Comparing Environmental Dispute Management Compliance Mechanisms in International Environmental Treaties and Traditional Dispute Resolution Mechanisms in the search for Effective Implementation

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This Article will argue that the best procedure to manage environmental disputes and thus guarantee effective compliance of International Environmental Law (IEL) treaties is an incorporation of traditional international dispute settlement institutions into compliance mechanisms in IEL treaties. This incorporation is suggested to come in the form of giving more responsibility to traditional international dispute resolution bodies within compliance mechanisms or recognizing them as appellate institutions for compliance matters. The idea behind this is that although IEL treaties prefer their procedures to be non-adversarial and non-adjudicatory, decisions involving traditional dispute resolution bodies have the advantage of being more permanent, fair and precedent-setting. This Article will study the compliance mechanism in the Paris Agreement and the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
in investigating this subject. This is because they are treaties able to be applied worldwide that have elaborate compliance procedures. This Article will rely on data from primary sources such as treaties themselves and secondary sources such as academic Articles on this subject will be made.

1.0 Introduction

Much emphasis has been placed on the implementation of and compliance with international treaties since the first half of the twentieth century.¹ These concepts made their way into International Environmental Law (IEL) treaties in the 1980s as Compliance Mechanisms (CMs), which are procedures to ensure the effective implementation of treaty obligations.² This Article will set a background by examining CMs and show how these mechanisms serve as dispute management institutions before moving to the dispute management procedures of traditional international dispute resolution methods. Special emphasis will be placed on the International Court of Justice (ICJ) as its special position as the judicial arm of the UN places it in a prime position among international courts. Focus will then move to the different CMs set out in the Paris Agreement and the Aarhus convention. The reason for focusing on these two international treaties is due to their unique characteristics and potential for worldwide application. Further, this Article will juxtapose both the CMs

² ibid.
in the IEL treaties focused on in this Article and traditional dispute resolution methods (TDRMs) in order to recommend a more efficient approach to effective implementation of IEL treaties. To conclude, this Article will make a case for the integration of the ICJ, a traditional dispute resolution institution into the non-compliance mechanisms of IEL Treaties as the most accurate procedure for ensuring effective compliance of IEL treaties.

1.1 Introducing Compliance Mechanisms and Dispute Management

Four terms of importance to this Article are compliance, implementation, enforcement, and dispute settlement. Compliance refers to a situation whereby a contracting party fulfils all the conditions and obligations imposed by an IEL treaty and its amendments or protocols. Implementation refers to all the legal actions a contracting party to an IEL treaty adopts in an effort to meet their commitments under a treaty. These legal actions include the creation of relevant statutes, regulations, and policies geared towards treaty implementation. Enforcement refers to the actions and procedures which a state undertakes through its local authorities and agencies to ensure that individuals and legal persons within the state who fail to comply with the obligations of the state under the IEL treaty are returned to the point of compliance or penalised through administrative, civil,

3 UNECE, ‘Guidelines for strengthening compliance with and implementation of multilateral environmental agreements (MEAS) in the ECE region’ (20 March 2003) UN Doc ECE/CEP/107, para 4(a).
or criminal sanctions. Dispute settlement refers to a process of bringing state actors whose opinions may differ on particular events or issues to a point of settlement.

Disputes between states on the issue of compliance had been commonly settled through the application of substantive international law rules. It was only from the late 1990s that emphasis began to be placed on novel means to ensure that parties to IEL treaties effectively complied with their obligations. Implementation and enforcement of compliance began to be mainstreamed in IEL with the introduction of compliance procedures in the 1990s. Non-compliance by a party can lead to international disputes and increase political tension between states. Managing that process is important in order to avoid undermining the purpose of the treaty in question. Most IEL treaties contain provisions on the settlement of disputes and return of defaulting parties to compliance.

4 ibid.
6 ibid.
7 Loibl (n 1) 426.
8 For example, the threat in 2002 by the US to withdraw foreign assistance to Yugoslavia until Slobodan Milosevic was transferred to the International Tribunal in accordance with Yugoslavia’s international obligations. See: Marlise Simons, 'Milosevic Is Given To U.N. For Trial In War-Crime Case' (Nytimes.com, 2001) <https://www.nytimes.com/2001/06/28/world/milosevic-is-given-to-un-for-trial-in-warcrime-case.html> accessed 29 August 2020.
Non-compliance procedures (NCPs) aid enforcement in the sense that parties can compel compliance with, or observance of, a law, rule, or obligation set out in IEL treaties through coordinated actions. Some of the obstacles militating against compliance by state contracting parties include a lack of adequate political attention given to the implementation of the state’s obligations. A state may also not be fully informed on the nature of her obligations under a specific IEL. Further, a state’s lack of methodical, administrative, and financial capacity to fulfil the terms of the treaty may also be a reason for non-compliance. Where relevant national authorities are unable to synchronise operations or understand their specific obligations under the enforcement plans; or where the citizens are not politically aware of their government’s responsibility under an IEL treaty, compliance can be a significant problem. This is because ensuring compliance is political and implementation may require keeping the population of a country informed.

Generally, CMs have three levels that serve different purposes. The first stage is reporting or verification. The aim at this point is to forestall non-compliance. Second stage is

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10 UNECE (n 3) para 5.


institutional assessment of the compliance by states with the purpose of facilitating compliance. The final stage is the stage of calculated response measures which serve the purpose of reacting to non-compliance.\textsuperscript{13} Thus, there is an interplay of factors and functions which are interdependent in the functioning of CMs. An NCP pools together information on the extent of each party’s performance, institutionalising non-compliance measures which cut across several agencies and institutionalised multilateral response to instances of non-compliance. A common feature of NCPs is their exclusion of procedures and institutions for settling disputes. There are numerous theories of compliance, but they are largely grouped under the two broad categories created by March and Olsen. These are the rationalist and normative theories.\textsuperscript{14} Under the rationalist theory, state actors decide the cost and benefits of their behaviour or function and take decisions which follow such rational calculations. Under the normative theory, however, states frame their actions around their known identities, legal obligations, and what they decide is appropriate action.\textsuperscript{15} In practice, it is logical to assume that states employ a combination of these approaches before taking international actions. This Article will not go further into defining and expatiating on compliance theories as it is not the subject of this Article.

As previously alluded to, a party’s failure to fulfil its obligations under an IEL treaty, may lead to international disputes. Disputes may take the form of states disagreeing on

\textsuperscript{13} ibid.


\textsuperscript{15} ibid 943.
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the extent of their obligations, or may arise where a state fails to fulfil its obligations under an IEL treaty leading to environmental harm in another state.\textsuperscript{16} International dispute settlement processes have the fundamental objective of resolving disputes between states peacefully.\textsuperscript{17} Traditional international dispute resolution mechanisms include ‘negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements’.\textsuperscript{18} As more international environmental disputes arise, emphasis has moved from a confrontational approach to a settlement system based on the recognition of our common humanity.\textsuperscript{19} IEL treaties have moved from a sovereignty-based approach for settling disputes to a more humane approach where each state is encouraged to meet its obligations through procedures that help them to achieve their obligations under each treaty.\textsuperscript{20}

An example of a situation where non-compliance may lead to a potential international dispute is where an IEL treaty governing transboundary pollution is not complied with.\textsuperscript{21} Thus, states that are polluted may require polluting states to

\textsuperscript{16} Klein (n 5) 379.
\textsuperscript{18} Charter of the United Nations (UN Charter) (24 October 1945) 1 UNTS XVI, art 33.
\textsuperscript{19} Loibl (n 1) 426.
\textsuperscript{20} ibid.
\textsuperscript{21} Examples include the India-Pakistan dispute over the Indus River treaty and the Argentina V Uruguay case which is discussed later in this Article.
fulfil their obligation under the said treaty. Environmental disputes can thus be managed through CMs of different IEL treaties or through traditional dispute resolution mechanisms. This Article will now examine the CMs in two significant IEL treaties, the Paris Agreement and the Aarhus Convention, before considering traditional international dispute resolution models.

2.0 Compliance Mechanisms in the Paris Agreement and the Aarhus Convention

2.1 Compliance Mechanisms in the Paris Agreement

The Aarhus Convention and the Paris Agreement are two IEL treaties that have worldwide application. I have considered these two treaties as sufficient to allow for full consideration of the issues raised in the Article as they each contain elaborate compliance procedures which provide material for us to study.

In 2018, the committee to facilitate implementation and promote compliance referred to in article 15 Paragraph 2 of the Paris Agreement (CMPA) was formed with a mandate to facilitate compliance of the Paris Agreement. The compliance mechanism is to be ‘expert-based and facilitative in nature’. It is also required to function in a ‘transparent, non-

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23 UNFCCC, Conference of the Parties, Twenty-Fourth Session, ‘Modalities and Procedures for the Effective Operation of the Committee Referred to in Article 15, Paragraph 2, of the Paris Agreement’ (14 December 2018) UN Doc FCCC/CP/2018/l.5, annex, I (2).
In an effort to make sure the mechanism is diverse and understood by every contracting party, there is a responsibility that the mechanism pays attention to national capabilities and circumstances of the parties to the agreement. Reports go from the mechanism to Conference of the Parties (COP) serving as the meeting of the parties to the agreement. The compliance system takes cognisance of the fact that Least Developed Countries (LDCs) are not on par with Developed Country Parties (DCPs). The compliance mechanism under the Paris Agreement, although similar to the form under the Kyoto protocol, encompasses a wider range of commitments ranging from mitigation, adaptation, funding, technology access, education, capacity building and, loss and damage. In both the Kyoto Protocol and the Paris Agreement, market mechanisms dependent on compliance to be effective are present, as well as some binding and voluntary commitments. Actors will be better advised if they draw lessons from the functioning of the regime under the Kyoto protocol.

There are twelve members of the committee: two members from each of the five UN regions, one from an LDC and another from a small island developing state.

There are two major procedures for triggering the CMPA. First, the self-trigger, which is when a party comes before the

24 Paris Agreement (n 22) art 15(2).
25 ibid.
26 ibid art 15(3).
27 UNFCCC (n 23) annex, III (19)(c) and IV (28).
29 ibid 230.
30 UNFCCC (n 23) annex, III (19-27).
CMPA seeking help on specific compliance or implementation issues. As expected, this form of trigger has been criticised as largely unreliable since contracting parties may not want to report themselves to the CMPA. Second, the CMPA is empowered to initiate the consideration of issues under circumstances which include: Where a party has not communicated or sustained a nationally determined contribution under Article 4 of the Paris Agreement, based on the most up-to-date status of communication in the public registry referred to in the Paris Agreement; where a party fails to submit a mandatory report under relevant sections of the Paris Agreement; or participated in the ‘multilateral consideration of progress whether based on information provided by the secretariat’ or not. The CMPA may consider issues in cases of significant and persistent inconsistencies of the information submitted by a party. The CMPA is charged with the responsibility of creating procedural rules to be presented to the COP serving as the meeting of the Parties to the Paris Agreement (CMA) in their meeting for 2020 which has been postponed due to the current global pandemic. It is suggested that the procedure be expanded to include party triggers. Party triggers refer to a situation where one party brings before a compliance mechanism instances of non-

31 ibid; referred to as ‘the Committee’ in the Paris Agreement (n 22) and UNFCCC doc (n 23).
32 UNFCCC (n 23) annex, III (22).
33 ibid.
34 ibid.
35 ibid.
compliance by another party which may be affecting them adversely.\textsuperscript{37} Even if this takes a limited role, it may be important as a trigger. Likely the most effective trigger which the CMPA may consider is to include non-party triggers such as the review of a party’s performance by the committee on its own in response to petitions from non-party stakeholders or based on specific reports or information generated under the Paris Agreement.\textsuperscript{38} The goal is for the committee to fashion out a workable trigger that efficiently aids implementation and compliance. This may require developing workable non-party trigger mechanisms. The example of the Aarhus convention may be instructive here.

Other examples of non-compliance issues are a failure of DCPs to meet their funding commitments to developing countries or a failure by a party to make the required improvement necessary for achieving the long-term goals of the Paris Agreement, among others. The CMPA is also empowered to consider ‘systemic issues’.\textsuperscript{39} These refer to issues which include repetitive or broader issues involving more than one party, such as the failure of a set of policies to achieve mitigation targets, among others. In order for the CMPA to perform their functions satisfactorily, parties must provide access to every information that is important in this regard. The CMA reviews the functions of the CMPA, this is why it is recommended that their relationship should be such that allows for enough room for non-interference while ensuring the CMPA is accountable. The first review of the modalities

\textsuperscript{37} Doelle (n 28) 234.
\textsuperscript{38} ibid 235.
\textsuperscript{39} UNFCCC (n 23) annex, V (32-34).
and procedures of the CMPA is billed for the seventh session of the CMA in 2024.\textsuperscript{40}

It goes without saying that the CMPA’s mandate is intimidating. There are over 190 parties with broad systemic and collective issues. Because the CMPA is a recent mechanism, there is a possibility it may be overwhelmed. However, its decisions which are non-adversarial and non-judicial run the risk of unenforceability.

2.2 Compliance Mechanisms in the Aarhus Convention

Having explained in limine the functioning of the CMPA, we now turn to consider the compliance mechanism under the Aarhus convention. The Aarhus convention was adopted on 25 June 1998 and entered into force on 30 October 2001. It currently has 47 parties including the European Union (EU). This convention has the potential to apply globally. For this reason, membership is not limited to state members of the UNECE or states with consultative status within the UNECE, it is also open to any member of the UN upon approval of the Meeting of the Parties (MOP).\textsuperscript{41}


Article 15 of the Aarhus Convention established an optional arrangement for a non-confrontational, non-judicial and consultative compliance mechanism that functions as an alternative to traditional dispute settlement procedures. The compliance procedure was created ‘without prejudice to the provisions of article 16 of the convention’.\(^{42}\) Pursuant to the requirements of Article 15 of the Aarhus Convention, the meeting of the parties (MOP) through decision 1/7 established a compliance committee to review compliance of parties with their obligations under the Aarhus Convention. The compliance committee is mandated to consider any submission or communication referred to it. In furtherance of the spirit of the wording of article 15, the compliance committee chair would characteristically begin with a reminder that the committee is not a court.\(^{43}\) This is in keeping with the spirit of a non-confrontational, non-judicial proceedings. The Aarhus Convention Compliance Mechanism (ACCM) is similar to the compliance procedure under the Paris Agreement and other IEL treaties in the sense that it is non-confrontational and non-judicial. Since its inception, the ACCM has addressed legal issues involving parties’ compliance with the commitments in the Convention.

To activate the Aarhus compliance committee, a party will inform the ACCM that it is unable to fulfil its obligations under the Convention (also known as the self-trigger).\(^{44}\) Also,

\(^{42}\) UNECE, Report Of The First Meeting of the Parties, Decision I/7, Review of Compliance (adopted 21-23 October 2002) UN Doc ECE/MP.PP/2/Add.8, annex, XIII (38).


\(^{44}\) UNECE (n 42) annex, XII (37).
parties may make reservations about another’s compliance with their obligations. The secretariat may, while considering reports under the convention, become aware of non-compliance in which case it may refer the matter to the ACCM. Further, members of the public may trigger the mechanism by bringing communications in regard to a party’s compliance with the convention. Also, the compliance committee may consider a compliance issue when requested by the MOP. The ability of the ACCM to be triggered by the public is one of the salient features that distinguishes it from the compliance mechanisms of other IEL treaties. Its other distinctive features include the fact that its decisions are not just soft legal interventions but have the ability to become fully legal decisions. For members of the public to enjoy this right, they must have exhausted domestic remedies before approaching the ACCM. The ACCM reports on its activities and makes appropriate recommendations at each MOP. It has limited power to act immediately subject to the consent of the party whose compliance has been considered. Once its report and recommendations reach the MOP, the MOP will decide on the appropriate measures it will take.

The ACCM differs substantially from the CMPA as the CMPA does not have the power to make legally binding decisions or allow triggers from the public. An overview of the Aarhus Convention suggests that the ACCM’s findings reflect a reliable interpretation of the convention when endorsed by a

45 ibid.
46 ibid.
47 Fasoli and McGlone (n 43) 45.
48 UNECE (n 42) annex, XI (36).
49 ibid XII (37).
consensus of the MOP.\textsuperscript{50} Further, it seems many cases brought before the ACCM are confrontational which makes the decisions from the committee more judicial. Also, the ACCM enforces a strict application of the domestic remedies rule. Due to these factors, some scholars conclude that the decisions of the ACCM are a judicial rather than a soft remedy.\textsuperscript{51} As much as there are differences both in nomenclature and trigger procedures, both CMs employ sound reporting systems and regular reports by parties play an important role in their operation. However, it can be surmised that the ACCM is more transparent than the CMPA as members of the public can contribute to the decision-making process under the ACCM.

As indicated previously, non-compliance issues can take the form of disputes among contracting parties. These disputes, as pointed out earlier, have traditional international means of rectification.\textsuperscript{52} This Article will examine this briefly.

3.0 Traditional Dispute Resolution Mechanisms

International law dispute settlement procedures are ways in which different positions as to events or issues between state actors are resolved in a manner where these views converge and there is no longer conflict.\textsuperscript{53} These processes are mentioned in Article 33 of the UN Charter as ‘negotiation, enquiry, mediation, conciliation, arbitration, and dispute settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.’\textsuperscript{54} The nature of

\textsuperscript{51} Fasoli and McGlone (n 43) 52.
\textsuperscript{52} UN Charter (n 18) art 33.
\textsuperscript{53} Cooper (n 17) 249.
\textsuperscript{54} UN Charter (n 18) art 33(1).
environmental law disputes is such that it is possible that two parties are able to derive utilitarian benefit either from the rectification of the action or its continuation.\textsuperscript{55} This is why the guiding rationale for settling these disputes is that states rectify them without resorting to violent conflicts.

Among the forms of traditional dispute resolution mechanisms (TDRMs) previously listed, there are mechanisms where the parties have control over the process and others that involve a formal third party. Negotiation, mediation, conciliation, fact finding, and inquiry are examples of the former. Negotiation is a process involving the identification of common interests in order to reach an acceptable outcome for all parties involved. Negotiations are flexible and allow for a huge range of considerations. Several environmental problems such as the Chernobyl disaster have been rectified through negotiation.\textsuperscript{56} One major negative attribute of negotiation is the probability of stronger parties bullying weak ones.\textsuperscript{57} Mediation is an interactive process where an impartial third party assists disputing parties in resolving conflict. The parties can have a mediator recommended to them or seek one out themselves. The mediator acts as an intermediary helping the parties with proposals they may adopt in order to rectify the dispute.\textsuperscript{58} The World Bank served this purpose in the India-Pakistan dispute over the Indus River. The presence of a third party usually depoliticises a matter. Conciliations, inquiry, and fact finding, even though not a frequent feature in resolving international environmental disputes, are also

\textsuperscript{55} ibid 308.
\textsuperscript{56} Klein (n 5) 383.
\textsuperscript{57} ibid 384.
\textsuperscript{58} Peter Carnevale and Dean Pruitt, ‘Negotiation and Mediation’ (1992) 42 Annual Review of Psychology 531, 564.
important TDRMs.\textsuperscript{59} This process requires that a third party makes a formalised finding of fact only. States that are wary of other TDRMs may find conciliation, inquiry, and fact finding as important alternatives. \textsuperscript{60} TDRMs that allow parties to influence the process and outcome sometimes come short of the legal based alternatives. This is because most IEL disputes go beyond the science and the facts to incorporate far reaching political consequences between states that require a final binding decision. Adjudication and arbitration are two TDRM forms that have this characteristic.

Adjudication and arbitration involve the application of legal rules to the facts, determinations of liability, and an outcome that is legally binding. Prior to exercising jurisdiction in this form, the relevant international adjudicatory body must have been vested with jurisdiction by the parties coming before them.\textsuperscript{61} This consent to jurisdiction may be on an ad hoc basis or through a special or advance agreement through participating in a treaty with such a jurisdiction. At the moment, IEL disputes have been decided by a number of international bodies but only under the framework of disputes which are the main subject of the jurisdiction vested on those bodies.\textsuperscript{62} For example, the World Trade Organization (WTO) has deliberated on environmental issues but this has only been in the context of trade disputes. The North Atlantic Free Trade Agreement (NAFTA) established arbitration bodies mandated to address environmental questions in accordance with the


\textsuperscript{60} Klein (n 5) 384.

\textsuperscript{61} ibid 385.

\textsuperscript{62} ibid 390.
North American Agreement on Environmental Cooperation (NAAEC), a side agreement to NAFTA. The International Court of Justice (ICJ) also has a robust environmental law jurisdiction. This Article will focus on the environmental decisions from the International Court of Justice (ICJ) due to the international reputation of the court. This Article focuses on the decision considered by a number of scholars to be the most important environmental decision from the ICJ in an effort to make a case for the ICJ to be the TDRM of choice.

The Case Concerning Pulp Mills on the River Uruguay, Argentina v Uruguay (Pulp Mills Case), was a dispute between Argentina and Uruguay on the non-compliance by Uruguay of the bilateral treaty, ‘Statute of the River Uruguay’. The case addressed the issue of transboundary harm and the importance of Environmental Impact Assessments (EIAs) in poignant detail. In doing so, it laid out important principles for the law in those subjects.

The case laid out the principle that EIAs are fundamental and obligatory prior to the implementation of a project that is likely to cause significant transboundary harm. The counsel to Uruguay described the judgment as the ‘most significant precedent in international law since Trail Smelter.’ The case showed that international courts can handle a dispute of this kind even though it relied a lot on scientific expertise. Although other forms of dispute management may be just as

63 ibid 392.
66 United States v Canada (Trail smelter) (1938 and 1941) 3 R.I.A.A. 1905.
effective. For a case with this amount of political tension and chances of problematic diplomatic relations between the two countries disputing, the court played a very important role in handling the politics well and skilfully doing so to arrive at justice.67

The dispute between Uruguay and Argentina concerned the River Uruguay which was a shared resource between both nations. The polluting potential of the two pulp mills authorised by Uruguay generated international commentary and huge concerns in Argentina. Argentina began legal proceedings against Uruguay claiming violation of procedural and substantive obligations based on Article 60 of the bilateral treaty.68 Article 60 vested jurisdiction in applying and interpreting the treaty on the ICJ. After hearing the entire case, the ICJ delivered a decision, which may be considered a judgement of Solomon, holding Uruguay to have violated the procedural obligations contained in the treaty but not the substantive obligations.69

Criticisms for TDRMs include the fact that their bilateral nature means there are few international processes parties can explore. Also, non-state actors are largely unable to influence or participate in the process. States are generally wary of resolving their disputes through dispute management processes as they would be unable to influence the outcome.70

68 Statute of the River Uruguay (n 65).
69 Boyle (n 67).
However, this does not mean that there are no advantages. For example, traditional dispute resolution agencies can definitively establish responsibility, causation, and monetary compensations to specific victims.\(^7\) Decisions from TDRMs build up precedents and develop the law. Furthermore, judicial institutions can serve as the main guarantee of a treaty’s integrity and will be available after other dispute resolution processes fail. TDRMs may urge the parties’ need to settle on time and can serve to absolve a state from political responsibility before its citizens.\(^2\)

Having examined both CMs in two IEL treaties and TDRMs, let us now consider the best procedure for dispute management that would ensure effective compliance.

### 4.0 A Better Dispute Management System

A successful management of international environmental law would entail an integration of TDRMs in the compliance mechanism of IEL treaties. This distinctive blend would incorporate the benefits of both dispute management systems while eliminating the obvious disadvantages. TDRMs possess the advantages which include the setting of precedents, definite legal authority for decision making and enhancement of the body of law. Incorporating them into IEL treaties will serve as an effective means of ensuring compliance. This integration should take the form of giving more responsibility to traditional international dispute resolution bodies within

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\(^7\) Klein (n 5) 388.

\(^2\) ibid.
CMs or recognising them as appellate institutions for compliance matters that involve disputing parties.

The integrated approach which this Article is recommending will adhere to the following procedures:

1) When compliance issues are triggered by a state party for its own purpose, the CM created in the treaty should address the situation without incorporating TDRMs as it is not a dispute;

2) Where one state triggers compliance proceedings against another state, TDRMs should be involved as this has the potential of becoming a dispute. This should also be the situation where state parties come together to trigger CMs against a particular state actor or group of states or where the committee by its own independent findings decides to trigger the mechanism against a party.

There are two circumstances under which TDRMs can be integrated into CMs in IEL treaties. The first is as institutions that will enter the decision from the compliance committee as their judgment and second is as appellate institutions. TDRMs can enter decisions from CMs as proper judgments emanating from them. This has the advantage of clothing CMs with the advantage of finality. IEL treaties that incorporate this into the working of their CMs will be able to clothe the decisions from them with the characteristics of a final judgment. Second, TDRMs can be incorporated as appellate tribunals that supply opinions on disputed interpretations of the law before

73 Known as the ‘self-trigger’.
74 United Nations, ‘Statute of the International Court of Justice’ (18 April 1946) art 36(1); this empowers parties to treaties to vest the ICJ with this form of jurisdiction.
compliance mechanisms.\textsuperscript{75} The domestic law equivalent for the function discussed here is the concept of a case stated procedure. These interpretations can be accepted as settled interpretations of the statute being disputed. TDRMs can also act as normal appellate tribunals. As stated earlier, the traditional dispute resolution institution intended by this Article to fulfil the recommendations made here is the ICJ. This is because other TDRM institutions will not be able to overcome the defects inherent in the integrated mechanism recommended here.

Criticisms of this integrated mechanism may include undue delays. However, this criticism is only tenable where after the compliance committee makes a decision, another round of proceedings restarts through a TDRM. This is the current situation as the CMs of other IEL treaties\textsuperscript{76} do not prohibit the parties from restarting the proceedings in another fora.\textsuperscript{77} However, if the ICJ records findings from the CMs as its own decision, the problem of undue delays is immediately taken care of. There will also be less delays even if the ICJ functions as an appellate court. Case stated decisions do not take elaborate proceedings; and in its substantive appellate proceedings, it would take notice of proceedings already undertaken by the compliance mechanism. It is true that some IEL treaties contain provisions to refer disputes to the ICJ, but this is different from what is argued here. This Article is not

\textsuperscript{75} Much like the domestic law procedure for ‘case stated’.

\textsuperscript{76} Including the ACCM and the CMPA.

\textsuperscript{77} Duncan Brack, ‘International Environmental Disputes: International Forums for Non-Compliance and Dispute Settlement in Environment-Related Cases’ (The Royal Institute of International Affairs, 2001) 3

arguing for a reference of disputes to the ICJ, but a referral of decisions from compliance mechanisms to the ICJ for recording as a proper judgment of the court.

Another criticism is that TDRMs are unattractive to state actors due to problems associated with court cases. Court actions exacerbate political tensions and create an environment for hostile diplomatic relations. What is recommended in this Article is different. The ICJ is not intended to entertain fresh cases, but only to record the decisions reached through the ordinary proceedings of a compliance mechanism emanating from it. The idea for this borrows loosely from the procedure for consent judgments in domestic cases. Domestic consent judgments refer to a situation where decisions reached by disputing individuals through mediation or negotiation are entered as court judgments in order to make it binding and enforceable. The ICJ is capable of undertaking this responsibility as it has already created an ad hoc environmental court window.

One may further argue that there is no good reason for the ICJ to feature at all in CMs as the COP can serve as the body to recognize its decisions and thus make it binding. However, this becomes insignificant when compared to the fact that states that have international clout may still influence the UN General Assembly, making it impossible in practice for such decisions to be recognised. A case under the Aarhus Convention proved this as the EU refused to allow the debates even though others agreed but could not summon a quorum to make their decision. No party would be able to influence the

78 These same arguments validly oppose the establishment of an international environmental court. This article recommends something different as this paragraph explains.
proceedings before the ICJ as it is an independent international body.

Integrating the ICJ into the compliance mechanism of IEL treaties is both important and powerful and ensures the protection of the transparency of the process of international environmental dispute management. Further, because the ICJ will largely be involved in the decision-making process and not the decision makers themselves, the disadvantages of creating an adversarial situation between disputing states is avoided. Thus, protecting the central interests and advantages of both dispute management processes. This would also mean that cases are disposed of, and thus that states do not unnecessarily prolong disputes.

5.0 Conclusion

This Article has studied the international environmental dispute management procedures of IEL treaties using the CMPA and the ACCM as examples. It then moved to a study of the dispute management procedures in the TDRM. It identified the advantages and disadvantages of each procedure before recommending an approach that would integrate the ICJ as either a body to record decisions from CMs as its own or serve as an appellate institution. The purpose of this integrated approach is to reflect the advantages of the dispute management procedures of CMs and TDRMs without the disadvantages. Article 36 paragraph 1 of the ICJ statute empowers parties to vest the ICJ with this sort of jurisdiction. International environmental disputes are important issues that require adept management to avoid prolonging conflict. To ensure effective compliance by parties to an IEL treaty, managing disputes with the best possible approach is fundamental. The integrated approach recommended in this Article is a good example.
Bibliography

Books and Chapters in Edited Volumes

Brunnée J, ‘Enforcement mechanisms in international law and international environmental law’ in U Beyerlin, Stoll P, and Wolfrum R (eds), Ensuring Compliance with Multilateral Environmental Agreements (Brill 2006)


Cases

Argentina v Uruguay (ICJ 2010) ICGJ 425

United States v Canada (1938 and 1941) 3 R.I.A.A. 1905
Journal Articles


Bilder R, ‘The Settlement of Disputes in the Field of the International Law of the Environment’ (1975) 144 RCADI 139

Carnevale P and Pruitt D, ‘Negotiation and Mediation’ (1992) 42 Annual Review of Psychology 564

Cogan J, ‘Noncompliance and the International Rule of Law’ (2006) 36 YJIL 190


**Legislation**

Charter of the United Nations (24 October 1945) 1 UNTS XVI


Statute of the River Uruguay (adopted 26 February 1975, entered into force 18 September 1976) 1295 UNTS 331

UNECE, Report Of The First Meeting of the Parties, Decision I/7, Review of Compliance (adopted 21-23 October 2002) UN Doc ECE/MP.PP/2/Add.8

UNFCCC, Conference of the Parties, Twenty-Fourth Session, ‘Modalities and Procedures for the Effective Operation of the Committee Referred to in Article 15, Paragraph 2, of the Paris Agreement’ (14 December 2018) UN Doc FCCC/CP/2018/l.5

UNECE, ‘Guidelines for strengthening compliance with and implementation of multilateral environmental agreements (MEAS) in the ECE region’ (20 March 2003) UN Doc ECE/CEP/107

UNFCCC, Paris Agreement (adopted 12 December 2015, entered into force 04 November 2016)

United Nations, ‘Statute of the International Court of Justice’ (18 April 1946)

Websites and other Sources


