-related/148/148-20140331-JUD-01-00-EN.pdf (accessed: 01.04.2022).

[3] McCurry J. Japan to Resume Commercial Whaling One Day after Leaving the IWC // The Guardian. 25.01.2019. URL: https://www.theguardian.com/world/2019/jan/25/japan-to-resume-commercial-whaling-one-day-after-leaving-the-iwc (accessed: 02.02.2023).

[4] See: Smbatyan A. S. 2014. *Decisions of International Judicial Institutions and Their Role in Strengthening the International Legal Order.* Doctoral dissertation.

definition in Article 18 of the Kyoto Protocol and the text of decision 24/CP.7).[5] Thus, the terms used in the text of an international treaty to refer to declarations, as well as the context, lead us to the conclusion that the declarations of treaty bodies themselves are not legally binding.

The rules for the application of such decisions must be determined by applying the rules of treaty interpretation. These rules are sufficiently open-ended as guidelines for all treaties, as they provide for an interpretation process that takes multiple means of interpretation in a "single combined operation." However, there are no strict rules that might contradict the intentions of the parties. In this context, the purpose of our study is to identify certain situations that might provide guidance for similar cases and help reach an approximate conclusion regarding the possible consequences of statements by supervisory authorities in the interpretation of international treaties.

The Development of a Compliance Mechanism in International Environmental Law

Today, the use of a non-compliance procedure is commonplace in international environmental law. On the one hand, this is a procedure for monitoring compliance by states with international legal obligations. On the other hand, it is an important mechanism for preventing environmental disputes regarding non-compliance with the provisions of various IEAs. There is no universal non-compliance procedure, as they are specific to each individual IEA and differ from agreement to agreement. Special committees created within IEAs perform quasi-judicial functions.

It can be argued that it is common practice these days to establish a non-compliance procedure as part of an IEA (Kuokkanen 2003: 315). Over 30 IEAs either include such a procedure (for example, the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change; the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer; the 1991 Convention on Environmental Impact Assessment in a Transboundary Context; the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention); the 2003 Kyiv Protocol on Pollutant Release and Transfer Registers; the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, and others), or are currently being developed (for example, the 2015 Conference of the Parties to the 1992 United Nations Framework Convention on Climate Change did not approve

[5] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. *Report of the Conference of the Parties on its 7th session, held at Marrakesh from 29 October to 10 November 2001.* P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

of the Rules of Procedure of the Paris Agreement Implementation and Compliance Committee until December 2022,[6] while the Compliance Committee of the Stockholm Convention has been stuck at the development stage since 2006[7]).

Unlike judicial institutions, non-compliance procedures are conceived as a "friendly" means of resolving international disputes, since they are preventive in nature, involve both the parties directly implicated in the resolution of the dispute and all the participants in the respective multilateral treaty, and the final decision is typically made by a conference of the parties to the IEA (this is a significant difference from human rights treaty bodies, where the Conference of the Parties to the treaty does not have such powers). As part of the non-compliance procedure, mechanisms are widely used to provide the guilty state with technical and financial assistance to facilitate the fulfilment of its obligations under the IEA. Most often, this involves exerting diplomatic pressure on the state that is guilty of non-compliance – demanding that it submit reports or action plans on the implementation of the IEA and the measures taken. Only later are more stringent enforcement measures applied. This also involves creating an effective system for monitoring the implementation of international legal obligations (Medvedeva 2012: 78).

In general, the non-compliance procedure is applied in cases where a state party to the given IEA does not comply with its norms. The emergence of such a procedure suggests that the traditional rules of international law regarding the violation of treaty obligations and the responsibilities of states are not particularly effective when it comes to implementing IEAs. Martti Koskenniemi, a prominent expert on international legal theory, provides an in-depth analysis of the difference between compliance and responsibility, noting that the institution of responsibility in international law has as its ultimate goal compensation for damage (i.e. obtaining compensation for the damaged state), whereas the goal of the non-compliance procedure is to force a state to return to compliance with IEA provisions (Koskenniemi 1992: 123–162). This difference exposes the weakness of traditional dispute resolution procedures for international environmental law, since, *de facto,* environmental degradation had occurred before the relevant IEA was signed. As Professor Mikhail Kopylov notes, the history of international environmental law is a series of overdue (and sometimes unsuccessful) reactions to spiralling environmental crises (Kopylov 2007: 240). It is this phenomenon that reveals the true nature of environmental law, operating against the backdrop of ongoing climate change, ozone depletion, and the loss of biological diversity. In such cases, it is extremely difficult to hold a state accountable for violating international

[6] UNFCC: Rules of Procedure of the Paris Agreement Implementation and Compliance Committee (PAICC) adopted 21 December 2022. URL: https://unfccc.int/news/rules-of-procedure-of-the-paris-agreement-implementation-and-compliance-committee-paicc-adopted (accessed: 01.02.2023).

[7] See: Stockholm Convention. URL: https://chm.pops.int/theconvention/compliance/tabid/61/default.aspx (accessed: 01.02.2023).

norms on climate change, since there is no method for calculating the harm with one hundred percent accuracy, and the negative consequences will only become fully apparent many years (perhaps even decades) into the future. In this context, the non-compliance procedure acquires even greater significance because it is more important in international environmental law to prevent harm than to try to force a state to pay damages. International environmental law is somewhat unique because environmental problems are increasing and expanding at such a rapid pace, and their consequences are irreversible. The traditional institution of responsibility does not allow us to respond to environmental problems in an adequate manner. The main goal is to assist a state that is in violation of the norms to return to compliance with the IEA, and not necessarily to blame it for non-compliance. In this respect, according to Tim Stephens, in such areas of international relations as natural resource management and environmental protection, cooperation at the contractual level is preferable to confrontation in the form of the judicial resolution of contentious issues (Stephens 2009: 2).

According to Professor Jan Klabbers, the regular system of state responsibility is not particularly suitable for environmental protection (Klabbers 2007: 1001). She puts forward the following arguments to support this claim: on international environmental law, there is often no real wrongfulness at issue, since causality between behaviour and environmental degradation is frequently difficult to establish with the degree of precision that the law would insist on; responsibility comes after the fact of environmental damage and generally cannot restore the *status quo ante* (the previously existing state of affairs), which is the primary task of international environmental law; and key standards of environmental law, such as environmental safety, due diligence, significant harm, and so on, as often too indeterminate to be enforceable by international judicial institutions. Moreover, most international treaties require mutual consent for recourse to international judicial institutions, whereas the non-compliance procedure can be applied at the initiative of a state, legal entity, or individual.

We should also add that it is often not states themselves that are guilty of causing environmental harm; polluters tend to be legal entities, usually TNCs. On the other hand, when environmental damage does occur, it is often difficult to identify a specific state that has been affected by the wrongdoing: for example, ozone depletion and pollution of the World Ocean causes harm to all of humanity.

The non-compliance procedure is primarily used for the following purposes (Redgwell 2001: 44; Redgwell, Fitzmaurice 2000): to provide positive encouragement to contracting parties to comply with their treaty obligations; to provide a multilateral forum for dispute resolution/avoidance; in the event of non-compliance, to provide a "softer," less legalistic mechanism than offered by traditional dispute-settlement procedures under international law; to force the state to comply with the norms of an international treaty rather than impose a sanction for non-compliance or award

compensation to an injured party; to facilitate access to the dispute resolution procedure, since non-compliance procedures may typically be invoked by one party, and are therefore not dependent upon common agreement.

Monitoring is an important component of the non-compliance procedure. Experts rightly note that the lack of a regular detailed and impartial reporting system makes oversight of the implementation by states of the provisions of the IEA impossible (Szell 1999: 98). The ability to obtain information about the compliance or non-compliance of states through a non-compliance procedure can be called a form of compliance monitoring. If monitoring data indicates that a state is violating the provisions of an IEA, and that IEA does not provide for a non-compliance procedure, then the states parties to it may resort to traditional dispute resolution procedures.

Having summarized the non-compliance procedures written into various IEAs, we can highlight their most characteristic features (Klabbers 2007: 998). Most IEAs contain provisions on the creation of a special compliance committee made up of a limited number of representatives of the states that are parties to the agreement. This indicates that the procedure is diplomatic rather than judicial. After considering a complaint, such a committee will typically submit a report to the plenary body, often dubbed the Conference of the Parties (COP) or Meeting of the Parties (MOP). A non-compliance procedure can be initiated by a state party to an IEA, the secretariat of a given IEA, or the violating itself (by submitting an annual report). The Aarhus Convention allows access to non-compliance procedures for NGOs and individuals – Article 15 (Solntsev, Petrova 2020: 41–49). On the whole, the creation and operating mechanism of a non-compliance procedure is provided for either by the provisions of a given IEA, or by a protocol thereto, or by the COP or MOP.

The issue of the binding nature of the decision and possible sanctions for failure to comply with the instructions is important here. In principle, the non-compliance procedure is advisory in nature: it is designed to facilitate the implementation of the provisions of the IEA, the rendering of assistance (for example, technology transfer), and the exchange of information. Decisions made as a result of the non-compliance procedure may include the imposing obligation on the offending state to develop a compliance action plan. If the state subsequently fails to cooperate and does not implement the decision, then action may be taken against it.

The following reasons for the non-compliance of states with the provisions of an IEA can be identified: as Jutta Brunnée points out, it is typically developing countries whose financial and technical capabilities truly are limited that are accused of non-compliance with IEAs (Brunnee 2005:11). However, it sometimes happens that states, when failing to comply with the provisions of an IEA, seek to obtain benefits since the fulfilment of environmental obligations is always a heavy economic burden.

In this article, we will consider the activities of several of the most important committees.

The Executive Committee on the Montreal Protocol

The Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer is one of the first international treaties to introduce a non-compliance procedure. As noted in the legal literature, the Montreal Protocol is the first international agreement to fill the gap between the procedure for the peaceful resolution of disputes and the reporting procedure with the emergence of a new significant procedure (Szell 1995: 99). The non-compliance procedure developed under the Montreal Protocol remains one of the most dynamically developing procedures to date, and an example for other IEAs to emulate (Klabbers 2007:997). The Committee's activities are largely responsible for the success of the international legal regime to preserve the ozone layer.

Article 8 of the Montreal Protocol reads: "The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance." The non-compliance procedure has been developed and modified since the 1990s. It currently operates on the basis of the Decision adopted at the MOP in Cairo in 1998.[8] The procedure can be invoked by a state or the Secretariat of Montreal Protocol.

The London Amendment to the Montreal Protocol was adopted in 1990,[9] adding Art. 5, para. 10: "The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements…" One of the Executive Committee's functions is to consider complaints under the non-compliance procedure. After it has considered a complaint, the Committee makes a decision which is submitted for final adoption at the annual MOP. If a state behaves obediently and asks for leniency and assistance, then the decision of the MOP is typically limited to provisions on measures that the state in breach of the rules must take at the national level, as well as on the delivery of the necessary assistance (financial, technical, etc.). However, non-compliance with the measures prescribed by the MOP may entail serious punitive measures, including restricting exports. The Montreal Protocol also has a "potential non-compliance" procedure that serves as a preventive measure.

In general, the non-compliance procedure established by the Montreal Protocol is used quite frequently. It is worth noting that Russia was also found guilty under the non-compliance procedure and for a long time refused to cooperate and comply with

[8] UNEP: Report of the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer of 3 December 1998. Annex II. URL: https://ozone.unep.org/system/files/documents/10mop-9.e.pdf (accessed: 20.04.2022).

[9] Adopted at the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer of 29 June 1990.

the provisions of the Montreal Protocol, but eventually agreed to accept financial assistance to re-equip its seven remaining Freon production facilities.[10] Another problem for Russia is that it uses the CFC-113 refrigerant, an ozone-depleting substance whose production is banned under the Montreal Protocol on Substances That Deplete the Ozone Layer to the 1985 Vienna Convention for the Protection of the Ozone Layer, in its rocket and space industry (Zhukov, Solntsev 2010: 87–94). For this reason, Russia makes a formal request to the Secretariat of the Montreal Protocol for permission to produce the amount of CFC-113 it needs for the rocket industry.

The CITES Compliance Committee

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was signed on March 3, 1973 in Washington, D.C., and entered into force on July 1, 1975. A total of 182 countries and the European Union are signatories to the Convention. The Russian Federation is a party to CITES by virtue of its status as the successor state of the Soviet Union, which ratified the Convention on December 8, 1976.[11]

Strict compliance with CITES is essential for the successful achievement of its objectives. Compliance mechanisms were finalized through the adoption of documents at Conference of the Parties (COPs) of CITES members states (Article XI provides for calling meetings of Conference of the Parties). According to Peter Sand, despite the controversial legally binding nature of the provisions of COP resolutions, CITES implies a quasi-legal process that emerged as a result of the evolution of the Convention itself (Sand 2013: 5–27). The seeds for the later emergence of a compliance mechanism were planted at COP 8 (Kyoto, 1992), where Resolution 8.4 (Rev. CoP15),[12] aimed at identifying parties that had failed to adopt domestic measures related to the regulation of trade in species within the scope of CITES, was adopted. However, the biggest steps in the development of the compliance mechanism were made at COP 11 (Gigiri, Kenya, 2000), at which Special Resolution 11.3 (Rev. CoP18) was adopted,[13] setting out the measures that need to be taken at the national and international levels. With the amendments made at COP 18, an international compliance mechanism is detected through interaction with INTERPOL and the World Customs Organization (Art. 15). What is more, representatives of the Wildlife Crime Working Group call on INTERPOL to attend meetings of the Conference of the Parties (Art. 21). The resolution notes the key role of the International Consortium on Combating Wildlife Crime (ICCWC),

[10] See, for example: (Werksman 1996).
[11] List of Contracting Parties. URL: https://cites.org/eng/parties/country-profiles/ru (accessed: 12.01.2023).
[12] CITES: National Laws for Implementation of the Convention. URL: https://cites.org/sites/default/files/document/E-Res-08-04-R15_0.pdf (accessed: 14.01.2023).
[13] CITES: Compliance and Enforcement. URL: https://cites.org/sites/default/files/document/E-Res-11-03-R18.pdf (accessed: 25.11.2022).

created in 2010 (St. Petersburg, Russia) as a platform for interaction between five entities: the CITES Secretariat, INTERPOL, the United Nations Office on Drugs and Crime, the World Bank Group, and the World Customs Organization. The mission of the ICCWC is to provide technical, informational, and financial support to national authorities in the development of a legal framework to combat wildlife crime.[14]

Another example of an international mechanism is the Compliance Assistance Programme (CAP), established at COP 18 (Geneva, 2019) to provide targeted support to countries that have difficulty preventing violations of the Convention and following the recommendations of the CITES Standing Committee. The Standing Committee provides guidance to the Secretariat regarding the implementation of the Convention; monitors the use of the budget by the Secretariat; coordinates, where needed, the work of other committees and working groups; carries out tasks assigned to it by the Constitutional Court; and develops draft resolutions for consideration by the COP (Abaturova, Badretdinov, Solntsev 2021: 1–9).

The next document regulating compliance is the Annex to Resolution 14.3 (Rev. CoP18),[15] "Guide to CITES compliance procedures" (hereinafter referred to as the "Guide," adopted at COP 14 (The Hague, 2007). The compliance mechanisms take a supportive approach with the aim of creating an environment that prevents non-compliance, rather than dealing with the negative consequences of existing instances of non-compliance (Art. 4).

The Guide outlines the key compliance responsibilities of the CITES authorities, which can be divided into two groups – managing and executive. The managing authorities include the COP, which, according to Art. 10, provides general policy guidance on compliance issues; directs and oversees the handling of compliance matters; reviews decisions of the Standing Committee related to specific compliance matters; and delegates certain authority to the Standing Committee or other CITES bodies. Executive tasks are performed by the Standing Committee, which, according to Art. 12, monitors and assesses overall compliance with obligations under the Convention; advises and assists Parties in complying with obligations under the Convention; verifies information; and takes actions to remedy unreasonable measures taken by the parties to the Conference within the framework of the key compliance mechanism – national regulations. The Animals Committee, Plants Committee, and Secretariat provide assistance with the necessary reviews, consultations, assessment, reporting, and monitoring.

Art. 16 of the Guide states that the Secretariat is to provide a party concerned with information it receives about that party's non-compliance with the provisions of the CITES, and communicate with the party regarding the matter. If the party fails to take

[14] CITES: The International Consortium on Combating Wildlife Crime. URL: https://cites.org/eng/prog/iccwc_new.php (accessed: 14.01.2023).

[15] CITES: Compliance Procedures. URL: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf (accessed: 25.11.2022).

sufficient measures to rectify the situation within a reasonable timeframe, the matter is, in accordance with Art. 21, brought to the attention of the Standing Committee, which has the authority to issue a written caution requesting special reporting or a compliance action plan from the party concerned, and to provide recommendations to resolve the existing problem of non-compliance (Art. 29). As a last resort, if the party shows no intention to achieve compliance, the Standing Committee has the right to recommend that the Constitutional Court suspend trade in specimens of one or more CITES-listed species (Art. 30).

Specific examples of compliance procedures include, in addition to the general reporting and regulations at the national level outlined above,[16] trade surveys on Significant Trade in Specimens of Appendix-II Species,[17] trade surveys of captive-bred organisms, and National Ivory Action Plans.[18]

The CITES Convention is a good example of just how effective applying economic sanctions, including trade embargoes, can be, as they almost aways lead parties that are in violation of agreements to comply with the requirements. This effectiveness was further confirmed by an independent external audit carried out in 2004 at the request of the Standing Committee (Koester 2000).

The legal basis for applying sanctions can be found in Art. XIV.1(a) of CITES, which "in no way affects the right of parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof." It follows from this that countries have the legal grounds to introduce unilateral trade embargoes in accordance with international legal norms.

Art. XIII of the Convention regulated cases of non-compliance with the treaty and determines the procedure for considering each specific case. If violations by any country of the mechanisms provided for by the Convention cannot be resolved through negotiations between the party concerned and the CITES Secretariat (in accordance with Art. XIII) or the Standing Committee, the Conference or the Standing Committee may, as a last resort, recommend an embargo in the form of the suspension of all trade in specimens of one or more CITES-listed species. This system make it possible to prohibit trade in the species mentioned in the Annex to the Convention, as well as trade in other species, which, in turn, entails economic damage due to the inability to carry out trade legally. As the Convention is universal, such methods of economic pressure have proven effective, and ensure that the parties comply with the provisions of the agreement in almost all cases.

[16] CITES: Compliance Procedures. URL: https://cites.org/sites/default/files/document/E-Res-14-03-R18.pdf (accessed: 25.11.2022).
[17] CITES: Review of Significant Trade in Specimens of Appendix-II Species. URL: https://cites.org/sites/default/files/document/E-Res-12-08-R18.pdf (accessed: 25.11.2022).
[18] Ibid.

In practice, however, some cases of applying sanctions have required intervention by the courts. France and the European Commission were locked in such legal proceedings between 1986 and 1990. In the Bolivian Furskins case, the Court of Justice of the European Union considered the import of ocelot fur from Bolivia into France following a trade embargo introduced by CITES Resolution 5.2 (1985) and its application under EU Regulation 3626/8266. The French government believed that the Regulation was only advisory in nature and did not contain any legal obligations. However, the Court of Justice of the European Union ruled that by allowing the goods to be imported, France had failed to fulfil its obligations under the article on the application of the Convention by failing to adopt stricter domestic measures (Sand 2017: 251– 263).

CITES is a very good example of the effectiveness of international environmental law, primarily due to the progressive development and practical application of innovative methods to force states to comply with its provisions. It is important to note the evolutionary nature of CITES: some mechanisms emerged during the discussion at the Conferences of the Parties to the Convention and were initially written, by consensus, into COP resolutions and later spelled out in detail in the codifying act Guide to CITES compliance procedures of 2007, which has been applied in practice over 40 times against states that have violated the provisions of CITES. Of course, challenges remain, not least of which the need to strengthen enforcement mechanisms, especially in developing countries.

Compliance Committee of the Kyoto Protocol

The reporting period for the Kyoto Protocol ended on December 31, 2012, but the protocol continues to operate in parallel with the 2015 Paris agreement, and 192 states are currently parties to it.

The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) provides for various treaty expert bodies, the members of which act in their personal capacity. It is the most detailed non-compliance procedure to the 1992 UNFCCC (Redgwell 2001: 43–67). The procedure, which was fully fleshed at the Seventh session of the Conference of the Parties (COP 7) of the UNFCCC,[19] is closest to a judicial procedure and sets out the conditions in which a complaint can be filed, procedural guarantees, and the rules on the right of appeal.

The main tasks of the expert review groups are to review information on the established emission amounts in accordance with Art. 3, paras. 7–8 of the Kyoto Protocol and ensuring that the Conference of the Parties serving as the Meeting of the Parties and the Compliance Committee have adequate information.[20]

[19] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

[20] UN: Guidelines for Review under Article 8 of the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 38–88. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

The Compliance Committee is made up of two branches: a *facilitative branch* and an *enforcement branch*. Each branch consists of ten members who act in their own personal capacity. They "shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields."[21]

The facilitative branch provides advice and assistance to individual participants, but does not deal with legally binding non-compliance issues. The enforcement branch is responsible for identifying cases of non-compliance with any obligation. It also resolves cases where the parties disagree with amendments or adjustments proposed by expert review groups to states parties.

The responsibility of the enforcement branch for "determining" cases of non-compliance is based on Art. 18 of the Kyoto Protocol. The term "determine" would suggest that decisions are final (unless overturned on appeal) and have binding force, but Art. 18 specifically states that this would require an amendment to the Protocol. The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol may review the reports of expert review groups, provide general policy guidance, and consider and make rulings on appeals. It is also the prerogative of the COP to decide on the legal form of compliance procedures and mechanisms.

As with other expert bodies, the issue of the legal significance of the Compliance Committee's decisions for interpretative purposes has been raised in relation to the Kyoto Protocol's compliance mechanism. For example, in the case concerning Croatia and the calculation of its assigned amount of CO2 emissions (2009), the review panel held that the manner in which Croatia calculated its assigned amount did not comply with the procedure set out in Arts. 3(7), 3(8) and 7(4) of the Kyoto Protocol.[22] Croatia added 3.5 million tonnes of CO2 equivalent to its base year emissions, citing Art. 4 of the UN Framework Convention on Climate Change, which allows flexibility for parties undertaking the transition to a market economy, as well as decision 7/CP.12, which allows parties to add 3.5 million tonnes. The enforcement branch adopted the same position as the expert review group and stated that decision 7/CP.12 adopted under the Convention cannot be applied to the calculation under the Kyoto Protocol.[23] Croatia objected: "The error the EBCC [the enforcement branch of the Compliance Committee] committed is primarily caused by grammatical interpretation of the clause, contradicting the Convention and COP decisions, 9/CP.2 in particular. Instead of grammatical interpretation, EBCC should have used teleological interpretation focusing on the intention of the Parties of the Convention, respecting particular circumstances of each

[21] UN: Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol. Report of the Conference of the Parties on its Seventh Session, Held at Marrakesh from 29 October to 10 November 2001. P. 89–107. URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/602/38/PDF/G0260238.pdf?OpenElement (accessed: 20.04.2022).

[22] UNFCCC: Report of the Review of the Initial Report of Croatia. August 26, 2009. Para. 157. URL: https://unfccc.int/documents/5800 (accessed: 25.11.2022).

[23] UNFCCC: Preliminary Finding. Party Concerned: Croatia. October 13, 2009. Para. 21. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-6_croatia_eb_preliminary_finding.pdf (accessed: 25.11.2022).

party. Such interpretation would enable EBCC to adopt fair and equitable decision with respect to Croatia honouring the Convention, decision 7/CP.12, specific historical circumstances referring to Croatia, but also provisions of [the Kyoto Protocol]."[24]

The enforcement branch disagreed in its final decision of November 26, 2009: "After full consideration of the further written submission from Croatia, the enforcement branch concludes that there are not sufficient grounds provided in the submission to alter the preliminary finding of this branch. In this respect, the branch notes that: Pursuant to Article 31 of the 1969 Vienna Convention on the Law of Treaties and customary international law, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In addressing the questions of implementation before it, the enforcement branch followed this general rule and was not persuaded that it is necessary to follow another method of interpretation."[25]

Croatia filed an appeal with the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol against the final decision of the enforcement branch,[26] although it withdrew the appeal before the Conference of the Parties considered the case.[27]

It is important to note that the Compliance Committee of the Kyoto Protocol has limited scope for interpretation. Section XV, para. 1 of decision 24/CP.7 provides a specific list of consequences that apply in various cases. The Committee may have certain discretionary powers when it comes to determining sanctions, but this generally does not involve relevant issues of interpretation. As the example of Croatia shows, there may be exceptional cases where the Compliance Committee, in fulfilling its functions, has to interpret a treaty in a way that could give rise to disagreement. However, in such cases, the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol has the final say and does not need to determine whether or not the decision of the Compliance Committee is based on a proper interpretation of the treaty. If this issue arises before a court or other body, then that body should consider whether and to what extent legal experts were involved in the decision of the Compliance Committee.

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[24] UNFCCC: Statement Position of Croatia in Relation to Preliminary Finding CC-2009-1-6/Croatia/EB. November 12, 2009. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-7_croatia_eb_further_written_submission.pdf (accessed: 25.11.2022).

[25] UNFCCC: Final Decision. Party Concerned: Croatia. November 26, 2009. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-8_croatia_eb_final_decision.pdf (accessed: 25.11.2022).

[26] UNFCCC: Comments from Croatia on the Final Decision. January 4, 2010. Para 2. URL: https://unfccc.int/files/kyoto_protocol/compliance/enforcement_branch/application/pdf/cc-2009-1-9_croatia_eb_comments_from_croatia_on_the_final_decision-website.pdf (accessed: 25.11.2022).

[27] UNFCCC: Withdrawal by Croatia of Its Appeal against a Final Decision of the Enforcement Branch of the Compliance Committee. Note by the Secretariat. August 16, 2011. URL: https://unfccc.int/resource/docs/2011/cmp7/eng/02.pdf (accessed: 25.11.2022).

To date, the Committee has accepted 12 cases for consideration (the most recent two against Kazakhstan in 2019 and 2020),[28] and decisions have already been made on 11 of them. In general, decisions of the Compliance Committee contribute to the practice of the application of international treaties. However, it would be a stretch to suggest that the decisions of the enforcement branch could have an impact on determining the applicable law in the context of the international climate regime similar to that of judicial decisions at the international level, which are one of the subsidiary sources of international law.

Paris Agreement Implementation and Compliance Committee

Article 15 of the 2015 Paris Agreement established a special mechanism to facilitate the implementation of and encourage compliance with the provisions of the treaty.[29] This mechanism consists of a committee whose activities are facilitative in nature and are not aimed at resolving disputes, applying penalties and establishing sanctions.

Following the Twenty-First Session of the Conference of the Parties to the Framework Convention of Climate Change in 2015, it was proposed that the Committee should consist of 12 members with competence in relevant fields such as the scientific, technical, socio-economic or legal fields, and who should be elected on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing states and least developed countries.[30] In addition, the Ad Hoc Working Group on the Paris Agreement was invited to develop the modalities and procedures for the effective operation of the committee and to present its work at the first meeting of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (hereinafter referred to as the CMA).[31]

The proposals presented at the Twenty-First Session of the Conference of the Parties were adopted at the CMA 1–3 sessions in Katowice in December 2018,[32] as were the modalities and procedures to facilitate implementation and promote compliance. Thus:

a) The CMA elects members of the Committee as well as an alternate for each member for a period of three years and for a maximum of two consecutive terms.[33]

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[28] UNFCCC: Compliance under the Kyoto Protocol. URL: https://unfccc.int/process/the-kyoto-protocol/compliance-under-the-kyoto-protocol (accessed: 25.11.2022).

[29] Paris Agreement of April 22, 2016. Art. 15. URL: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_russian_.pdf (accessed: 12.01.2023).

[30] UN: Report of the Conference of the Parties on its Twenty-First Session, Held in Paris from 30 November to 13 December 2015, para. 102. URL: https://unfccc.int/resource/docs/2015/cop21/rus/10a01r.pdf (accessed: 12.01.2023).

[31] Ibid. Para. 103.

[32] The first session of the CMA took place in three parts: part one (1) in Marrakesh in 2016; part two (1-2) in Bonn in 2017; and part 3 (1-3) in Katowice in 2018.

[33] UNFCCC: Modalities and Procedures for the Effective Operation of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement. *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on the Third Part of its First Session, held in Katowice from 2 to 15 December 2018.* URL: https://unfccc.int/sites/default/files/resource/cma2018_3_add2_new_advance.pdf (accessed: 25.11.2022).

b) The Committee shall elect co-chairs from among its members (one of which must be representative of a developed country, while the other must be from a developing country).[34]

c) The Committee shall meet at least twice a year.[35]

d) Decisions of the Committee are deemed to be adopted if at least three quarters of the members are present and take part in the voting, and the total number of members present at the vote is at least ten.[36]

The provisions adopted concerned the initiation of issues and the procedures for considering them, the adoption of appropriate measures, conclusions and recommendations, and the consideration by the Committee of systemic issues. These provisions were improved upon and supplemented following the fourth session of the CMA, and, as such, they will be discussed in greater detail below.

The Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance were adopted at the third session of the UNFCCC and concern the following: the role of alternate members; the duties and rules of conduct of members and alternate members; measures to prevent conflicts of interest; the rules regarding transmitting and approving the agenda of meetings; the decision-making and voting procedure; and the powers of observers and the Secretariat.[37]

The fourth session of the CMS approved the procedures to facilitate implementation and promote compliance, which complemented and developed the conditions and procedures established at the first CMA, and duplicated the rules adopted by decision 24/CMA.3 at the third session of the CMA.

In accordance with the accepted rules of procedure, any party may, through the national focal point, make a written submission with respect to its own implementation of and/or compliance with any provision of the Paris Agreement to the Committee through the Secretariat.[38] The submission must describe the problem in detail, indicate the reasons why the problem(s) occurred, the basis on which the party is filing the submission, and the relevant national capabilities of the state. The Committee carries out a preliminary examination of the submission within three months after the date it was initiated and then makes a decision on whether or not to initiate a consideration of the issues.

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[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] UNFCCC: Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement. *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on its Third Session, Held in Glasgow from 31 October to 13 November 2021.* URL: https://unfccc.int/sites/default/files/resource/CMA2021_10_Add3_E.pdf (accessed: 25.11.2022).

[38] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022. Rule 17. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

In accordance with the provisions of the Convention, each party must provide: information on their nationally determined contributions to the global response to climate change; "a national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases";[39] information on the progress achieved at the national level; and information on financial and technology assistance. The parties must also participate in the initiation of a multilateral review of progress in the provision of financial support, technology transfer, and capacity-building. Developed countries, in turn, must additionally report the amount of financial support provided to developing countries to combat climate change.[40] If, four weeks in advance of the CMA meeting, a party has not provided such information or taken part in the consideration of the issue, or if it has been determined on the basis of previously adopted recommendations and guidelines that the information submitted contains significant and persistent inconsistencies, the Committee makes a decision on whether or not to consider the issues, after which it notifies the party about this with relevant justification of its position. The party concerned may take part in the deliberations of the Committee, but not at the decision-making stage. The Committee then adopts appropriate measures, taking into account the findings and recommendations presented by the party concerned, paying particular attention to its national capabilities and circumstances. Appropriate measures adopted by the Committee may include: engaging in a dialogue with the party concerned; providing assistance on issues of accessing finance, technology and capacity-building support; making recommendations to the Party concerned and communicating such recommendations to the relevant bodies or arrangements; and developing an action plan.[41]

The Committee may also identify issues of a systemic nature with respect to the implementation of and compliance with the provisions of the Paris Agreement faced by a number of Parties and bring such issues to the attention of the CMA for its consideration.[42] The Committee then prepares and submits a recommendation.

The Paris Agreement Implementation and Compliance Committee held eight sessions during the course of its work (2020–2022), considering various issues, most notably organizational, technical, procedural, financing, and other issues. The eighth and currently last session of the Committee was held in Bonn in August 2022.[43] The final

[39] Paris Agreement of April 22, 2016. Art. 7, para. 3. URL: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_russian_.pdf (accessed: 13.01.2023).

[40] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022. Rules 18–20. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

[41] UNFCCC: Report of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement "Rules of Procedure of the Committee to Facilitate Implementation and Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement." November 14, 2022 Rule 22. URL: https://unfccc.int/sites/default/files/resource/cma2022_L01E.pdf (accessed: 13.01.2023).

[42] Ibid. Rule 32.

[43] UNFCCC: Report of the 8th meeting of the Paris Agreement Implementation and Compliance Committee (9-12 August 2022). URL: https://unfccc.int/sites/default/files/resource/PAICC%208%20meeting%20report.pdf (accessed: 02.02.2023).

document contains information relevant to the Third Annual Report to the CMA. The report covers activities carried out between August 19, 2021 and August 12, 2022 and contains information on communications and awareness activities, the budget, and recommendations for consideration by the COP.

The Committee developed and adopted draft rules of procedure. Its sessions were mostly dedicated to highlighting the work of the Secretariat, which focused on the provision by the parties of information on implementation, expert technical reviews, knowledge-building activities, and increasing transparency. Particular attention was paid to gender issues and empowerment action on climate change in accordance with the Enhanced Lima work programme on gender and its gender action plan.[44]

Further, in line with the Glasgow work programme on Action for Climate Empowerment, the Committee identified the need to increase empowerment and improve access to information for members of society in the context of combating climate change. The means and methods for achieving this include education, raising public awareness, access to information, participation in decision-making, and increasing international cooperation.[45]

A separate section in the report is dedicated to the work of the Committee in the field of communication and the dissemination of information: information is regularly updated on the Committee's web page, which also contains up-to-date news and event announcements connected with issues under consideration. Issues of financing and the Committee's budget for implementing its assigned functions and tasks were also raised separately. The complaints have not been considered yet.

Aarhus Convention Compliance Committee

One of the most successful committees is the one established on the basis of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Convention, developed by the United Nations Economic Commission for Europe (UNECE) and signed on June 25, 1998 in the Danish town of Aarhus,[46] requires parties to guarantee the right of access to information, the right to participate in decision-making, and the right of access to justice in environmental matters in order to protect the right of every person now and in the future to live in a healthy environment conducive to his or her well-being. The Aarhus Convention is the first international treaty on environmental protection whose main focus is on the obligations of states to the international community and NGOs.

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[44] UNFCCC: Enhanced Lima Work Programme on Gender and its Gender Action Plan. URL: https://unfccc.int/sites/default/files/resource/cp2019_13a01E.pdf#page=6 (accessed: 13.01.2023).

[45] NFCCC: Glasgow Work Programme on Action for Climate Empowerment. November 13, 2021. URL: https://unfccc.int/documents/310896 (accessed: 02.02.2023).

[46] To date, 46 states and the European Union have joined the Convention. Russia and Uzbekistan are the only CIS countries who are not parties to the Convention.

Art. 15 of the Aarhus Convention provides for the adoption of measures of a "non-confrontational, non-judicial and consultative nature" for reviewing compliance with the provisions of the Convention. These measures must allow for appropriate public involvement. To implement this provision, Decision I/7 on the establishment of the Aarhus Convention Compliance Committee (hereinafter referred to as the Committee) was adopted at the first Meeting of the Parties in the Italian city of Lucca in 2002. The Decision established the Committee as the main body for reviewing complaints, set out the structure and functions of the Committee, and outlined the procedures for considering issues of compliance with the requirements of the Convention (Solntsev, Petrova 2010: 41–49).

Art. 1 of the Decision stipulates that the Committee shall consist of eight members "who shall serve in their personal capacity" for a period of not more than four years.[47] Committee members must be nationals of the Parties and Signatories of the Convention of high moral character and recognized competence in the fields to which the Convention relates, as well as persons having legal experience (Art. 2 of the Decision). It is important to note here that candidates can be nominated not only by states parties to the Convention, but also by NGOs (Art. 4 of the Decision).

The Committee may consider submissions from member states, requests from the Secretariat, and communications from the public.[48] However, communications from the public are only considered on the condition that the state party to the Convention has not taken a deferment in relation to the compliance mechanism for considering applications from members of the public. Article 18 of Decision I/7 provides for the possibility of a state party to the Convention to take advantage of the deferment. On the expiry of twelve months from the date of the entry into force of the Convention with respect to a party, that party may notify the Secretary-General of the United Nations that it is unable to accept the consideration of complaints filed by a citizen or association of citizens by the Committee. If a state party has submitted such a notification, submissions cannot be made with respect to that party for the period specified in the notification, but not longer than four years.

Communications submitted by members of the public with respect to a state party for which the Convention has entered into force are addressed to the Committee through the secretariat in writing or electronically and must be supported by "corroborating information" (Art. 19 of the Decision). Pursuant to Art. 20, the Committee considers any communication unless it determines that the communication is anonymous, unreasonable, incompatible with the provisions of the Convention, or which constitute an abuse of the right to make such communications. The Committee takes

[47] Many of its experts are world-renowned scientists and authors of monographs on international environmental law.
[48] According to Art. 2, para. 4 of the Aarhus Convention, "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.

into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress. However, there is no requirement to exhaust all domestic means (Art. 21 of the Decision), which is a very progressive point for modern international law.

The Aarhus Convention compliance mechanism attached great importance to openness and transparency in its work. All the Committee's documents are freely available to the public (primarily through its website), and Committee meetings are held in the public domain. In keeping with Arts. 26–30 of Decision I/7, which deal with confidentiality, members of the public may participate in Committee meetings as observers. The Committee usually gives observers the right to submit comments and information, and takes them into account during its meetings.

As for measures taken by the Committee, they are not traditional for international judicial bodies. The Committee's experts proceed from the assumption that states parties ratify and sign treaties with the express intention of accepting and complying with their obligations. According to legal experts, in most cases, the failure of a state party to implement and comply with the provisions of the Convention is due to a lack of resources, flawed domestic remedies, or unforeseen circumstances, rather than to the lack of will. This is why experts believe that multi-stakeholder consultative processes, compliance assistance and capacity-building are the best methods in these cases (Kravchenko 2007: 28).

The standard procedure for rendering a decision under the Aarhus Convention compliance mechanism is for the Compliance Committee to consider a case and make findings and recommendations, which are included in a report submitted to the Meeting of the Parties. The Meeting of the Parties then makes the final decision at its biennial sessions. However, Arts. 36(a) and 37(a) of Decision I/7 state that it is within the Committee's competencies to advise the state party concerned and provide assistance to individual states parties on matters relating to the implementation of the Convention. Further, by agreement with the state party concerned, the Committee may take other measures (although the Meeting of the Parties still takes precedence), which may include:

- making recommendations to the party concerned;
- requesting the party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- In cases of communications from the public, making recommendations to the party concerned on specific measures to address the matter raised by the member of the public.

As regards the Meeting of the Parties, it may take the measures above in addition to any measures that are exclusively within its purview (Art. 37 of Decision I/37). For example, only the Meeting of the Parties can "issue declarations of non-compliance; issue cautions; suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges

accorded to the party concerned under the Convention [such a measure was taken against Belarus in 2021, a fact that prompted the country's withdrawal from the Aarhus Convention in 2022]; take such other non-confrontational, non-judicial and consultative measures as may be appropriate."

The choice of measures depends on the extent, type, cause and frequency of non-compliance, as well as on the political will and spirit of cooperation that the state party demonstrates in matters of compliance with the Convention.

Compared to the control mechanisms of other IEAs adopted to date,[49] the Aarhus Convention Compliance Committee is more progressive, both in terms of its structure and in terms of its complaints procedure. For instance, this control body consists of independent experts only. Plus, in terms of procedure, citizens and NGOs were given the formal right to file complaints and participate in the preparation of national reports.

The Committee began its work in 2002 with the election of the first members of the Committee following the adoption of Decision I/7. Since that time, the Committee has received a total of 197 complaints. Two of these concerned inter-state disputes: "Romania v. Ukraine" and "Lithuania v. Belarus."[50]

EU non-compliance case. At the same time, it should be noted that the Aarhus Convention Compliance Committee has repeatedly drawn attention to the fact that the European Union, as a party to the Aarhus Convention, does not comply with its provisions,[51] although the Constitutional Court has not confirmed this. The Committee established that the European Union had breached Art. 9(3) of the Aarhus Convention by preventing NGOs and members of the public from holding EU institutions to account for illegal decisions that affect public health and the environment, for example authorizing fossil fuel subsidies, approving harmful pesticides, and permitting overfishing. The Committee stated in its 2017 decision that the European Union had to expand the opportunities afforded to members of the public for environmental protection in EU courts in order to comply with the treaty.

The reluctance of the EU Commission to address this issue in a timely and effective manner prompted EU states in June 2018 to take the highly unorthodox step of adopting a Council decision invoking Art. 241 of the Treaty on the Functioning of the European Union (TFEU) in order to force the Commission to take action.[52] Specifically,

[49] Such mechanisms are provided for in a number of international environmental agreements. See, for example: the 1987 Montreal Protocol on Substances That Deplete the Ozone Layer; the Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change, and others.

[50] UNECE: Submissions by Parties of Aarhus convention. URL: https://unece.org/env/pp/cc/submissions-parties (accessed: 02.02.2023).

[51] UNECE: Aarhus Convention Compliance Committee in Case ACCC/C/2008/32. URL: https://unece.org/env/pp/cc/accc.c.2008.32_european-union (accessed: 02.02.2023).

[52] European Union: Council Decision (EU) 2018/881 of 18 June 2018 Requesting the Commission to Submit a Study on the Union's Options for Addressing the Findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if Appropriate in View of the Outcomes of the Study, a Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1367/2006. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D0881&from=EN (accessed: 02.02.2023).

the EU Council Decision called on the Commission to submit, by September 30, 2019, a study of options for addressing the findings of the Compliance Committee and, if appropriate in view of the outcomes of the study, to submit, by September 30, 2019, a proposal for the revision of EU Regulation No. 1367/2006 (the Aarhus Regulation[53]), implementing the provisions of the Aarhus Convention for EU institutions.

The Commission published a study in October 2019 confirming what was already clear to most experts and independent observers – that the most effective way to solve the problem would be to bring EU Regulation No. 1367/2006 into line with the Convention. Therefore, the Commission should start preparing proposals on the revision of this regulation as soon as possible.

On October 6, 2021, the European Union adopted an amendment to EU Regulation No. 1367/2006 that allows for stricter public scrutiny of EU acts that affect the environment.[54] The amendments make it possible to request a review of such acts by the EU institutions in order to better ensure environmental protection. The document entered into force on October 28, 2021, with the exception of Art. 1, para. 3(a), which applied from April 29, 2023.

Cases involving Belarus. Belarus closed NGO Ecohome for violating the legislation on the activities of public associations. However, the Compliance Committee considered this to be a violation of Art. 3(8) of the Aarhus Convention: "Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement." Belarus considered the Committee's recommendations "unfounded and excessive."[55] The Committee proposed "to suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to Belarus under the Aarhus Convention."

According to Art. 60 of the Vienna Convention on the Law of Treaties of 1969, a decision to suspend rights can only be made unanimously by all parties to an international treaty. The result of the voting on the issue of Belarus was not unanimous, yet this did not prevent decision VII/8c (clause 7(i)) from being approved. Belarus said that it had every intention of maintaining its membership in the Aarhus Convention

[53] European Union: Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community Institutions and Bodies. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1367&from=en (accessed: 02.02.2023).

[54] European Union: Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 Amending Regulation (EC) No 1367/2006 on the Application of the Provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community Institutions and Bodies. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1767 (accessed: 02.02.2023).

[55] See: United Nations Economic Commission for Europe: On the Comments of the Republic of Belarus to the Additional Report. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_08.11.2021_rus.pdf (accessed: 02.02.2023).

"subject to the cancellation before January 1, 2022 of the decision that contradicts the principles of international law and the provisions of the Aarhus Convention."[56] The decision was not repealed, and Belarus withdrew from the Aarhus Convention.

Almost a quarter of all countries (45 of the 193 UN members states) are parties to the Aarhus Convention, which confirms their commitment to protecting and respecting environmental human rights. These are countries from Europe, the Caucasus and Central Asia

On the one hand, it would seem that the Committee can be considered an independent supervisory body of a quasi-judicial nature, whose motions become part of "case law." The UK Supreme Court has ruled that "the decisions of the Committee deserve respect on issues relating to standards of public participation."[57] The England and Wales Court of Appeal has similarly ruled that "there is persuasive authority […] in decisions of the Aarhus Convention Compliance Committee."[58] The Advocate General of the Court of Justice of the European Union has repeatedly referred to the recommendations of the Committee when considering the provisions of the Aarhus Convention. The importance and universal recognition of the Convention's provisions are also confirmed by the fact that in the case of Taşkin and Others v. Turkey,[59] the judges of the European Court of Human Rights used the principles of the Aarhus Convention to build their arguments, ignoring the fact that the respondent state is not even a signatory of the treaty. On the other hand, the vote to limit the procedural rights of a member state in the case of Belarus was marked by a clear violation of the principle of impartiality and the Vienna Convention on the Law of Treaties.

It should be noted that the European Union was in violation of Art. 9(3) of the Aarhus Convention for over ten years, preventing NGOs and members of the public from holding EU institutions accountable for wrongful decisions that affect public health and the environment, authorizing fossil fuel subsidies, allowing overfishing, etc. Even after the amendments were introduced into the relevant EU laws, the Committee notes only partial compliance with the Aarhus Convention of the part of the European Union (all binding administrative decisions taken by EU institutions should be subject to review, including those that require "implementation measures" at the national level; and it is important to make state aid decisions that violate EU environmental law

[56] See: United Nations Economic Commission for Europe: Letter from Minister of the Republic of Belarus A. P. Khudyk. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_26.11.2021_letter_rus.pdf (accessed: 02.02.2023).

[57] The UK Supreme Court: Walton v. The Scottish Ministers (Scotland). Judgment of 17 October 2012. Para 100. URL: https://www.supremecourt.uk/cases/docs/uksc-2012-0098-judgment.pdf (accessed: 02.02.2023).

[58] England and Wales Court of Appeal: The Secretary of State for Communities and Local Government v. Venn. Judgment of 27 November 2014. Para 13. URL: https://www.casemine.com/judgement/uk/5b46f1f72c94e0775e7ef241 (accessed: 02.02.2023).

[59] European Court of Human Rights: Case of Taekin and Others v Turkey. Application No. 49517/99. Judgment of 10 November 2004. Paras. 99, 119. URL: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2246117/99%22],%22item id%22:[%22001-67401%22]} (accessed: 02.02.2023).

subject to review). At the same time, neither the Committee nor the Constitutional Court imposed the kind of measures on the European Union as on Belarus in terms of their harshness. It has been pointed out that "cases of harassment and punishment of environmental defenders were recorded in 16 countries" between 2017 and 2022, "including detentions at airports and raids on homes, the use of excessive force by the police, and the failure to provide adequate medical care, none of which was followed by any sanctions decisions."[60] None of the offenders had their rights restricted under the Aarhus Convention.

On the whole, despite the advisory power of decisions taken within the framework of the IEA, experience shows the positive impact of this practice. What is more, national and international courts take the positions of treaty bodies, primarily the Aarhus Convention Compliance Committee, into account when making their decisions. The dual filter built into the treaty bodies of international agreements improves their effectiveness and ensures that decisions are more balanced.

We can thus state that the Aarhus Convention, its Compliance Committee, and the Meeting of the Parties as a supervisory body, make up a system with great potential to become a truly effective means of protecting environmental human rights at the international level. The Compliance Committee aims to resolve disputes arising in the process of implementing the norms of the Aarhus Convention. Compared to regional human rights courts, this procedure makes it possible to resolve or prevent international disputes at a minimum cost and in a maximally swift fashion, as well as to monitor the implementation of the relevant decisions effectively. This is not to say, however, that the body does not have certain political biases and is not selective in its decisions. Moreover, as we have repeatedly stressed throughout this paper, the non-compliance procedure is designed to resolve disputes amicably. Art. 15 of the Aarhus Convention reads: "The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention." The measures adopted by the Committee and approved by the Constitutional Court were clearly confrontational in nature and led to Belarus pulling out of the Aarhus Convention, even though it was one of the first countries to ratify it and was a party to it for over twenty years (starting in 2000).

It should be noted that a separate body has been set up to monitor compliance with obligations under the Kyiv Protocol to the Aarhus Convention. The Committee on Compliance with the Kyiv Protocol has only recently started to review complaints. On June 17, 2020, the NGO Ekologia-Chelovek-Pravo lodged a complaint against Ukraine for failing to comply with the requirements for implementing the decisions of the Protocol in domestic legislation. No decision has been made yet.

[60] See: United Nations Economic Commission for Europe: Letter from Minister of the Republic of Belarus A. P. Khudyk. URL: https://unece.org/sites/default/files/2021-11/frPartyVII.8c_26.11.2021_letter_rus.pdf (accessed: 02.02.2023).

Compliance Committee under the 2010 Nagoya Protocol

Emerging practices in the granting of access to genetic resources and the fair and equitable sharing of benefits arising from their utilization point to the need to systematize the legal framework and strengthen institutionalization at the international level. In this regard, the Compliance Committee (hereinafter referred to as the Committee) under the 2010 Nagoya Protocol on Access and Benefit-Sharing (hereinafter referred to as the Nagoya Protocol, or simply the Protocol)[61] to the to the 1992 Convention on Biological Diversity (hereinafter referred to as the CBD)[62] plays a major role. The issue of access to genetic resources and the fair and equitable sharing of benefits arising from their utilization is an extremely serious one that requires a permanent monitoring and reporting mechanism. This much is stated in Art. 30 of the Nagoya Protocol, entitled "Procedures and Mechanisms to Promote Compliance with this Protocol." According to this article, the first Meeting of the Parties was tasked with considering and approving cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. "These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention." This task was duly carried out at the first COP-MOP (Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol, Pyeongchang, South Korea, 2014) through the adoption of decision NP-1/4,[63] which established the Compliance Committee to promote compliance with the provisions of the Nagoya Protocol and to address cases of non-compliance. Pursuant to Decision NP-1/4, the Compliance Committee is made up of 15 members nominated by Parties, on the basis of three members endorsed by each of the five regional groups of the United Nations (Art. B2). In addition, the COP-MOP elects two representatives of indigenous and local communities as observers. Notably, this is the only case where the control mechanism specifically provides for the mandatory participation of representatives of indigenous peoples.

In accordance with the provision on Cooperative Procedures and Institutional Mechanisms (Annex to Decision NP-1/4), the Committee may receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from: any party with respect to itself; any party with respect to another party;

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[61] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity of October 29, 2010. URL: https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf (accessed: 11.08.2022).

62 The United Nations Convention on Biological Diversity of June 5, 1992. URL: https://www.un.org/ru/documents/decl_conv/conventions/biodiv.shtml (accessed: 11.08.2022).

[63] Cooperative Procedures and Institutional Mechanisms to Promote Compliance with the Nagoya Protocol and to Address Cases of Non-Compliance. URL: https://www.cbd.int/doc/decisions/np-mop-01/np-mop-01-dec-04-en.pdf (accessed: 12.08.2022).

and the Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol (Art. D1). What is more, the Committee may examine a situation where a party fails to submit its national report pursuant to Art. 29 of the Protocol, or where information indicates that the Party concerned is faced with difficulties complying with its obligations[64] under the Protocol (Art. D9). Interestingly, such information can be obtained either from the national report or from the secretariat, and is based on information regarding the provisions of the Protocol provided by the representatives of indigenous and local communities that have been directly affected. In addition, the Committee may examine systemic issues of general non-compliance that come to its attention (Art. D10).

At its third meeting in April 2020, the Committee recognized the progress made in the submission of interim national reports, which stood at 91% of the total number of states as of March 2020.[65]

In accordance with the Protocol, the parties are required to take legislative, administrative or policy measures, create institutional mechanisms for their implementation, and disseminate mandatory information through the clearing-house mechanism.[66] To date, 95 member states (77%) have published or reported on legislative, administrative or policy measures on access and benefit-sharing under the clearing-house mechanism in their respective interim national reports.

The measures taken by states vary in terms of their specificity and comprehensiveness; a large portion of them were introduced before the Nagoya Protocol entered into force (for example, general environmental legislation or measures relating to livestock production and forest protection) and now need to be updated. Some 28 states have reported to the Committee that they have not established any such measures, although 16 of these are currently developing measures and a further seven are planning to. Thus, 120 parties to the Protocol (98%) have set up national focal points (NFPs). This number reflects significant progress and high levels of implementation of one of the requirements regarding institutional mechanisms. A total of 80 parties to the Protocol (65%) have competent national authorities (CNAs), while 12 have reported that internal work is progressing as intended, and seven indicated that such work is in the pipeline. These numbers are up significantly from February 2018, when the completion rate was 54%. Checkpoints were established by 40 parties to the Protocol (32%), while 18 parties reported that progress had been made in this area and 16 were planning on making such moves (these figures also represent an increase from February 2018,

[64] ABSCH: National Report Analyzer. URL: https://absch.cbd.int/en/reports (accessed: 13.08.2022).

[65] Report of the Compliance Committee Under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization on the Work of its Third Meeting Online, 21-23 April 2020. URL: https://www.cbd.int/doc/c/0b26/eaea/09a6039e40296b3fa873f941/np-cc-03-05-en.pdf (accessed: 02.02.2023). This is the latest data: the fourth session of the Committee has not yet taken place.

[66] Compliance Committee under the Nagoya Protocol: Review of General Issues of Compliance. Note by the Executive Secretary. February 24, 2020. URL: https://www.cbd.int/decision/cop/?id=7168 (accessed: 13.08.2022).

when only 27% of parties had designated checkpoints). Accordingly, incompleteness of information provided may serve as grounds for a case to be considered by the Committee.

Furthermore, the scope of reporting information is constantly being updated and expanded. For example, COP-MOP Decision 3/15[67] "Preparation for the Follow-Up to the Strategic Plan for Biodiversity 2011–2020 requested that the Compliance Committee at its next meeting consider how to support and promote compliance with the Nagoya Protocol within the post-2020 global biodiversity framework. The parties to the Protocol also welcomed the decision of the COP-MOP on the post-2020 global biodiversity framework (Decision 14/34).[68] It should be noted here that the Kunming-Montreal Global Biodiversity Framework – a strategic plan for the implementation of the Convention on Biological Diversity and its protocols in the period 2022–2030 – was approved in December 2022[69] (reporting under the Nagoya Protocol is discussed in Goal C and Objectives 13 and 15). The reporting format will thus need to be revised to take the Global Biodiversity Framework into account. The Compliance Committee also noted that some parties found a number of questions in the reporting format unclear or could be interpreted in different ways. The Committee proposed revising some reporting criteria for the next cycle (2023). The reporting format has been updated in order to collect information on the indicators adopted in Decision NP-3/1, and all questions must now be answered.[70] In addition to collecting information on problem areas and difficulties in the implementation of the protocol, a new section is now included at the end of each section that allows countries to reflect on lessons learned and what they think has worked well. The section is completed voluntarily.

As of 2023, the Committee has not yet considered any complaints with respect to non-compliance with the Nagoya Protocol.

Thus, we can state that, at the present stage, many issues in the practice that is emerging within the framework of the Compliance Committee under the 2010 Nagoya Protocol require technical refinement. However, as the reports suggest, state parties to the Protocol are prepared to actively submit information and report on measures taken at the national level, point to problems that exist in the system, and ask relevant questions. The Compliance Committee is an effective mechanism that allows it to

[67] Decision Adopted by the Parties to the Nagoya Protocol on Access and Benefit-Sharing of 30 November 2000. URL: https://www.cbd.int/doc/decisions/np-mop-03/np-mop-03-dec-15-en.pdf (accessed: 13.08.2022).

[68] CBD: Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity "Comprehensive and Participatory Process for the Preparation of the Post-2020 Global Biodiversity Framework". November 30, 2018. URL: https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-34-en.pdf (accessed: 13.08.2022).

[69] CBD: Decision 15/4 "Kunming-Montreal Global Biodiversity Framework". December 19, 2022. URL: https://www.cbd.int/conferences/2021-2022/cop-15/documents (accessed: 02.02.2023).

[70] CBD: Decision Adopted by the Parties to the Nagoya Protocol on Access and Benefit-Sharing "Assessment and Review of the Effectiveness of the Protocol (Article 31)." November 30, 2018. URL: https://www.cbd.int/doc/decisions/np-mop-03/np-mop-03-dec-01-en.pdf (accessed: 02.02.2023).

produce statistical reports, trace positive steps in the implementation of the Protocol's provisions, make recommendations to states, and gradually modernize the process of monitoring compliance.

Compliance Committees under International Agreements Governing the Management of Chemicals and Waste

In this section, we analyze the four compliance committees of the so-called chemical conventions (the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998, the Stockholm Convention on Persistent Organic Pollutants of 2001, and the Minamata Convention on Mercury of 2013). We have grouped these conventions together due to the similar internal logic of their activities and the subject of regulation.

Art. 14 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989 only mentions the possibility of creating a funding mechanism on a voluntary basis, if needed, for the transfer of technology, to assist in case of emergency situations, etc.[71] At the same time, Art. 15(5e) of the Convention allows for the Conference of the Parties to establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.[72] At the sixth meeting of the Conference of the Parties in 2002, the decision was made to establish a mechanism for promoting implementation and compliance with the Basel Convention,[73] and a committee of 15 members was established to administer the mechanism based on the geographical representation of five regions.[74] The purpose of the mechanism is to assist states in implementing and complying with obligations arising from the provisions of the Basel Convention. The Committee has the following mandate:

1) To consider submissions from the parties (when that party concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention without assistance);

2) To consider party-to-party submissions (when one state has concerns regarding the implementation of the provisions of the Convention by another state with whom it is directly involved under the Convention, and the parties have been unable to resolve the problem themselves);

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[71] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of March 12, 1989. Art. 14. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/basel.pdf (accessed: 13.09.2022).

[72] Ibid. Art. 5. Para. 5. Sub-para. e.

[73] The Conference of the Parties to the Basel Convention: Establishment of a Mechanism for Promoting Implementation and Compliance. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).

[74] The Conference of the Parties of the Basel Convention: Membership of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).

3) To consider submissions from the Secretariat of the Convention when it becomes aware of possible difficulties of any party in implementing the provisions of the Convention following, provided that the matter has not been resolved within three months by consultation with the party concerned.[75] The Committee's Facilitation Procedure may involve the provision of advisory services and recommendations, which may be taken into account or ignored at the discretion of the party, and, following the Facilitation Procedure, the Committee may submit recommendations to the Conference of the Parties in relation to certain provisions of the Convention.[76] Over the past three years, the Committee has received 18 submissions from the Secretariat (11 of which include recommendations), as well as four self-submissions from parties (two of which provide recommendatory measures), while not a single state has taken advantage of the party-to-party submission procedure.[77] In addition, the Committee also has the authority to consider general issues of implementation and compliance with the provisions of the Basel Convention relating to the environmentally sound management and disposal of hazardous wastes, establishing and developing means of detecting and eradicating illegal traffic, etc. This involves analyzing all available information and, if necessary, requesting additional information from the parties. This Committee may then produce a report for the Conference of the Parties, which can make certain recommendations and proposals at this point.[78]

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998 does not provide for a funding mechanism of any kind. During the discussions on the structure and content of the Convention, most countries did not see the need to enshrine financial provisions in the text of the Convention itself, believing that the absence of such provisions would not be an obstacle to its effective implementation. This proved key in the decision to create a subsidiary body to implement the compliance mechanism.[79] The text of the Rotterdam Convention establishes a provision whereby the Conference of the Parties shall at its first meeting develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Conven-

[75] The Basel Convention Mechanism for Promoting Implementation and Compliance. Para. 9. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09. 2022).
[76] Ibid. Para. 19.
[77] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes. Compliance. Current submissions. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/SpecificSubmissionsActivities/Currentsubmis- sions/tabid/2310/Default.aspx (accessed: 14.09.2022).
[78] The Basel Convention Mechanism for Promoting Implementation and Compliance. Para. 21. URL: http://www.basel.int/Implementation/LegalMatters/Compliance/Decisions/tabid/3643/Default.aspx (accessed: 15.09.2022).
[79] The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. 2019. URL: https://www.pic.int/TheConvention/Overview/TextoftheConvention/tabid/1048/language/en-US/Default.aspx (accessed: 15.09.2022).

tion.[80] However, this decision was made almost twenty years after the signing of the Rotterdam Convention, at the ninth meeting of the Conference of the Parties in 2019, which was formalized as a new Annex VII to the Convention.[81]

The Committee is very similar in composition, structure, and competence to the Basel Convention Compliance Committee, only the circle of persons who are permitted to make submissions to the Committee is slightly different. The first two groups are exactly the same (self-submissions and party-to-party submissions), while the third group differs. In accordance with the Rotterdam Convention, if a state fails to submit information under Art. 4 ("Designated national authorities"), Art. 5 ("Procedures for banned or severely restricted chemicals"), or Art. 10 ("Obligations in relation to imports of chemicals listed in Annex III") to the Secretariat, the Committee may provide advice and support for the implementation of the obligations imposed on it under these three articles of the Convention, but only if the issue has not been resolved with the Secretariat within 90 days.[82] The first meeting of the Rotterdam Convention Compliance Committee, held in November 2022, approved the work plan for 2022–2023.[83]

The Minamata Convention on Mercury was adopted on October 10, 2013 at a diplomatic conference in the Japanese city of Kumamoto held under the auspices of the United Nations, and entered into force on August 16, 2017 (Kodolova et al. 2021: 24–32). The primary objective of the Convention is "to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds."[84] Art. 15 of the Convention concerns the activities of the Implementation and Compliance Committee. The issue of establishing such a committee was a point of discussion throughout the negotiation process, along with the provision on financing (Art. 13). A number of states believed that there was an unspoken practical connection between these two elements – specifically, that a compliance mechanism could not exist or even be created without reliable guarantees of financial support (Templeton, Kohler 2014: 211–220). This idea has been reflected in other international environmental agreements too. For example, during the talks that led to the signing of the Stockholm Convention on Persistent Organic Pollutants of 2001, the frustration over the inability of the parties to agree on funding issues (Arts. 13 and 14) stalled the

[80] Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of September 10, 1998. Art. 17. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/consent.pdf (accessed: 09.09.2022).

[81] The Conference of the Parties of the Rotterdam Convention: Procedures and mechanisms on compliance with the Rotterdam Convention. URL: http://www.pic.int/TheConvention/ComplianceCommittee/Decisions/tabid/3606/ctl/Download/mid/11427/language/en-US/Default.aspx?id=88&ObjID=47812 (accessed: 15.09.2022).

[82] The Compliance Committee of the Conference to the Parties of the Rotterdam Convention URL: http://www.pic.int/The-Convention/ComplianceCommittee/Overview/tabid/8446/language/en-US/Default.aspx (accessed: 15.09.2022).

[83] First Meeting of the Rotterdam Convention Compliance Committee (CC.1). 16-18 November 2022. URL: http://www.pic.int/TheConvention/ComplianceCommittee/Meetings/CC1/Overview/tabid/9272/language/en-US/Default.aspx (accessed: 08.11.2022).

[84] Minamata Convention on Mercury of October 10, 2013. Art. 1. URL: https://wedocs.unep.org/rest/bitstreams/14123/retrieve (accessed: 03.03.2022).

establishment of the Compliance Committee. Developing countries believed that they were not receiving adequate financial support from developed countries (as mandated in Art. 13) to fulfil the obligations imposed on them in accordance with the provisions of the Stockholm Convention (the effectiveness of the implementation by developing countries of the provisions of the Convention depends on the effectiveness of the implementation by developed countries of their obligations regarding the provision of financial and technical assistance and technology transfer[85]). Accordingly, the creation of a Compliance Committee would place additional burdens on developed countries that they are not prepared to take on (Eriksen, Perrez 2014: 195–210). Art. 19 (5(a)) of the Stockholm Convention states that the Conference of the Parties has the power to establish such subsidiary bodies as it considers necessary for the implementation of the Convention.[86] This issue has been repeatedly discussed at meetings of the Conference of the Parties since 2006, and various options have been tabled for resolving it, but, to date, the parties have been unable to reach a consensus.

The provision on the Implementation and Compliance Committee contained in the 2013 Minamata Convention on Mercury was immediately written into the document – although states were not able to agree on the issue to begin with – to ensure that it would not take approximately twenty years for such a committee to appear, as was the case with the Rotterdam Convention.

The Committee is established on the basis of an incentive compliance mechanism that pays special attention to the national, technical and financial capabilities of states in the implementation of their obligations arising from the provisions of the Convention.[87] It is made up of "15 members, nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations"[88] (the first 15 members were elected at the first meeting of the Conference of the Parties, and the second committee was elected at the third meeting of the Conference of the Parties; it was made up of ten of the original members serving a second term, and five new members who would serve two terms).[89]

[85] Stockholm Convention on Persistent Organic Pollutants of May 23, 2001. Art. 15. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/pollutants.pdf (accessed: 08.11.2022).
[86] Ibid. Art. 19 (5(a)).
[87] ISD: 4th Session of the Intergovernmental Negotiating Committee on Mercury (INC 4). Summary Report, 27 June–2 July 2012. URL: https://enb.iisd.org/events/4th-session-intergovernmental-negotiating-committee-mercury-inc-4/summary-report-27-june-2 (accessed: 08.11.2022).
[88] Minamata Convention on Mercury of October 10, 2013. Art. 15. URL: https://www.mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-rus-full.pdf (accessed: 30.04.2022).
[89] Conference of the Parties to the Minamata Convention on Mercury First Meeting. Decision Adopted by the First Conference of the Parties to the Minamata Convention on Mercury MC-1/7: Membership of the Implementation and Compliance Committee as Referred to in paragraph 3 of Article 15. November 22, 2017. URL: https://www.mercuryconvention.org/sites/default/files/documents/decision/UNEP-MC-COP1-Dec7-MembershipICC.RU.pdf (accessed: 13.09.2022).

The Implementation and Compliance Committee started its work in 2018. It has held three meetings to date. At the first meeting, the Committee approved the rules of procedure for the meeting, which for the most part mirrored the rules of procedure for meetings of the Conference of the Parties.[90]

The second meeting of the Implementation and Compliance Committee approved the scope of the Committee's competencies. This subsidiary body of the Minamata Convention may consider any written submission from member states regarding their compliance with the provisions of the Convention. After reviewing these documents and consulting with the party in question, the Committee can provide recommendations in the form of mediation (technology transfer, technical support, and the development of compliance strategy). The Committee also has the right to review national reports and consider systemic issues pursuant to Art. 21 of the Convention. If necessary, the Committee can request additional information from states in order to prepare individual or summary recommendations. Further, the Committee may consider issues based on requests from the Conference of the Parties and present summary recommendations at meetings of the Conference of the Parties for resolving issues of a legal, technical, and expert nature.[91]

The third meeting of the Implementation and Compliance Committee (held online in June 2021) dealt with the issue of the implementation of and compliance with Art. 21 of the Convention based on a consideration of the first short national reports submitted in accordance with that article. The Committee noted the high reporting rate for the first short reports, but pointed to the fact that much of the information provided was incomplete, insufficient or missing, which it put down to the parties potentially having interpreted certain reporting requirements in varying ways.[92] During its work, the Committee stressed that it is the responsibility of the parties to submit national reports. On the basis of this, the Committee expressed the hope that the high rate of reporting would continue with the full reports, as more complete data would make it easier to ensure compliance with all the provisions of the Convention.[93]

We can thus see that three "chemical agreements" (the Basel, Rotterdam and Minamata conventions) have already established compliance committees. What sets the Minamata Convention on Mercury apart from the other agreements in terms of its

[90] Conference of the Parties to the Minamata Convention on Mercury Second Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. August 29, 2018. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/2_11_r_ICC.pdf (accessed: 13.09.2022).

[91] Conference of the Parties to the Minamata Convention on Mercury Third Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. August 8, 2019. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/UNEP-MC-COP-3-13-Report_ICC.Russian.pdf (accessed: 09.09.2022).

[92] Conference of the Parties to the Minamata Convention on Mercury Fourth Meeting. Report on the Work of the Implementation and Compliance Committee of the Minamata Convention on Mercury. January 31, 2022. URL: https://www.mercuryconvention.org/sites/default/files/documents/working_document/4_15_Rev1_ICCReport.Russian.pdf (accessed: 12.09.2022).

[93] Ibid.

success is the fact that it includes a specific provision on the establishment of an implementation and compliance committee, whereas the texts of the Basel, Rotterdam and Stockholm conventions merely stipulate the possibility of creating a subsidiary body to determine instances of non-compliance with their provisions. The lack of provisions in the texts of these conventions on the establishment of a compliance committee is the main reason why the process of setting up such committees stalled in all three cases. The Implementation and Compliance Committee established under the Minamata Convention is an example of a robust mechanism that is capable of identifying and addressing local and systemic problems in the implementation of, and compliance with, the provisions of the Convention. While the compliance mechanism cannot ensure the effective implementation of the provisions of the Convention by itself, it does make successful implementation a real possibility in the future.

Conclusion

The role of quasi-judicial bodies has been growing steadily since the beginning of the 21st century. Their decisions, while not legally binding, have acquired a certain legitimacy: states implement them; they are generally recognized in the doctrine of international law; and are cited in decisions of international courts. In addition, it is possible today for one and the same dispute to be considered by both a quasi-judicial body and an international court, either simultaneously or different points in time. A number of questions arise regarding the obligation of these judicial and quasi-judicial institutions to take each other's decisions into account, which of these should be the priority appeal body, how and to what extent the rule on the exhaustion of all legal remedies can be applied, the hierarchy of decisions in the event that they contradict each other, etc. Thus, conflicting jurisdictions between international judicial institutions and quasi-judicial bodies may become another symptom of institutional fragmentation. At the same time, the practice of quasi-judicial institutions in international environmental law has proven extremely effective.

The development of the non-compliance procedure effectively blurs the line between diplomatic and judicial procedures for the peaceful resolution of disputes. The non-compliance procedure has been used as an alternative to the traditional dispute resolution system since the late 1980s, evolving constantly since that time and becoming a mandatory element of all IEAs. On the one hand, it is a flexible procedure compared to traditional means of dispute resolution, allowing the parties to resolve and prevent disputes at a minimum cost and in a maximally swift fashion, and providing a mechanism for monitoring the implementation of resolutions. On the one hand, the very category of international law known as the "non-compliance procedure," while it helps resolve issues in the short term, may in the long term contribute to the relativization of the normativity of international law, the transformation of absolute prohibitions into relative prohibitions, and the blurring of the line between legal norms and political decisions. Moreover, as the experience of the Aarhus Compliance Committee

shows, excessive discriminatory pressure on a country (in this case Belarus) led to its withdrawal from the international treaty, which, of course, undermined the principle of impartiality.

On the whole, the practice of applying compliance procedures has proven highly effective. Perhaps the wealth of experience gained within the framework of these mechanisms of international control can be used in the creation of an international environmental court.

About the Authors:

Anastasia M. Otrashevskaya – Postgraduate student, Department of International Law, Peoples' Friendship University of Russia (RUDN University), 6, ul. Miklukho-Maklaya, Moscow, Russia, 117198
E-mail: a.otrashevskaya@gmail.com

Alexander M. Solntsev – Candidate of Legal Sciences, Associate Professor, Deputy Head of the Department, Department of International Law, Peoples' Friendship University of Russia (RUDN University), 6, ul. Miklukho-Maklaya, Moscow, Russia, 117198. E-mail: solntsev_am@rudn.ru

Parzad N. Yusifova – Postgraduate student, Department of International Law, Peoples' Friendship University of Russia (RUDN University), 6, ul. Miklukho-Maklaya, Moscow, Russia, 117198. E-mail: pari.yusifova.97@mail.ru

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