

Reporting and Review Institutions in 10 Multilateral Environmental Agreements

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EXECUTIVE SUMMARY

For multilateral environmental agreements (MEAs) to be effective at achieving their goals they must be put into practice. While there has been significant progress in the negotiation of new MEAs over the past several decades, until recently attention to implementation at the state level has lagged. Many MEAs, however, obligate parties to submit national reports on their implementation-related activities. Some also contain processes for the review of party implementation; some go further and review compliance with MEA obligations; and some MEAs evaluate their own effectiveness. Collectively, these practices and associated rules and subsidiary bodies are termed review institutions.

This report describes and analyses review institutions in the set of 10 major MEAs described in GEO-2000 (see Annex 1 for the complete list). Review institutions are centrally important to global environmental governance because they provide a means to evaluate, on an ongoing basis, the performance of MEA parties. While other studies exist for particular MEA review institutions, this report is the first to look at a wide range of major environmental agreements and to analyse their review institutions comparatively.

Review institutions are defined in this report as institutions, formal and informal, that gather, assess, and take decisions based on information relevant to the implementation of, compliance with, adjustment of, and effectiveness of international obligations, as well as of subsidiary agreements and authoritative decisions of the parties. While “review” may encompass many things, the primary focus in this report is the review of domestic actions and implementation.

Review institutions are typically authorized and defined in the text of MEAs, but they often evolve, or are created through, subsequent decisions by the parties or by subsidiary MEA bodies. In addition, specific review institutions in practice often interact with, and are influenced by, other institutions and international organizations. These institutions and organizations may be legally external to the MEA or may be part of the MEA process. In either case these linkages with formally external actors and processes are often central to the operation of the MEA review institutions. For all these reasons, this Report employs an empirical, rather than purely legal and textual, approach to review institutions. It seeks to describe in detail both how reporting and review are formally structured in each MEA as well as how they operate in practice. This analysis is based upon a combination of sources: international legal texts, decisions of the parties, scholarly accounts, and interviews with the secretariat of each MEA.

Within the set of ten MEAs explored, existing review institutions vary widely. The many details are contained in the body of the report. Annex 2 summarizes for each MEA the reporting requirements, implementation review, compliance review, and effectiveness review institutions. Not all of these categories apply in each case. Where relevant, functional equivalents to review — practices or institutions which engage in some measure of review *de facto*, in an informal or extra-textual manner — are noted both in Table 1 and in the body of the Report.

In the MEAs examined there is a wide range of approaches to the review of party performance. The Montreal Protocol and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) contain the most extensive and formalized review institutions and the Convention on Migratory Species and the Convention to Combat Desertification the least. National reporting, the backbone of any review institution, is formally present in every MEA examined save the UN Convention on the Law of the Sea (UNCLOS). Even in that case, however, some form of



reporting occurs via an informal process initiated by the UNCLOS Secretariat. Despite these reporting obligations, most MEA reporting rates are low, often under 50 per cent. MEA reporting is difficult for many parties, particularly developing countries, and there is concern that this burden is growing.

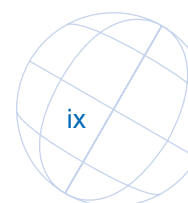
Implementation review appears in less than 50 per cent of the MEAs surveyed. In those MEAs that lack an implementation review process national reports are generally gathered and distributed by the relevant secretariat, with little or no analysis. Effectiveness review in MEAs is rare, though occasionally discrete aspects of MEA effectiveness are examined. A formal compliance review institution presently exists only in the Montreal Protocol, but the CITES National Legislation project and Infractions Report process approximate aspects of compliance review without being formally designated as such.

The Basel Convention and United Nations Framework Convention on Climate Change (UNFCCC) are expanding their review institutions and are actively negotiating compliance review mechanisms. These negotiations are clearly influenced by the Montreal Protocol experience and specifically the Protocol's Non-Compliance Procedure. The paucity of extant compliance review institutions is reflective of the sensitivity of many governments toward external review of commitments. In addition, many governments are generally concerned about the proliferation of new MEA institutions.

Overall, one clear theme is the increased interest in and emphasis on implementation, compliance, and effectiveness. There is significant activity taking place in many of the MEAs studied to either expand or develop review institutions. Within this general trend, however, there are few temporal patterns discernable in the structure and process of MEA review institutions. Neither older nor newer MEAs exhibit a greater tendency toward the development of review institutions. There is, however, evidence that review institutions are most developed where MEA commitments are most specific. This conclusion is predictable from a functional perspective. The Montreal Protocol, with the most elaborate review institution, contains detailed substantive commitments that are amenable to careful performance review. CITES similarly contains detailed, concrete commitments and has accordingly developed, through an organic and occasionally informal process, a well-functioning set of review institutions. Similarly, with the negotiation of the Kyoto Protocol the UNFCCC has begun to create more specific, concrete commitments and it is now beginning to create the institutions necessary to review compliance with them. As more protocols to framework and quasi-framework agreements are negotiated (such as the recent Biosafety Protocol to the Convention on Biological Diversity), more and more elaborate review institutions are likely to develop.

It is important to underscore that despite concerns about treaty congestion and coordination, MEA institutions and negotiations over new institutions exhibit remarkable similarities. This suggests that while formal coordination may be limited, in practice government delegates are aware of experiences in other MEAs and attempt to build upon and incorporate lessons learned elsewhere.

To put these findings concerning MEA review institutions in a broader comparative context, review institutions in several other areas of international law are examined in the Report. These include the World Trade Organization (WTO), the International Labour Organization (ILO), the North American Agreement on Environmental Cooperation (NAAEC), the World Bank, and several human rights and arms control treaties. This survey of non-MEA practice illustrates the wide range of review institutions in existence in contemporary international law, and presents several models that do not appear in MEAs. One alternative model not found in the MEAs surveyed, nor in any extant MEA, is active, contentious dispute settlement, which is present in the WTO and which in practice performs aspects of compliance and implementation review. (UNCLOS, surveyed in this



Report, does contain an International Tribunal for the Law of the Sea but the number of cases brought to date is quite low and hence in practice it is not yet “active”). A second alternative model is citizen- or non-governmental organization (NGO)- triggered review institutions, which are termed “fire alarm” mechanisms here. These institutions permit individuals or NGOs to submit complaints about party performance which may lead to some form of review. Such fire-alarm mechanisms are found in the ILO, NAAEC, many human rights treaties, and in the World Bank system.

The following eight recommendations and lessons learned are drawn from this Report’s analysis of MEA and non-MEA review institutions:

- Develop good data gathering and reporting systems early on, and make the reporting process useful to the parties individually.
- Incorporate multiple sources of data where possible, in particular in-depth, on-site or country studies by Secretariats or independent teams.
- Utilize the Internet for the filing and publication of reports and of reviews, where applicable.
- Provide concrete assistance and training to parties in the gathering and reporting of MEA-relevant data.
- Consider the use of dual (technical and political) institutional bodies in compliance review institutions.
- Expand the use of individual or NGO-triggered, “fire alarm” review institutions.
- Non-confrontational, soft or “managerial” approaches to compliance review are important, but both incentives and disincentives are present in effective compliance review institutions.
- Build review expertise and legitimacy slowly, particularly in the case of implementation and compliance review, and initiate review institutions as early as possible.

