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COMPLIANCE MECHANISMS UNDER
MULTILATERAL ENVIRONMENTAL AGREEMENTS
A COMPARATIVE ANALYSIS OF
COMPLIANCE MECHANISMS UNDER
MONTREAL AND KYOTO PROTOCOLS

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MULTILATERAL ENVIRONMENTAL AGREEMENTS
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MONTREAL AND KYOTO PROTOCOLS

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ABSTRACT

COMPLIANCE MECHANISMS UNDER MULTILATERAL ENVIRONMENTAL AGREEMENTS A COMPARATIVE ANALYSIS OF MONTREAL AND KYOTO PROTOCOLS

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The main aim of this study is to make a detailed examination on one of the fundamental concerns of global environmental governance, compliance issue, within the context of the compliance mechanisms (CMs) created under the multilateral environmental agreements (MEAs).

In this respect, in the study, it is basically scrutinized what the role of the CMs is in ensuring better compliance of the parties with their commitments under the MEAs.

In the framework of this examination, a comparative analysis is made between compliance mechanisms under Montreal Protocol and under Kyoto Protocol on the basis of four main dimensions: gathering information, procedures/institutional structure, measures and functioning of the mechanisms in practice.

Based on the findings, it is argued that, in case that the weaknesses of the compliance mechanisms are improved and the coordination between them is ensured, the current system of compliance mechanisms can be responsive for better compliance.

Keywords: Compliance, Compliance Mechanisms, Multilateral Environmental Agreements, Montreal Protocol, Kyoto Protocol.

ÖZ

ÇOK TARAFLI ÇEVRE ANLAŞMALARINDA UYGUNLUĞUN SAĞLANMASI MEKANİZMALARI MONTREAL VE KYOTO PROTOKOLLERİNİN KARŞILAŞTIRMALI BİR ANALİZİ

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Bu çalışmanın temel amacı, küresel çevre yönetiminin temel sorunlarından biri olan uygunluğun sağlanması konusunda, çok taraflı çevre anlaşmaları altında kurulan uygunluğun sağlanması mekanizmaları kapsamında, detaylı bir inceleme yapmaktır.

Bu bağlamda, çalışmada temel olarak uygunluğun sağlanması mekanizmalarının tarafların çok taraflı çevre anlaşmaları altındaki taahhütlerini daha iyi yerine getirmelerindeki rolü incelenmektedir.

İnceleme çerçevesinde, dört ana boyut temelinde,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler ve mekanizmaların pratikteki işleyişleri-, Montreal Protokolü ve Kyoto Protokolündeki uygunluğun sağlanması mekanizmaları arasında karşılaştırmalı bir analiz yapılmaktadır.

Elde edilen bulgular temelinde, kısa vadede, mekanizmaların zayıf yönlerinin iyileştirilmesi ve mekanizmalar arasındaki eşgüdümün temin edilmesi durumunda, mevcut sistemin, uygunluğun daha iyi yerine getirilebilmesine yanıt verebileceği ileri sürülmektedir.

Anahtar Kelimeler: Uygunluğun Sağlanması, Uygunluğun Sağlanması Mekanizmaları, Çok Taraflı Çevre Anlaşmaları, Montreal Protokolü, Kyoto Protokolü.

To my family,

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LIST OF ACRONYMS AND ABBREVIATIONS

AG-13	<i>Ad Hoc</i> Group on article 13, UNFCCC
AF	Adaptation Fund
ARR	Annual Report Review
Art./Arts.	Article/Articles
CDM	Clean Development Mechanism
CFI	Court of First Instance
CH ₄	Methane
CIS	Commonwealth of Independent States
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CM	Compliance Mechanism
CO ₂	Carbondioxide
ComplCom	Compliance Committee
COP	Conference of the Parties
CSD	Commission on Sustainable Development
DSP	Dispute Settlement Procedure
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEAP	Environmental Effects Assessment Panel
EEC Treaty	European Economic Community Treaty
EGTT	Expert Group on Technology Transfer
EMEP	Cooperative Programme for the Monitoring and Evaluation of the Long Range Transmission of Air Pollution in Europe
ERR	Expedited Review Report
ERT	Expert Review Team
ET	Emission Trading

GC	Governing Council
GCF	Green Climate Fund
GEF	Global Environment Facility
GEG	Global Environmental Governance
GEOMAP	Global Environmental Observing, Monitoring and Assessment Programme
GHGs	Greenhouse Gases
HFCs	Hydrofluorocarbons
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
IDR	In-depth Review
IEL	International Environmental Law
IEP	International Environmental Politics
IET	International Emission Trading
IGOs	Intergovernmental Organizations
IL	International Law
ILO	International Labour Organization
IMF	International Monetary Fund
ImplCom	Implementation Committee
IO	International Organization
IPCC	Intergovernmental Panel on Climate Change
IR	International Relations
IRD	International Regimes Database
ITLOS	International Tribunal on the Law of the Sea
ITPGRFA	International Treaty on Plant Genetic Resources
ITTA	International Tropical Timber Agreement
IUCN	International Union for the Conservation of Nature
JI	Joint Implementation
JWG	Joint Working Group
KP	Kyoto Protocol
LDCF	Least Developed Countries Fund
LoA	Logic of Appropriateness

LoC	Logic of Consequences
LoTs	Law of Treaties
LRTAP	Convention on Long-range Transboundary Air Pollution
LULUCF	Land use, Land-use Change and Forestry
MARPOL	International Convention for the Prevention of Maritime Pollution from Ships
MCP	Multilateral Consultative Process
MEA	Multilateral Environmental Agreement
MF	Multilateral Fund
MOP	Meeting of the Parties
MP	Montreal Protocol on Substances that Deplete the Ozone Layer
N ₂ O	Nitrous oxide
NAPAs	National Adaptation Programmes of Action
NCM	Non-compliance Mechanism
NCP	Non-compliance Procedure
NGOs	Non-governmental Organizations
ODSs	Ozone Depleting Substances
OECD	Organisation for Economic Co-operation and Development
OEWG	Open-ended Working Group
Para./Paras.	Paragraph/Paragraph
PCA	Permanent Court of Arbitration
PFCs	Perfluorocarbons
PPFC	Prototype Carbon Fund
PRTR	Protocol on Pollutant Release and Transfer Registers
QoI	Question of Implementation
RoP	Rules of Procedure
SAP	Scientific Assessment Panel
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
SCCF	Special Climate Change Fund
SF ₆	Sulphur Hexafluoride
TEAP	Technology and Economic Assessment Panel

TF	Trust Fund
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	UN Development Programme
UNCTAD	UN Conference on Trade and Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNIDO	UN Industrial Development Organization
UNITAR	UN Institute for Training and Research
VC	Vienna Convention for the Protection of the Ozone Layer
VCLoT	Vienna Convention on the Law of Treaties
WEC	World Environment Court
WG	Working Group
WCO	World Customs Organisation
WHO	World Health Organization
WMO	World Meteorological Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

CHAPTER I

INTRODUCTION

Environmental problems have started to be a concern at international level since late 1960s. From late 1960s to date, a great number of agreements, organizations and mechanisms have been created and developed to cope with these problems.

Particularly, the United Nations (UN) shaped and framed the environmental agenda in that period. Indeed, the global conferences organised by the UN, the institutions established and activated for this purpose involving numerous specialized agencies and semi-autonomous bodies, and the environmental agreements adopted by the UN's efforts to address a wide variety of environmental problems which range from climate change to pollution, from extinction of species to deforestation, all have contributed to the formation of environmental agenda and also to the improvement of international environmental law.

Thus, the UN system has greatly contributed to the struggle with the challenges of global environmental issues. However, at the same time, it has also caused the emergence of numerous diverse structures, and thus, the proliferation of international institutions having mandate over different aspects of environmental problems.

In addition to the continuing growth of the UN system, the number of MEAs have also gone up rapidly, particularly in the period from Stockholm to Rio (Sand, 2007), since the first multilateral environmental agreement (MEA), namely, Convention on the Rhine, adopted in 1868 (UNEP, 2001). Their number has led to almost over 700 MEAs and 1000 bilateral environmental agreements (BEAs)¹ till to recent years (Mitchell, 2003). This increase in number of MEAs, while

¹ It should be noted that, as there is no consensus on their number among the researchers, it is possible to find different numbers in different researches. See also (Kanie, 2007: 68).

creating ‘treaty congestion’ on the one hand, has also caused the decentralization of the institutional structure, on the other hand (Hunter, Salzman and Zaelke, 2002;² Sand, 2007; Weiss, 1995). This is because, all MEAs have established their own institutional bodies, such as Conference of the Parties (COPs) and Meeting of the Parties (MOPs) which provide their operation in practice.

In recent decades, the international system based on the domination of states has also changed in many aspects. In fact, even though states have remained as the main actors of the system, particularly in some areas, like global environmental issues, nonstate actors such as intergovernmental organizations (IGOs), non-governmental organizations (NGOs), transnational corporations, playing progressive roles that directly or indirectly affect the global environment policies, also have begun to be effective in global environmental law and policy.

Indeed, this explosion of institutions, agreements and actors in environmental issues has led to a great number of growing challenges,³ which wait to be resolved such as fragmentation of global environmental governance (GEG);⁴ lack of cooperation and coordination among international organizations; weaknesses related to the implementation, enforcement, effectiveness and compliance with environmental agreements (Andresen, 2007; Arts and Leroy, 2007; Gupta, 2002;

² Hunter, Salzman and Zaelke (2002:455) also reveals treaty congestion in two categories: substantive treaty congestion implying the overlap of treaties’ requirements and procedural treaty congestion implying the overextension of the limited time and resources necessary to ensure compliance and to negotiate new agreements.

³ To address these challenges, the proposals including either to reform of existing institutions, such as UNEP (Meyer-Ohlendorf and Knigge, 2007), or the UN (Chambers, 2005) to create of a World or Global Environmental Organization (Biermann, 2007; Charnovitz, 2002, 2005a; Rechkemmer, 2005; Simonis, 2002)³ have been discussed among scholars to eliminate the weaknesses of the system and to strengthen the GEG. See also (Pauwelyn, 2005; Rest 2000) for the proposals on the creation of a World Environment Court (WEC).

⁴ Biermann (2009) argues that there have been degrees of fragmentation and three criteria can be employed to differentiate between them: degree of institutional integration and degree of overlaps between decision-making systems, existence and degree of norm conflicts and type of actor constellations. Based on these criteria, he proposes to differentiate between three types of fragmentation: (1) synergistic fragmentation, (2) cooperative fragmentation, and (3) conflictive fragmentation. He also reviews the claims in favor and against more integrated or more fragmented governance organized around the question of (1) the relative speed of reaching agreements (2) the level of regulatory ambition that can be realized (3) the level of potential participation of actors and sectors and (4) the equity concerns involved. For details see, Biermann (2009: 14-40).

Kriton, 2000; Mehta, Leach and Scoones, 2001; Najam, Papa and Taiyab, 2006; UNEP, 2008).

Of those challenges, the need to strengthen ‘compliance’ has been precisely stressed in Agenda 21 as a response to effective governance of environmental problems.

Agenda 21 provides that,

“[e]ach country should develop integrated strategies [including “mechanisms for promoting compliance”] to maximize compliance with its laws and regulations relating to sustainable development” (chapter 8, para.21).⁵

It is also underlined that,

“[s]tates should further study and consider methods to broaden and make more effective the range of techniques available at present,.....[which]may include mechanisms and procedures for the exchange of data and information, notification and consultation regarding situations that might lead to disputes with other States in the field of sustainable development and for effective peaceful means of dispute settlement in accordance with the Charter of the United Nations, including, where appropriate, recourse to the International Court of Justice, and their inclusion in treaties relating to sustainable development” (chapter 39, para.9).

Although Agenda 21 is currently a soft-law document, when the efforts for creating an all-encompassing UN Treaty, called as “Draft International Covenant on Environment and Development” which contains provisions for reporting, compliance mechanisms and dispute-settlement mechanisms (articles 67, 68, 69) are taken into account, its soft-law recommendations become more important. This is particularly because, this draft Covenant aims not only to consolidate existing legal principles related to the environment and development, but also to convert Agenda 21’s soft-law recommendations into legally binding hard international law (IUCN, 2010).

The UNEP Special Session of the Governing Council (GC) held in 2000 also recognizes the central significance of compliance, enforcement and liability besides capacity building. UNEP, particularly with the adoption of the

⁵ Agenda 21. Retrieved May 13, 2011 from <http://www.unep.org/documents.multilingual/default.asp?DocumentID=52&ArticleID=56&l=en>.

‘Programme For the Development and Periodic Review of Environmental Law For the First Decade of the 21st Century (Montivideo III Programme)’ in 2001, also starts to take ‘compliance issue’ as a core concern, stressing the ineffectiveness of environmental law.⁶

In addition, in the World Summit on Sustainable Development (WSSD) held in 2002, the need of promoting compliance and so the establishment and operation of mechanisms that can improve and maintain compliance has emerged as a core theme of GEG. In the same year, UNEP adopted Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (MEAs) of which Chapter I addresses specifically compliance with MEAs (UNEP, 2006).

Very recently, in the Rio+20 UN Conference, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, compliance issue is not specifically emphasized, most probably, due to the fact that the Conference’s particular focus is on establishing the concept of green economy and building an institutional framework for materializing sustainable development goals. However, through the Conference’s non-binding document, ‘The Future We Want,’ it is also reaffirmed that,

“the means of implementation identified in Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Plan of Implementation..... are indispensable for achieving the full and effective translation of sustainable development commitments into tangible sustainable development outcomes” (Rio+20 Report, 2012:48).

Thus, ‘compliance issue’ has turned out to be one of the major concerns for GEG in both IEL and IEP in current decades. Indeed, it has been recently realized that, it is not sufficient to adopt legally binding commitments on environmental issues for success in coping with environmental problems, the adoption of environmental agreements is only the beginning of the process. It is necessary to provide full compliance to ensure effectiveness of both these agreements and of environmental governance, due to the fact that,

⁶ United Nations Environment Program Governing Council (February 9, 2001). Decision 21/23. The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century. Retrieved May 8, 2011 from http://www.unep.org/hazardoussubstances/Portals/9/Lead_Cadmium/docs/GC_mandates/GC_21_6_English.pdf.

“[c]ompliance remains an important objective not only because it often correlates with better levels of environmental protection, but also because it improves environmental governance by maintaining the credibility of environmental regimes...” (Stephens, 2009:63-64).

In fact, for an effective global governance, beside the other areas of concern, it is also necessary to provide the actors' complying with the agreements that they have participated. If all the actors adhere to their agreement commitments, even if the problem can not be solved completely, it forms an important step towards incrementally better compliance, better governance and ultimately better sustainable development.

This awareness on the significance of compliance among the IEP and IEL scholars has led to serious debates, and it is begun to be discussed by which ways best enable the states to meet the environmental agreements's obligations, and thus enable them to comply with the commitments under these agreements.

Consequently, a search was started for finding new methods to improve compliance with MEAs, which will not solve the problems but will prevent them before they occur. That is, these new methods should be based on preventive approach to identify compliance problems and to find solutions (through assistance or any other measures) before non-compliance actually occurs. They should be also complex, detailed and technical, but at the same time, more flexible and dynamic which can render easy adaption to the frequent changes in global environmental issues in practice.

Thus, gradually increased attention which is being given to the issue of compliance has generated new mechanisms named as 'compliance mechanisms' in the field of environmental protection which supplement the available means under the rules of international law.

Currently, it is possible to see these new elaborated and flexible mechanisms - institutions and procedures-, of which mandate would be to strengthen compliance with commitments deriving from related MEAs, in some MEAs. Though the number of those that have already been developed is not so high, and most of them are in the process of being developed, they are remarkably expected to

strengthen compliance and then to strengthen environmental governance, at least to play a significant role for them.

However, their effective operation and inducing better compliance still remains as an important question in both academic studies and in practice. This is because, even though they have characteristics making them stronger than traditional mechanisms (as highlighted particularly in chapter 3) to deal with the compliance issue more effectively, they have also some weaknesses that can undermine their effectiveness in the final analysis.

Therefore, in this thesis, it is mainly aimed to examine the role of these mechanisms in ensuring better compliance. So, it is discussed whether the improvement of the present system and coordination between CMs can be adequate for better compliance of the parties with their commitments under the MEAs, on the basis of two case studies, CM under the Montreal Protocol and Kyoto Protocol.

The Purpose of the Research

The focus of this study is to analyse the role of compliance mechanisms (CMs) in ensuring compliance of the parties with their commitments under multilateral environmental agreements (MEAs).

While making the analysis, the aim is not to question whether, how and under what conditions they are influential on altering the behaviours of actors, and gradually on environmental quality-

This is firstly because, it remains still incredibly difficult to measure their direct effect to compliance. Indeed, to analyze them and to lead to a certain judgement on their effect, even their “likely effectiveness,” is a very complex issue because of various relevant processes and dynamics incorporated into the mechanisms that deserve attention to give a sufficient response to the question (Hovi *et al.*,2005:4). Moreover, almost all mechanisms developed under different MEAs are still in the stage of establishment or development so can not be regarded as fully tested. To illustrate, CM developed under the Kyoto Protocol was adopted with a decision of the COP in 2001 (Decision 24/COP 7), and many

issues necessary to bring the Protocol into operation-except the legal status of enforcement consequences- has been resolved in 2005 through the confirmation of the Decision 24/COP 7 in Decision 27/MOP 1. Individual cases that brought before the Committee, on the other hand, began to be considered just since 2006. In addition, CM under the Montreal Protocol has also not reached at its end, but still continues to develop through three crucial phases: the adoption of a draft NCP in 1990, the adoption of the current NCP in 1992 and its modification in 1998, which signal the possibility of the need for further modifications in the future. Furthermore, compliance is a very complex issue. A great range of factors can affect it, like the characteristics of the activity that the accord deals with, the characteristics of the accord, the characteristics of the country, or party to the accord, and like the factors in the international environment (the role of NGOs, actions of other states and the role of IGOs) (Jacobson and Weiss, 2001). Therefore, it also requires a great number of efforts to be enhanced, like strengthening its empirical and theoretical foundations, the role of civil society, the norms complementing and supporting compliance and rule of law, building capacity of regulators and those they regulate and political will, expanding funding, applying new analytical tools, diagnosing specific problems and understanding and empowering key actors (Zaelke, Stillwell, Young, 2005).

It is only aimed to provide an in-depth understanding of the existing mechanisms and elaborate their present features on the basis of two case studies, thus, to discuss the options for an improved compliance system, and to support the related debate in the academy through putting valuable input into it.

In brief, it is intended to be one of the beginning efforts questioning how to enhance compliance with CMs under MEAs, to contribute to discussion on them.

In this respect, offering a starting point on which further research related to the relationship between compliance and CMs could build, the main objectives of this thesis have been to lay out a research agenda on the compliance issue and CMs relying on three main components of the CMs, to analyse the role of CMs in ensuring better compliance, to analyse the ways of enhancing compliance under the current system, to pursue an approach including the illustrations from two case studies of the thesis, the CM under the Kyoto Protocol and the CM under the

Montreal Protocol, to make a comparative analysis between two case studies on the basis of four dimensions: gathering information, procedures, responses and their functioning in practice, and to foster discussion on this issue among academics and thus to contribute scholarly debates.

Research Design

Research Question

The main research question of the thesis is to examine the role of the CMs in ensuring and improving compliance of the parties with their commitments under MEAs.

Sub-questions

1. The first question will be related to the identification of the concepts of compliance, the compliance mechanism (CM) under multilateral environmental agreements (MEAs), the concepts of MEA and regime, their meanings in general and in the context of this study in particular, and the clarification of the distinction between the concept of compliance and other related concepts such as implementation, effectiveness and enforcement.

Under this question, the main goal is to clarify what is meant by these concepts in the thesis and to constrain them to the frames of these definitions. Thus, it is aimed to show the direction of the perspective pursued in the study and to facilitate the discussion on compliance and CMs in a more comprehensible manner providing their correct application in practice.

2. Second question will be confined to the main theoretical models of compliance. It will be discussed to what extent and how do these models provide insights into the compliance debate, what the main features of these models and what the similarities and differences between them are, and also which one can be used as a theoretical framework in the context of the thesis itself to ensure better compliance.

Through all these questions, this part searches for the theoretical explanation of these mechanisms, and endeavours to put forth their theoretical basis for making their functioning more understandable in practice.

3. Through this question, it will be elaborated how the development of CMs can be revealed, what the preparatory and triggering reasons behind their development are, what the limitations of traditional means,- including Law of Treaties, responsibility of states, dispute settlement procedures (diplomatic and judicial means)-are, what the features making CMs more attractive than these traditional means are, what the distinct characteristics between the CMs and DSPs are, what the institution(s) created under a MEA, and their functions are, what the main components of CMs are, and what the fundamental features of these components are, also what the legal basis of the NCPs is, what the main powers and functions of the committees created under the NCPs are, what the procedural phases and safeguards in NCPs are, and finally, how the binding effect of the response measures can be demonstrated.

The main objective here is to draw a general framework on the main characteristics of CMs, thus, to manifest the current system briefly and plainly, without reference to its specific details for providing a background information on the system with its general characteristics.

4. The fourth question will investigate how do CMs function in the context of the Montreal and Kyoto Protocols, how they developed, what the basic characteristics of their components -gathering information-NCPs and response measures-are, to what extent their provisions on compliance mechanisms can be materialized in practice and how well they function in practice.

In this section, based on the background information on compliance mechanisms given in general in the previous section, it is aimed to make a comparative analysis between compliance mechanisms under Montreal Protocol and under Kyoto Protocol. While doing this analysis, pursuing the same way followed in the previous section, it firstly studies on their development up to the present, and then evaluates the components of the mechanisms to provide a full

understanding on the process. Differently, in order to illustrate and demonstrate the issues the study is concerned with, it also tends to explore what actually happens, how well they function in practice, to what extent their provisions achieve to be influential in practice, to make an assessment on compliance to the MEA in general-not of each party to the MEA, as it poses serious difficulties-.

5. Under the fifth one, it will be questioned whether the CMs are capable of influencing compliance in ways that other traditional mechanisms can not or in ways that are more effective, whether they are capable of ensuring better compliance with the environmental commitments brought by MEAs. It will be also discussed what their weaknesses are, how they can be improved and can be made more effective in shaping actors' behaviour, and whether this improvement in CMs can be effective certainly on meeting the demands for providing better compliance, if not, which ways should also be considered to contribute to the strengthening of compliance, what should be planned to be done in the short and long terms for strengthening compliance.

In the context of the questions asked here, it is argued that, for inducing better compliance for the short term, it may be enough to follow the current system based on CMs under MEAs through improving their functioning and creating conditions for stronger coordination between them. That is, the efforts addressing the problems of the mechanisms and coordination can speed up the progress towards better compliance in the short run and better environmental governance through CMs in the long run.

In line with the main research question and sub-questions, the major focus areas of the study are the followings: analysing current system, drawing its theoretical and conceptual frameworks, benefiting from the illustrations of two cases, making a comparative analysis between two cases on the basis of four dimensions: gathering information, procedures, responses and their operation in practice, finding out the shortcomings of the current system, figuring out the desired improvements in the system for better compliance, analysing the need for stronger coordination between different CMs.

As it would be an overly ambitious task to illustrate and analyze in details all aspects of all CMs, the study will be restricted to these areas abovementioned, which are determined as the major focus areas of the study.

Nevertheless, while making the analysis, some of those aspects that may be relevant and interesting for compliance mechanisms, can still be revealed as an additional information. In order not to exceed the scope of the study, these will not be examined in details, but only will be touched upon.

Methodology

Methodology pursued for assessing the role of CMs for better compliance is a comparative case analysis based on an interdisciplinary research benefited from the literatures of international relations and international environmental law.

Therefore, this intensive research is based on a comprehensive literature review and data collection (a couple of sources including dozens of books (almost over), a variety of journals and official documents) conducted from 2009 to 2012 in the libraries of the Middle East Technical University (METU), Institute for Environmental Studies (IVM), Vrije University (VU), in Max Planck Institute For Comparative Public Law and International Law (MPI), University of Heidelberg, and Washington College of Law, American University (AU).

Based on this comprehensive research and also with the effect of efficient discussions made by the researchers in the abovementioned universities studying on the fields of compliance and CMs, the thesis's structure has been drawn on the basis of a conceptual framework (involving the clarifications of the concepts of compliance, MEAs and CMs) and a theoretical framework (involving basic explanatory models of compliance: management vs. enforcement model).

On the ground of this main structure, particularly two cases, compliance mechanism under Montreal Protocol to the 1985 Vienna Convention on Substances that Deplete the Ozone Layer and compliance mechanism under Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) are selected to demonstrate and illustrate the issues the study is concerned with.

Case Selection

Two mechanisms -CMs created under the Kyoto Protocol and the Montreal Protocol - are chosen as case studies, because:

They are both widely recognised and globally accepted, and both Protocols impose “result-oriented obligation.”⁷

They are both within the same cluster according to their themes, the protection of atmosphere. That is: each deals with atmospheric problems and the ODSs are also GHGs. In addition, they are interrelated and they effect each other, for example: ultraviolet radiation resulting from ozone depletion reduce the capacity of plants and marine species to sequester atmospheric CO₂ and can enhance climate change (Oberthür, 2001). So, in fact, each can serve mutually for the other’s success or failure.

It is also considered that a great number of examples of practice and beneficial lessons for the themes in discussion can be drawn from them.

Lessons learnt from them can be integrated into the analysis of the thesis to map out the possible ways of enhancing compliance.

Finally, linking them to each other and to the issues of compliance, it is aimed to question whether the use of CMs to provide better compliance can be achieved or not.

Main Argument

In the context of the questions asked within the thesis and based on the findings as response to these questions, it is argued that it is necessary to improve the current system through overcoming the weaknesses posed by different aspects

⁷ There are mainly two main categories of treaty obligations, namely the “result-oriented” obligations and the “action-oriented” ones. Action-oriented treaties, such as CITES, Espoo Convention, Basel Convention, Biological Diversity Convention, and the Cartagena Protocol on Biosafety, Convention on Regulation of Whaling, do not set concrete environmental objectives to be achieved within a precise time limit. On the other hand, result-oriented ones, such as the Montreal Protocol-Kyoto Protocol, Stockholm Convention, set precisely defined objectives-time limits and actions to be taken (Beyerlin, Stoll and Wolfrum, 2006).

of the CMs, strengthening the elements that have proved effective and providing stronger coordinated effort between different mechanisms of the MEAs.

Despite the evidence suggested in this thesis, given the difficulties in resolving the major shortcomings in the operation of the present system of CMs and also conflicts and inconsistencies between them because of the lack of strong coordination, it can still be thought that improving of the existing system and strengthening of the coordination between different CMs, can hardly contribute directly to resolving the main challenges of CMs and compliance issue in practice.

This consequence can be partly right on the ground that it is not possible to reach to certain results in social sciences, particularly because of the complexity of social issues.

Also, in resolving issues of more conflictual nature, rather than such mechanisms and their good operation, and also coordinated efforts, but most importantly, the will of states and their choices are the most effective elements in practice. This is because, the functioning of the present environmental system with its all competents depends on the states' agreement on that issue.

However, this research leads to the conclusion that, eliminating the current system's weaknesses-at least decreasing them-, while improving the system and enhancing coordination within the current system, raises as the best way in the current conditions to go forward towards better compliance in the short term and perhaps better environmental governance in the long term.

Table 1: The Relationship Between Compliance and CMs	
For CMs to be beneficial in supporting better compliance with MEAs' commitments	<ul style="list-style-type: none"> • First of all, CMs should establish structures, of which weaknesses have been eliminated(or at least decreased). • Secondly, they should be complemented through ensuring coordination of the CMs of different MEAs.

Even if the improvement of the current system does not necessarily follow that compliance would also get better as a result, compliance naturally (in direct or indirect way) is affected from it positively. If this positive influence can be complemented and strengthened through ensuring coordination and promoting this coordination between different CMs, this leads to better compliance as well. Thus, compliance mechanisms can be used as effective tools providing support for better compliance in the short run and ultimately for better GEG-at least to some extent-, in the long run, since improved CMs have relevance and consequences for GEG generally as well.

So, it is argued that, improved CMs purified from their weaknesses, along with stronger coordination between them, can be key elements for ensuring better compliance in the short term.

CHAPTER II

CONCEPTUAL FRAMEWORK: COMPLIANCE AND COMPLIANCE MECHANISM (CM)

For the purposes of this study on the role of compliance mechanisms (CMs) in improving better compliance, three key questions should be posed at the outset: what does “compliance” mean? what should be understood from compliance mechanism (CM) under multilateral environmental agreements (MEAs)? and what the concepts of MEA and regime refer to?

In fact, in order to enable and facilitate the discussion on compliance and compliance mechanisms under MEAs, it is substantially necessary to clarify what these concepts mean in general, and in the context of this study in particular. Regarding compliance, to understand the concept better, its differences from related concepts such as implementation, effectiveness and enforcement will be elaborated.

2.1 Compliance: Just Conforming to Rules or More?

2.1.1 Related, but different concepts: Enforcement, Implementation and Effectiveness

In order to clarify the meaning of compliance, it is first of all necessary to distinguish it from the related concepts of enforcement, implementation and effectiveness (Faure and Lefevre, 1999; Özer, 2009; Najam, Papa, Taiyab, 2006), since these concepts can be used interchangeably in the literature and this can result in conceptual confusion, and so incorrect analyses and diagnoses on the issues discussed related subjects.

Before entering into the academic debate on these concepts, to have at least a view on their meanings in the established language at the outset, looking to the dictionaries' entries can be helpful as a starting point.

The first concept, enforcement, in dictionaries, is generally defined as “the act of enforcing, compulsion, force applied” (Parker, 2005). Implementation, on the other hand, is stated as “providing practical means for accomplishing something, carrying into effect” (Parker, 2005). The other related concept, effectiveness’s meaning is simply identified as “the quality of being able to bring about an effect” (Parker, 2005). Finally, the concept of compliance is described, among many others, as “acting according to certain accepted standards” (Parker, 2005) and in the dictionary of environmental economy, science and policy, as “the extent to which individuals or firms conform to environmental regulations” (Grafton, 2001:51).

After providing a quick view on what these concepts simply mean by utilizing from their dictionaries’ entries, it can be now easier and more understandable to focus on academic debate on these concepts and to distinguish them stressing their differences from each other, and finally to clarify the meaning of compliance.

Firstly, enforcement is defined broadly (not often preferred in the literature), as “rewards or promises of rewards as a means of strengthening incentives to comply” (Breitmeier, Young, Zürn, 2006:148). In general, as understood from its definition, it is defined as using the tools like financial penalties, the withdrawal of privileges, or trade, military and economic sanctions, if the implementation is not provided, or compliance can not be achieved (Crossen, 2003). That is, enforcement has to involve mechanisms to force the parties of the legal documents (international or national documents, treaties, laws, directions..etc.) to comply and implement (Najam *et.al.*2006). In fact, after non-compliance occurs, it provides the tools to bring the non-compliant parties back to compliance. To force the parties also requires an enforcer, who enforces the partner with efficient tools to comply and implement. As it is known, in the global sphere, there is no government and hierarchical system, also there are even no enforcement mechanisms, enforcers as different from national systems (Raustiala and Slaughter, 2002). Compliance, on the other hand, aims particularly to prevent non-compliance before it occurs. More importantly, it does not always require an enforcer or to be forced to comply with, as it can occur without being forced to do.

Secondly, implementation, from the perspective of law, implies to make international legal documents effective and operative in the national legal system through creating legislation and providing institutions (both domestic and international) and other necessary tools for implementation and enforcement of that legislation (Najam *et.al.*, 2006; Raustiala and Slaughter, 2002). Then, two phases come out as the main elements of the process: adopting national legal measures and enforcing them by creating institutions, or fulfilling other necessities. It is “neither a necessary nor a sufficient” concept for explaining the compliance (Raustiala and Slaughter, 2002:539). Indeed, it is not necessary because compliance can occur automatically if practice in the national system is same with the international commitments without any need for a new regulation in national system. It is not sufficient because implementation does not always produce meeting the requirements and being compliant with the obligations. In brief, implementation can be an important step for reaching to compliance, but, compliance conceptually “goes beyond implementation” (Chayes&Chayes and Mitchell, 1998:39).

In the case of the concept of effectiveness,⁸ rather than the conformity of behaviour to rules, the outcome of this conformity is taken into account. That is, for a rule to be effective, it should lead to prescribed behaviours or outcomes, there should a casual linkage between a legal rule and behaviour. However, compliance “simply identifies a conformity between the rule and behaviour,” yet, “draws no casual linkage” between them (Raustiala, 2000:398).

When the academic literature is examined, it is seen that effectiveness can be defined in various ways according to the discipline based on or to the perspective followed in this discipline and to the subject studied on: as “legal definition (compliance with law)-policy-oriented definition (attaining the goals)-political definition (behavioral change)” (Levy, Young, Zürn, 1995:291-292). In fact, whereas, in law, the emphasis is generally on compliance with laws, regulations adopted to implement, in politics, effectiveness is further focused on and it is tried

⁸ To understand the concept of effectiveness, see also Maljean-Dubois and Richard (2004) on two tests of *efficacité* and *effectivité* (referring to De Visscher (1967). *Les effectivités du droit international public*).

to be measured by the impacts of the adopted documents on behaviours, that is, on behavioural change. In IR, on the other hand, according to the perspective of the scholar, it can be characterized with different set of questions. It can be concerned with achievement of objectives (Najam *et.al.* 2006),⁹ problem-solving, improvement of the situation when compared with the absence of the actions questioned for effectiveness (for example, regarding the effectiveness of a MEA, assessment of the “counterfactual” of what would have happened if it has not adopted (Mitchell, 2007:898-899) or any behavioural change, and if it is related to the environmental issues, environmental changes (Raustiala and Slaughter, 2002). However, neither full compliance with laws nor behavioural change seem adequate to lead to the complete information on effectiveness and to measure it. This is because, a variety of factors can play role in assessing the effectiveness (Raustiala, 2001). To illustrate, Mitchell’s work (2007) on the effectiveness of environmental agreements identifies three indicators of their effectiveness as outputs, outcomes, and impacts. In his work, Mitchell (2007:896) puts forward that as outputs (“laws, policies and regulations that states adopt to implement an environmental agreement and transform it from international to national law”) are not enough to induce the behavioural changes (implying outcomes) and environmental quality change (implying impacts, improvements in environmental problems).

This indicates that, compliance can be “neither necessary nor sufficient” for explaining effectiveness (Mitchell, 1996:25; Raustiala and Slaughter, 2002:539). It is not necessary, as despite the lack of compliance, it can be possible to observe considerable behavioural and environmental change in some cases. Secondly, it is not sufficient, because although there is enough compliance with related rules, agreements.etc., in some cases, only compliance can be inadequate to achieve necessary behavioural change or environmental improvement. For example, many MEAs make compliance easier involving “lowest common denominator dynamic” (Raustiala and Slaughter, 2002:539). Yet, despite this, they can still fall short of inducing behavioural change. Even they can result in behavioural change, there

⁹ Najam *et.al.*(2006) also raises another concept, “performance,” as their study’s main concern, defining it as “the sum of implementation, compliance, enforcement and effectiveness.”

can still be high level of probability for not being able to induce environmental improvement as it can be inadequate to prevent the irreversible environmental harm with these agreements (Mitchell, 1996).

In brief, it can be concluded that, compliance/non-compliance distinction is not always equivalent to the effective-noneffective distinction. Mitchell (2007) demonstrates this argument by analyzing the influence-noninfluence of environmental agreements, and concluding that a strict focus on compliance for measuring effectiveness results in analytically misleading consequences.

2.1.2 Compliance as a Concept Within the Context of the Thesis

Kingsbury (1998:346) argues that “compliance is[....]not a free-standing concept, but derives meaning and utility from theories so that different theories lead to significantly different notions of what is meant by compliance.” However, it can be stated that, as shown above, the concept of compliance is generally understood in the existing literature as an actor’s behaviour’s conformity with legal rules (Chayes&Chayes, 1995; Chayes&Chayes and Mitchell, 1998, 1995, 1994; Fisher, 1981; Jacobson and Weiss, 1998b). These rules can be about procedural requirements like adoption of necessary secondary regulations, establishment of related institutions, agencies, or reporting and monitoring on the compliance, and substantive requirements which are intended to achieve the goals of the legal rules in question, like to control the activity-to stop it-to change the application standards of it ..etc. So, the concept of compliance includes two main dimensions: procedural and substantive dimensions (Breitmeier *et al.*, 2006; Chasek, Downie and Brown, 2006; Crossen, 2003; Jacobson and Weiss, 1998b; Zhao, 2005), but, in evaluating compliance, it is useful to distinguish these two dimensions but also compliance with the spirit of the agreement (Weiss, 1999; Weiss and Jacobson, 2001). In fact, it can also be defined as “upholding the spirit”of the agreement (Najam *et al.*, 2006:46). Yet, when the concept of compliance has been extended to upholding the spirit of the agreement, it makes extremely difficult to make “empirical analysis” (Crossen, 2003; Mitchell, 1996).

In the context of this study, the main concern is compliance mechanisms created by different MEAs (thesis’s case studies involving Montreal Protocol and

Kyoto Protocol) and their role for ensuring better compliance. So, the focus will be primarily on:

1. Exclusively compliance with MEAs’ substantive and procedural requirements, rather than with the broader categories of other non-explicit rules, like principle and norms, excluding upholding the spirit of the agreement, as it introduces “unnecessary subjectivity” into the analysis (Mitchell, 1996:5), or with the environmental commitments in general, which can result in a very broad scope of analysis.

2. Whether actors’ actual behaviour conforms to the agreements’ rules, whether they have changed their behaviour to accord with them (actor here is implied as members of the MEAs, so only states. It is obvious that MEAs can have affect other actors’ behaviour (public-private), yet, “because states and supranational organizations like the EU are so far the only addresses” of those MEAs, here the focus will be on state compliance (Matz, 2006:303)).

3. Treaty-induced compliance (conforming to rules because of MEAs’ compliance mechanisms), so not on coincidental compliance, good faith non-compliance or intentional non-compliance (Mitchell, 1994, 1996, 2007).

Table 2: Concept of Compliance		
Related but Different Concepts		
Enforcement	Implementation	Effectiveness
<ul style="list-style-type: none"> • Broader than enforcement • Not necessarily requires enforcement 	<ul style="list-style-type: none"> • Broader than implementation • Not necessarily requires implementation 	<ul style="list-style-type: none"> • Not necessarily related to effectiveness
In the Context of the Thesis		
<ol style="list-style-type: none"> 1. compliance with MEAs’ substantive and procedural requirements 2. whether states’ actual behaviour conforms to the prescribed behaviour 3. conforming to rules because of MEAs’ compliance mechanisms 		

Overall, in this study, compliance will be used to explain exclusively whether the states’ (party to the related MEA) behaviour conform to the agreement-based

requirements (procedural-substantive), because of MEAs' compliance mechanisms, rather than conform to the broader categories of other non-explicit rules, like principle and norms and upholding the spirit of the treaty. Thus, according to this definition, non-compliance occurs when the states' behaviour departs from the related MEAs' requirements.

2.2 Compliance Mechanism within the Context of Multilateral Environmental Agreements (MEAs)

Before proceeding further, it is also necessary to clarify what the concept of compliance mechanism (CM) within the multilateral environmental agreement (MEA) refer to and how it can be defined in the current study. But before the CM, it is also essential to identify the concepts of multilateral environmental agreement (MEA) and regime.

Multilateral Environmental Agreement(MEA):

First of all, 'Multilateral Environmental Agreement (MEA)' refers to a multilateral treaty adopted between three or more states¹⁰ which "are intended to be all-inclusive in membership and geographic and substantive scope" (Kimbal, 1992:30).

Their institutional arrangements can be described in three ways: the MEA can set up an intergovernmental organizations (IGO) with legal personality, or an existing IGO can serve as the institutional basis for it, or they can have no institutional arrangements at all (Churchill& Ulfstein, 2000). IGOs created under MEAs are quite different from the traditional IGOs, due to their "less formal, more *ad hoc* nature" (Churchill& Ulfstein, 2000:658). Because MEAs are subject to the law of treaties and not to international institutional law, the organs created under them are seen as "self-governing bodies, and thus as informal organizations" (Churchill& Ulfstein, 2000:648).

The CMs under MEAs generally operate through the Committees (ImplCom/ComplCom) created under the NCPs and the following institutions

¹⁰ For a detailed information on MEAs, see Özer (2009: 49-88).

established under MEAs which can be called also as “autonomous institutional arrangements” (Churchill& Ulfstein, 2000): a conference or meeting of the parties (COP/MOP), a secretariat and one or more subsidiary-advisory bodies (technical or scientific bodies) and a financial mechanism. In addition to them, a compliance body (ComplCom/ImplCom) created under the NCPs of the relevant MEAs raises also as an important part of the CMs under MEAs

The Conference of the Parties (COP):

The Conference of the Parties (COP) - the term ‘Conference of the Parties’ was first used in a MEA by CITES in 1973 (Churchill& Ulfstein, 2000)- of each MEA (or the Meeting of the Parties (MOP) of a protocol attached to it, as protocols to MEAs have the same institutional structures) is the plenary and governing body set up by the related MEA.

It does not have a permanent seat, but they regularly (annually or every other year) meet at different places altering according to their decisions. A bureau can also be established by the COP to provide help to it and to lessen its workload.

It is the ultimate decision making-body on all matters, involving both substantive and procedural ones, and also both internal and external ones, related to the functioning of the MEA in question. So, it has a variety of tasks depending on its powers. Its tasks can be summarized under two main spheres: at the internal sphere (like decision-making on procedural or substantive matters and controlling compliance of parties) and at the external sphere (like concluding agreements-capacity for making agreements).

Secretariat:

It is possible to observe various kinds of secretariats established under different MEAs with different tasks and authorities. With respect to CMs and their functions in CMs, they can be examined in two distinct categories: secretariats that are set up as permanent or interim bodies of the agreement (Churchill&Ulfstein, 2000).

The secretariat is assigned to provide services to the bodies of the MEA in the necessary issues for implementing and promoting the provisions of the related

agreement. It assists to them in monitoring and evaluating the compliance of their MEA, in the preparations for the meetings or draft decisions on compliance, and in receiving and analyzing the reports on the implementation of commitments, and also in providing coordination with other international organizations, financial institutions such as the GEF, other MEAs, and so forth. It can also assist to the parties in their preparation for national reports on their compliance with MEA obligations.

Subsidiary Organs:

Subsidiary organs can be established by the MEA itself or after the adoption of the agreement, by a COP decision.

The size of them can be limited to a certain number and their membership can require certain qualifications such as to be qualified expert on the issue (e.g.the Scientific Council of the Bonn Convention (art. VIII (2))).

They are usually created with the aim of providing better functioning of the whole mechanism. So, they can be defined as auxiliary bodies of which mandate is usually restricted with giving advice or financial and technical assistance. Some of them can be entitled on implementation and compliance. Yet, in this case as well, their mandate does not go beyond giving advice and assistance.

Financial Mechanism :

In CMS, resources are generally provided from the general budget prepared and adopted by the COP/MOP which is the only body having competence on financial issues.

In addition to the contributions determined by the budget, also parties' voluntary contributions form the main financial resources. There are also new funding mechanisms like the Multilateral Fund (art. 10, MP), and the Global Environmental Facility(GEF) to improve financial resources. Furthermore, the flexibility mechanisms created for industrialized countries in the Kyoto Protocol (art.12,6,17), namely Clean Development Mechanism (CDM), Joint Implementation (JI), International Emission Trading(IET) also aim to develop new means for financial resources.

Environmental Regime:

The MEAs have been created due to the emergence of the need of international standards in order to deal with environmental problems of worldwide concern, to promote cooperation and to resolve conflicts between states on these problems. The states have established these agreements based on international environmental regimes for nearly past four decades, particularly starting after the Stockholm Conference on the Human Environment (1972), and by agreeing to join to them, they voluntarily opt to subscribe to and obey the ways and means of those accords.

Thus, IEL has been established through the creation of separate environmental regimes within these multilateral environmental agreements (MEAs). In fact, a wide variety of different issue areas such as whales, maritime oil pollution, fishing, endangered species protection..etc. involving massive environmental concerns such as transboundary air and ocean pollution, ozone depletion, and global warming are addressed legally through the formation of these regimes¹¹ in which the basic principle is not to cause harm to other states beyond the limits of national jurisdiction reflecting the notion of international environmental law found in Principle 21 of the Declaration of the Stockholm Conference.

So, here, it is also necessary to understand also what the concept of ‘regime’ refers to.

Regime is defined by Krasner (1983:2) as “as a set of explicit or implicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations.” List and Rittberger (1992) has used the term by adding a further behavioural component to

¹¹ A few samples to the conventions which have established global environmental regimes: International Convention for the Regulation of Whaling, International Convention for the Prevention of Pollution of the Sea by Oil, replaced by the International Convention for the Prevention of Maritime Pollution from Ships (MARPOL), the Convention of Fishing and the Conservation of Living Resources of High Seas, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Long-Range Transboundary Air Pollution, the UN Convention on the Law of the Sea, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Protocol on Environmental Protection to the Antarctica Treaty, the Convention on Biological Diversity, the International Convention to Combat Desertification, the Stockholm Convention on Persistent Organic Pollutants, the Vienna Convention for the Protection of the Ozone Layer, supplemented by the Montreal Protocol, the Framework Convention on Climate Change, and its Kyoto Protocol.

the four normative-institutional elements (principles, norms, rules and decision-making procedures) proposed by Krasner. To this usage, a regime can exist “if a certain density of rules and durability of norm- and rule- guided behaviour can be ascertained” (List and Rittberger, 1992:89, 90). Levy *et al.* (1995:274), on the other hand, present a broader understanding of regimes implying “ international social institutions consisting of agreed upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue-areas.” It is also regarded as “conglomerates of hard law rules (treaties), soft law instruments (declarations and recommendations) and institutions that are indispensable for the effective working of hard and soft law” (Lang, 1992:110).

This way of defining regimes as institutional mechanism specified by a multilateral agreement for promoting the agreement’s objectives has been used predominantly in the literature (Chhotray and Stoker, 2009; Porter *et al.*, 2000). This implies that, regimes combine the characteristics of MEAs and international institutions in themselves; creating a “legal framework” through MEAs (Romano, 2000:86), and “a permanent mechanism for adapting this framework to the new needs of and challenges to the international community” (Romano, 2000:86).

Young (1999b) puts regimes in four categories: regulatory (identifying proscriptions and prescriptions for parties); procedural (establishing regular collective decision-making processes); programmatic (fostering the pooling of parties’ resources for joint projects) and generative (fostering development of new social practices, constructivist concept of the regime implying generating new social practices) (Mitchell, 1996).

It is possible to find out several global environmental regimes which have been usually created in the form of a binding agreement. In particular, on global environmental issues, the most common kind of legal instrument which create regimes has been the convention.

Based on this information on the concepts of MEA and regime, now, attention can be directed to what the concept of compliance mechanism (CM) within the multilateral environmental agreement (MEA) refer to and how it can be defined in the current study.

It should be first of all stated that, it is possible to speak of mainly three types of mechanisms which can ensure compliance (Epiney, 2006). These are:

1. Mechanisms ensuring compliance by confrontational means, including counter measures on the basis of the LoTs, withdrawal of membership's privileges, trade restrictions, responsibility-liability and DSPs (Wolfrum, 1999).

2. Mechanisms ensuring compliance by non-confrontational means, including providing economic benefits to balance environmental commitments, compliance assistance, capacity building (Wolfrum, 1999).

3. Mechanisms which can be defined in neither confrontational or non-confrontational character, "such as information rights or accord standing in internal judicial review procedures" (Epiney, 2006:325).

It is also possible to apply different categorizations for defining CMs, for example, Mitchell (1994,1996) and Faure&Lefevere (1999) mention three parts of any compliance system: a primary rule system, a compliance information system, and a non-compliance response system. Similar to them, Chayes &Chayes consider a mechanism involving dispute resolution procedures, capacity building, transparent information system, treaty adaptation and response systems (Chayes&Chayes,1995; Chayes&Chayes and Mitchell,1998). Main elements involved in CMs are explained in six categories by Beyerlin, Stoll and Wolfrum(2006). These are:1. reporting 2. assessment 3. supplementary means of information-gathering 4. non-compliance procedure 5. options for responding to verified cases of non-compliance 6. institutional setting and procedural safeguards.

Among those, the UNEP's definition can in fact be used as a guiding definition to understand particularly how CMs can be identified in general and should be identified in the context of the thesis.

According to its definition (UNEP, 2007) CMs created under MEAs are designed to encourage compliance by their four components and so have to be identified under these four main components. These are:

1. Gathering information reviewing national performance of MEAs: involves mechanisms for reviewing and assessing the performance of the parties in order to identify compliance problems beforehand.

2. Institutionalised multilateral non-compliance procedures (NCPs): involves institutional structure (ComplCom/ImplCom), powers and functions and procedural phases/guarantees.

3. Multilateral non-compliance response measures: involves appropriate responses (positive and negative) to non-compliance to produce and maintain a sufficient level of compliance acceptable by the parties.

4. Dispute settlement procedures (DSPs): involves traditional means of settling disputes (diplomatic and judicial means).

It should be noted that, some NCPs, setting up provisions relating to two components of this definition (information-gathering, response measures), can already involve these two components in themselves, so, concept of CM can be employed to substitute NCPs as well. On the other hand, UNEP's definition as stated above, in line with the recent tendency defining the CM as "an extension of the defining characteristics of a non-compliance procedure" (Raustiala, 2001:14), rather than merely mentioning the non-compliance procedures as component of the mechanism, also identifies two other components (information-gathering, response measures) explicitly and separately as components of the mechanism. In addition to them, also the DSPs are counted as one of the components of a CM under the MEAs together with NCPs, response measures and gathering information. This is because, the DSPs are "external" mechanisms relying on third parties, while the others are "internal" mechanisms which are "controlled by the parties to the MEA themselves" (Handl, 1997:32, footnote14).

On the other hand, for the purposes of this study, compliance mechanism (CM) is said to be the internal mechanism involving three components of UNEP's definition, information-gathering reviewing the parties' performance, NCPs, and response measures, among which to move back and forth is possible in the process of the functioning of the system. Thus, it excludes DSPs, due to the fact that this definition is supposed to present a more far-reaching definition which promises to show better the internal process in which compliance with MEAs' obligations can be promoted.

It also implies only international mechanism, national implementation and enforcement, and also national measures are not covered by the study.

It should be also underlined that rather than the usage of the concept of non-compliance mechanism(NCM), the concept of compliance mechanism (CM) is preferred to be used consciously. This is particularly because, in a CM, the fundamental purpose is to ensure and promote compliance, thus, to prevent non-compliance before it occurs, rather than to redress the consequences of non-compliance/or to punish the non-compliant parties. So, a compliance system does not concern only with the process after non-compliance occurs (so “intended to broader” than non-compliance system (Raustiala, 2001:13)), but the previous period before it occurs is also remarkably important for it, and also even if compliance is ensured, it seeks the ways for its improvement. That is, CM involves the processes of prevention of potential non-compliance, if compliance is ensured, the promotion of it, if non-compliance (breach of an MEAs’ obligation) is occurred, the application response measures against it, and the prevention of its repetition.

In brief, CM as a concept requires a broader perspective than the concept of NCM. Then, it seems that CMs have been evolved under MEAs in three steps: involving particularly three aims together: reporting-monitoring-verification, preventing non-compliance; an institutional/procedural structure/ assessment on the compliance status within this structure, facilitating compliance; response measures, responding to non-compliance.

Table 3: Compliance Mechanism(CM) as a Concept Employed in the Thesis

- Broader than NCPs(involve also information-gathering, response measures). Narrower than UNEP’s definition (UNEP’s definition involves also DSPs).
- Implying international mechanism built into MEAs, not covering national ones.
- Requiring a broader perspective than the concept of NCM.

So, it is defined as an international-internal compliance mechanism (not NCM) of MEAs involving three components: information-gathering, NCPs, response measures.

In this sense, this thesis exclusively scrutinizes CMs based on the identification summarized in the Table 3 abovementioned. This identification involves the three types of mechanisms of ensuring compliance all together in itself establishing a '*sui generis*' structure for a CM. That is, as seen when CMs's general characteristics are examined in details (see chapter 3), CMs include in themselves both confrontational means (like withdrawal of privileges of membership, trade restrictions and non-confrontational means (like compliance assistance, capacity building), and also some procedural safeguards which are not defined in the scope of confrontational or non-confrontational means.

2.3 Basic Explanatory Models of Compliance

Because compliance is linked to both International Law (IL) and International Relations (IR) in many ways, research on compliance involves a rich diversity with a range of competing theoretical perspectives with their divergent implications arised for explaining compliance, in both IL and IR disciplines. As a detailed review of theories (IR or IL) on compliance issue is beyond the scope of this study, it is here focused on two main theoretical models, management and enforcement models of compliance, which have potential to provide often complementary and beneficial insights into the compliance debate.

The theories examined both from IL and IR literatures show that the most relevant-prominent approaches on compliance debate can be broadly grouped into two categories (INECE, 2009; Raustiala, 2000; Zaelke and Higdon, 2006): the rationalist and normative theories which "represent opposite ends of the spectrum" (INECE, 2009:8). They are based on the distinction introduced by March and Olsen(1998) between respectively two different logics of behaviour, namely, the logic of consequences and the logic of appropriateness (INECE, 2009; Mitchell, 2007).

These theories under two categories all contribute to understand the issue of compliance to some extent, but, neither explicitly focus on compliance mechanisms and MEAs. Rather, they attempt to develop a general theory of compliance with International Law, remaining incomplete and inadequate for explaining CMs under MEAs.

This is particularly because, CMs under MEAs do not always function through one or the other logic. In fact, when these approaches are applied to them, it appears that MEAs can influence the actors' behaviour (actors here are not implied as only states but also others, such as individuals, private actors, businesses..etc.) through both behavioural logics mentioned above. No single logic can fully capture the complex nature of the MEAs and their compliance mechanisms. So, understanding compliance with MEAs requires analyzing both logics.

Within the logic of consequence, MEAs can influence actors' behaviours by signalling that certain actions are in their interests and others are not. Actors's behavioural change occur according to the calculations of costs and benefits of the behaviours. To prevent non-compliance and to improve compliance, this logic suggests to enforce, to deter and to punish.

Within the logic of appropriateness, MEAs can influence actors' behaviours "by signalling that certain behaviours are 'appropriate' and others are 'inappropriate'" for that situation (Mitchell, 2007:902). To prevent non-compliance and to improve compliance, this logic suggests not to punish or reward the actors, but, to provide cooperation and compliance promotion among them.

Which one of these predominate vary according to the type of agreement, parties, process, time and several other factors. Sometimes, one can predominate, sometimes the other, and in some cases, the two logics can mutually reinforce each other (Mitchell, 2007). That is, both logics incorporated to the rationalist and normative theories can provide beneficial comprehension to understand the behavioural change that can lead to compliance (INECE, 2009). March and Olsen (1998:952) already stresses that "the two logics are not mutually exclusive," and any action can involve the features of both logics.

So, the analysis requires to employ a combination of both logics that can shape environmental and behavioral change differently, treating them not as substitutes, but as complements.

Starting with the studies on institutionalism, IR theory has also begun to focus on IR-IL interdisciplinary research. While some scholars supporting the

collaboration between IR and IL for establishing more effective environmental laws and institutions (Abbott, 1999; Brunnée and Toope, 2000; Byers, 1999; Chayes&Chayes, 1995; Keohane, 1997; Mitchell, 2002, Raustiala and Slaughter 2002, Setear, 1996; Slaughter, Tulumello & Wood, 1998; Slaughter Burley, 1993, Simpson, 2000; Young, 1979), others criticize this kind of research as it can undermine the distinctive character of international legal rules or it can facilitate to escape from legal obligations for dominant states (Kennedy,1999; Koskenniemi, 2007). Yet, in spite of criticisms, there has been a trend towards IR-IL collaborative research particularly in international environmental issues, and issues related to compliance has been an important area of this collaboration and interaction between IR-IL scholars.

Management approach of Abram and Antonia Chayes presents one of these attempts aiming to employ a combination of both logics and to make IR-IL collaborative research on compliance issue. As seen in the subsequent sections, their model created for explaining compliance has been very effective on the design of the CMs under MEAs (Özer, 2009). The creation of these CMs is seen as the indication of the managerial approach to compliance. Indeed, Chayeses have provided the movement on the way of a new development in IEL, compliance mechanisms.

This model and its critics by enforcement model have established two basic explanatory models (approaches) on compliance issue and also compliance mechanisms created under MEAs (Özer, 2009). So, it is here necessary to scrutinize these models to understand the functioning of the CMs.

2.3.1 Management Model of Compliance

Regarding the management -or “responsiveness” (Vezirgiannidou, 2009:43) model to compliance, in which “the strong emphasis[is]on prevention and on management-oriented and institutionalized action” (Sachariew, 1991:32)-, it should be firstly stated that, Chayes&Chayes (1995) have created it as “a

synthesizing theory” on compliance gathering together many themes in the IL literature with the insights in IR theory (Raustiala and Slaughter, 2002:543).¹²

Indeed, it is a synthesizing theory in the case that, firstly, in consistent with IL theories, it is assumed that there is a “general propensity of states to comply with international law” (Chayes&Chayes, 1995:3;Chayes&Chayes and Mitchell, 1995:78) originating from three factors: efficiency, interests and norms.

1. Efficiency: Through the established rules and procedures (domestic bureaucracy) mandated by international agreements for compliance, explicit calculation of costs and benefits for every decision is not required, and therefore, transaction costs can be saved. Guzman (2001) here criticizes Chayes& Chayes in that transactions costs can be saved by many other strategies that can lead to similar cost savings, like to be based on the available evidence, or to invest in information gathering, and when the optimal amount of information is gathered, to base the decision on that information, without any presumption in favor or against compliance.

2. Interest: States are free to choose the international agreement to enter or to not enter, after assessing it whether it is in their interests or not, as they are consent-based legal documents. In addition, negotiation process enables the actors to make interest-based calculations and to form their positions against the agreements. Another opportunity which facilitates compliance is that these agreements generally provide their parties to participate to the regimes created under them, “attending their meetings and responding to the requests” (Chayes&Chayes, 1995:22), thus, they can open the ways of amendments in accordance with the shifts in parties’ preferences over time.

¹² Keohane (1997) also tries to reconcile two divergent perspectives of compliance, naming them as the instrumentalist (interest-based) and the normative optic (legitimacy-based). He argues that neither the normative or instrumentalist optic adequately can be enough to explain compliance, so, interests, reputations and institutions should be taken as common for both optics in an attempt to synthesize the two optics. See (Zaelke and Higdon, 2006) also for the view on “blending normative and rationalist theories” (Zaelke and Higdon, 2006:383).

3. Norms: Norms induce a sense of obligation in states to comply with international law forming the “foundation for much of the compliance with international treaty rules” (Chayes&Chayes and Mitchell, 1995:79). To exemplify, one of the major norms of the international law, *pacta sunt servanda*, states’s efforts to prepare, negotiate, and monitor international agreements, and also the voluntariness of signing the agreements all provide pressure for compliance (Chayes&Chayes, 1995;Chayes&Chayes and Mitchell, 1995).

Despite all these, if there is still non-compliance, this stems either deliberate non-compliance or from treaty language which does not capture the real meanings of the issues discussed in the bargaining and negotiation processes, or the problems in formulating the rules “to govern future conduct” (Chayes&Chayes, 1995:10).

To Chayes and Chayes(1995), deliberate violation of international law or international agreements is not a rule, but an exception. That means, for them, in general, states, acting in good faith, prefer not to violate the international legal obligations. In violations other than deliberate violation, non-compliance is “due to inadvertance or incapacity” (Chayes&Chayes and Mitchell, 1995:80), occurs mainly because of three reasons (Chayes&Chayes, 1995:9-17):¹³

¹³ As an additional note, reasons of non-compliance has been explained differently by different scholars. To exemplify, for Chasek, Downie and Brown (2006) non-compliance can be traced to several different types of factors including the inadequate translation of regime rules into domestic law, insufficient capacity to implement, enforce or administer relevant domestic law, a lack of respect for rule of law, the high relative costs of compliance, inadequate financial and technical assistance, the inability to monitor compliance, poorly designed regimes, and the large number of environmental conventions and the confusing and uncoordinated web of requirements they have produced. Breitmeier, Young and Zürn(2006), stressing the necessity of examining first the extent to which non-compliance is voluntary or involuntary and second whether non-compliance amounts to a substantial challenge to the rule in question or whether it essentially involves a technical problem, differentiate four sources of non-compliance: cheating, ambiguity/impreciseness of a prescription, norm considered wrong, lack of capacity to implement non-compliance, by examining first the extent to which non-compliance is voluntary or involuntary and second whether non-compliance amounts to a substantial challenge to the rule in question or whether it essentially involves a technical problem. Each of four sources non-compliance corresponds to a specific theoretical perspective on compliance: incentives, legalization, legitimacy and reponsiveness, which have clear links to IR theories: Incentives-rational institutionalism, legalization and legitimacy- liberalism and social constructivism, responsiveness-theories stressing discourses and communication. Sand(1996) mentions three primary reasons for non-compliance: treaty ambiguity-incertitude of treaty standards, lack of state capacity-incapacity of states to meet treaty commitments and changing circumstances-inflexibility of treaties in the face of changing circumstances. Mitchell(1996) indicates non-compliance as a preference, due to incapacity, due to inadvertence as sources of non-compliance.

1. Ambiguity: Treaty language and the complexity of the treaty can create ambiguity. If the norms, rules or procedures in the treaty are not clear, it requires interpretations and when it is interpreted, different parties can adopt different positions to the same rules.

2. Capacity limitations: States may be out of compliance with an agreement because they lack the resources to establish domestic regulatory mechanisms. This is especially true for developing countries which involve capacity limitations to carry out their commitments. They lack the necessary scientific, technical bureaucratic and financial resources to build effective domestic regulatory mechanisms.

3. Temporal dimension: Treaties are designed to persist over long periods of time, so, there can be “considerable time lags” (Chayes&Chayes, 1995:15) between commitments and the implementation. For adaptation to changing conditions, new instruments can be required, but they can not be responded by states instantly. So, transition periods can be necessary for leading to high level of compliance.

Management model is a synthesizing theory in the case that, secondly, in consistent with institutionalism, it underlines the importance of the role of the law which is played in the performance of functions such as coordination, monitoring and enforcement, and stresses the importance of international institutions and treaties in performing these functions (Danish, 2007:222).

Moreover, management model claims similar views with the constructivist approach as well. In fact, it is proper to argue that “constructivism provides a natural complement” (Brunnée, 2003:261) to management model. For example, they claim that states comply with an agreement’s obligations not merely in return for its functional benefits, but also because participation in different international regimes and legal process (as a result of “New Sovereignty” (Chayes&Chayes, 1995:123, 127;Chayes&Chayes and Mitchell, 1995:75) can form an “iterative

process of discourse” (Chayes&Chayes, 1995:25) or, “justificatory discourse” (Chayes&Chayes, 1995:26). The iteration from signature to ratification and also from convention to the protocol can be enough to provide adherence to commitments, and contributing to transformation of states’ identities and interests, can lead to international cooperation (Setear, 1996). So, even though international environmental agreements rarely incorporate enforcement mechanisms, compliance with them can be high (Barrett, 2003).

Constructivist account on compliance which is labeled as transformationalist model by Downs, Danish and Barsoom (Downs *et al.*, 2000) can be found in much of the literature on international environmental regimes like Young’s works studying on not only the states’s benefits from regimes, but also on regimes’s social and constitutive impacts (the impacts of legitimacy, capacity, socialization, legalization and standard operating procedures(SOPs)) (Young, 1999a).

Besides its features making it a synthesizing theory, its other important feature which is making it more important for this study, is its proposal to establish a compliance management mechanism which has been quite influential on the design of the CMs under MEAs. This mechanism involves transparent information system (reporting-monitoring-verification), dispute settlement, capacity building, adaptation, responses.

1. Transparent Information System: Ensuring transparency firstly requires the development of data through the reporting of the state on its compliance problems which is not only crucial for resolving the existing non-compliance problems, but also the possible ones beforehand. In fact, according to the problem that the states have (e.g.financial problem, technical inadequacy..etc.), they are granted by remedies and thus can resolve it before it results in non-compliance. In addition, it includes assessment of information on actors’ behaviours under the agreement, collected from various sources and verification, both through state verification systems (formal) and informal checks from other states, nongovernmental organizations or other interest groups.

2. Dispute Settlement: The improvement of dispute resolution procedures provides both to solve the problem of ambiguity on the meaning of norms and to have a compulsory conciliation with nonbinding recommendations determining the required performance of the disputants in the particular cases. Thus, by both maintaining the principle of sovereignty, and not forcing parties to accept the decisions, conciliation can be reached and a broad range of disputes can be addressed. In most cases, as international agreements involve a large number of “informal mediative processes” (Chayes&Chayes, 1995:24;Chayes&Chayes and Mitchell, 1995:84) or a designated body’s (often the secretariat or a legal committee) authoritative or semiauthoritative interpretation (if agreement is managed by an organization), to apply to dispute settlement is even not required.

3. Capacity Building: It can involve technical and financial assistance and advice for helping to manage the capacity deficit in technical, bureaucratic capability and financial resources. This assistance and advice can be required for helping the states (particularly developing ones) to enact legislation in accordance with the conditions of an international agreement, to implement this new legislation in practice, to improve scientific facilities, to enhance data systems, to train national enforcement officials..etc..

4. Adaptation-Revision: Agreements need amendment (formal amendment or protocol approach) to be able to adapt to economic, technological, social and political changes. In these amendments, some parties, who do not want the amendments’ entry into force, can block them. In order to overcome this problem, agreements should provide adaptation and amendment without “long ratification delays” (Chayes&Chayes and Mitchell, 1995:87).

5. The Response System: Producing different responses to different types of non-compliance can also be used as a way of eliciting changes in actors’ behaviours for inducing compliance.¹⁴ But, management strategy argues against

¹⁴ For the different types of response systems- punitive, remunerative, preclusive, generative, cognitive or normative systems-, see Mitchell (1996).

“hard-edge enforcement tools” like sanctions, and adjudication-style dispute mechanisms (Danish, 2007:226). So, the response to violation of the norms should not be penalty, but to be excluded from cooperation network. This is particularly because, the most important influence on parties’ compliance choices is to ensure their engagement as members of the network of interdependent regulatory regimes in this ongoing process of justification and persuasion (see also Slaughter, Tulumello and Wood, 1997). Also, enforcement tools prevent the dialogue required for “transformation, consensus-building and identity convergence” (Danish, 2007:226).

Chayes&Chayes argue that, the above mentioned elements of management strategy have merged into a broader process of persuasion. In this process, the violator parties are tried to be persuaded to change their behaviours through discourse among the parties, the agreement’s organization, and the international community.

Moreover, for Chayes&Chayes (1995), strict compliance with an agreement is neither necessary nor possible on every occasion, as compliance is not an “on-off phenomenon” (Chayes&Chayes, 1995:17). Therefore, an acceptable level of compliance¹⁵ including “deviance within acceptable levels” (Chayes&Chayes, 1995:17) can be allowed by the parties as long as this deviant behavior does not prevent others’ taking benefits from the agreement and does not result in the agreement’s collapse.

Overall, as Chayeses see ambiguity in agreements, incapacity and time lags between commitment and performance as the main sources of non-compliance, they argue that, instead of focusing on enforcement, international institutions and international law should seek to manage compliance using normative and

¹⁵ Levels of compliance can be explained in four categories: weak compliance, moderate compliance, substantial compliance and no action taken to comply(very rarely in practice). While weak compliance means that the country had taken some actions to implement and comply with the obligations accepted under the treaty, but those actions fell significantly short of what required, moderate compliance means that the country had taken appropriate action to implement the treaties and was in compliance with most of the obligations. It has been generally the result of ineffective or weak administration. Substantial compliance, finally, means basically fulfilling obligations though there may be minor infractions. However, it should be underlined that there is no objective standard for determining acceptable level of non-compliance, it changes according to the agreement, the context, the behavior of parties, time and political process (Jacobson and Weiss, 1998a:518-520).

institutionalist tools to enhance the compliance capacity of states. They claim that “[a]s a practical matter coercive economic-let alone military- measures to sanction violations cannot be utilized for the routine enforcement of treaties....The effort to devise and incorporate such sanctions in treaties is largely a waste of time” (Chayes and Chayes, 1995:2), as “intentional noncompliance is infrequent” (Chayes&Chayes and Mitchell, 1995:80) and sanctions for coercive enforcement are too costly and are too difficult to mobilize (Brunnée and Toope(2000:46) similarly define them as “adversarial, backward-looking and coercive”). So, for them, the enforcement model of compliance (or “sanctions-driven enforcement strategy” (Danish, 2007:226)) is misconceived, and it should be replaced with their management model, relying on a problem-solving, cooperative approach instead of a coercive one.

2.3.2 Enforcement Model of Compliance

Challenging management theory (later, it also challenges transformationalists), enforcement theory of compliance emphasizes the central role of enforcement in providing, maintaining and securing compliance (Downs and Jones, 2002; Downs *et al.*2000; Downs, 1998; Downs *et al.* 1996).

Within this theory, it is argued that, the necessity of enforcement varies according to the “nature of the underlying game” (Downs,1998:322). In a coordination game, enforcement is not relevant, but, in contrast, it is relevant in connection with the repeated Prisoner’s Dilemma or mixed-motive game where states benefit from collective cooperation, but also have incentive to defect from it. The theory also suggests that the optimal enforcement strategy vary depending on the nature of good being regulated, the quality of available compliance data and utility certainty, so, it does not assume that when enforcement provisions are present, they exactly embody Tit-for-Tat or any other principle of reciprocity, but, depending on the conditions, it is possible to embody different enforcement strategies (Downs, 1998:327-328).

Scholars adopting this theory, Downs, Danish and Barsoom(2000) find it necessary to analyse management approach and transformationalists seperately, while they are explaining their responses to the critiques towards enforcement

theory. This is because, for them, the theorists in the management tradition contend that “formal enforcement provisions are almost irrelevant,” those referred as transformationalists, on the other hand, argue that “enforcement is worse than irrelevant” as it causes counterproductive impact on the “evolution of cooperation” by reducing the willingness of states to participate to the regimes and by developing an adversarial environment among member states of regimes (Downs, 1998:319).

To transformationalists, participation in a regime has the potential of changing the preferences of the states and thus, of leading them to socialize and prefer “ever-increasing levels of cooperation” (Downs, 1998:336). There are basically four design principles facilitating this transformationalist process: 1. maximizing the number of members participating in the institution, 2. establishing only soft commitments as initial obligations, 3. requiring consensus for decision-making, 4. providing compliance control by dispute avoidance and compliance management rather than coercive enforcement mechanisms (Downs *et al.* 2000:472-477; Downs, 1998:336). However, Downs *et al.* argue that there is little evidence showing that changes in states preferences are usually brought by transformational forces that those argue (Downs *et al.* 2000; Downs, 1998).

In response to the management approach, they also argue that, both ambiguity and incapacity which are arisen as the main reasons of non-compliance by management school, may not be as disconnected from deliberation (Downs, 1998; Downs *et al.*, 1996), due to the fact that states can choose deliberately the ambiguity of agreements that they make, and incapacity that they employ in connection with a given agreement.

For the scholars advocating the enforcement theory, if compliance with an international agreement is high, this implies that, that agreement requires not more much from the states to do, than they would do in the absence of that agreement. That is, the agreement involves no meaningful condition to change state behaviour or to force it to do something, so involves “shallow cooperation.” Downs *et*

al.(1996) shows specifically, the Outer Space Treaty,¹⁶ and the Seabed Arms Control Treaty,¹⁷ and the Montreal Protocol and Mediterranean Plan/Barcelona Convention,¹⁸ as examples to support their views on the existence of “shallow cooperation.”

Victor (1999:152) also agrees with Downs *et al.*(1996) that, some sort of enforcement measures can sometimes be required, particularly when the cooperation is deep and incentives to violate the agreement are high. However, he also stresses the importance of internal public pressure from environmental groups and robust legal systems (transnational legal process) in encouraging compliance “to enforce international commitments from inside (ground-up) rather than outside (top-down).” In addition, like Downs *et al.*, he also reveals the high compliance rate of MEAs by “shallow cooperation,” and supports his claim by referring to the dominance of “the lowest common denominator” in international cooperation (Victor, 1999:153) and the 1985 Sulfur Protocol¹⁹ of which provisions on sulfur oxide emissions were already adopted under by several countries prior to its conclusion.

In short, this theory argues that high compliance with international agreements is the indicator of the shallowness of that agreement. This is because, when an agreement calls for a significant change in behaviour, in other words, when the regime deepens and increases the demands, both the gains from cooperation and incentives to deviate from the agreement increase (Downs *et al.*, 1996). As a result of these increases in both the gains and deviances, to deter non-

¹⁶ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. Retrieved May 6, 2010 from <http://www.un.org/en/globalissues/atomicenergy/agreements.shtml>.

¹⁷ Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in The Subsoil Thereof. Retrieved May 6, 2010 from <http://www.un.org/en/globalissues/atomicenergy/agreements.shtml>.

¹⁸ Convention for the Protection of the Mediterranean Sea Against Pollution. Retrieved May 6, 2010 from <http://www.unepmap.org/>. See also Skjørsh (1993) for an analysis from international relations theory considering the effectiveness of the Mediterranean Action Plan.

¹⁹ Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Per Cent. Retrieved May 6, 2010 from http://www.unece.org/env/lrtap/status/lrtap_s.html.

compliance and to sustain cooperation, the free-rider problem has to be resolved through stronger sanctions (retaliatory, monetary, political or reputation-based punishments). So, in deeper regimes requiring deeper cooperation which require states to do something differently,-that is, more much than they would do in the absence of that agreement-, stronger enforcement tools should be used to be effective (Downs *et al.*1996). Deeper cooperation can be rendered without much enforcement only if “there [has been] less incentive to defect from a given agreement...[such as] changes in technology, relative prices, domestic transitions” (Downs *et al.*, 1996: 397-398).

2.3.3 Management Model vs. Enforcement Model

Chayeses’s management approach, “rejecting reliance solely on a material enforcement strategy,...in favor of a social enforcement strategy” (Downs *et al.*, 2000:487), have some features which make it close to the enforcement approach.

In fact, Alter (2003) stresses that, in both approaches, the necessity of enforcement tools, -many different types of international and decentralized sanctioning mechanisms can meet the enforcement strategy’s “political economy theory” (Downs 1998: 320), like reciprocity, sanctions and the threat of withdrawing inducements-, to facilitate compliance is accepted. However, the difference is that, of these enforcement tools, Chayeses (1995:2) see using enforcement strategies such as coercive sanctions as “a waste of time.” In addition, in both strands, it is accepted that, in coordination problems, cooperative solutions can result in effective compliance without enforcement tools, as in these contexts, self-interest can ensure following the common standards to utilize the benefits of international coordination.

As seen in those studies mentionedabove, both approaches have similarities, but at the same time, basic differences particularly regarding the reasons of non-compliance and the forms of sanctions (either in the form of coercive economic or military, or in the form of social enforcement) (Crossen, 2003:33). More importantly, there can be some missing elements regarding other forms of free-riding like non-participation in both approaches’ analyses. Barret (2007, 2003) stresses this deficiency of both management and enforcement approaches. He

argues that, while Chayes&Chayes consider compliance and participation as separate problems, Downs *et al.*(1996), on the other hand, fail to distinguish the punishments necessary for participation from the punishments necessary for compliance. For Barret, participation and compliance can be different phenomena, but, if an agreement is to change behaviour, it should be capable of deterring both non-compliance and non-participation. As a matter of fact, non-participation is more important due to the fact that, “if non-participation can be deterred then non-compliance can easily be deterred” (Barret, 2007:251).

Then, when it is asked which approach provides better results in order to promote compliance, and thus improve environmental quality, it is not easy to give a definitely right answer to this question. In their comprehensive study, namely, “Analyzing International Environmental Regimes: From Case Study to Database,” Breitmeier, Young and Zürn (2006) try to test these different approaches empirically through an International Regimes Database (IRD).²⁰ As a result of the analysis, as consistent with the enforcement approach, they conclude that, enforcement mechanisms increase compliance (Breitmeier *et al.*, 2006:78). Regarding management approach, they find that, the mechanisms produced by the approach like giving different obligations to different members, granting transition or grace periods and using capacity building as a tool for improving compliance do not facilitate compliance, on the contrary, worsen it (Breitmeier *et al.*, 2006: 104-110).

However, they argue that, their results can not be shown as a justification to dismiss the management approach, as their sample may be biased, or their variables can be not adequate to cover all aspects of the perspective, as they remain isolated from other potential influences of compliance (Breitmeier *et al.*, 2006:110). Furthermore, the queries that they made about the impact of

²⁰ The International Regimes Database (IRD) contains information for more than 50 states and the EU, and 23 regimes: Antarctic, Baltic Sea, Barents Sea Fisheries, Biodiversity, CITES, Climate Change, Danube River Protection, Desertification, Great Lakes Management, Hazardous Waste, Inter-American Tropical Tuna Convention, Conservation of Atlantic Tunas, International Regulation of Whaling, London Convention, ECE Long-Range Transboundary Air Pollution, North Sea, Oil Pollution, Protection of the Rhine Against Pollution, Ramsar (Wetlands), Protection of the Black Sea, South Pacific Fisheries Forum Agency, Stratospheric Ozone, and Tropical Timber Trade (Breitmeier *et al.*, 2006).

compliance mechanisms on goal attainment and problem-solving show that, the management approach to compliance is far more dominant in international environmental regimes than enforcement approach²¹ (regarding goal attainment in 94.1 percent of the cases, regarding problem-solving in 89.4 percent of the cases) (Breitmeier *et al.*, 2006: 182, 189-236). That implies, international environmental regimes do not rely heavily on enforcement measures to elicit compliance (only make use of procedures featuring the issuance of notices of violation which usually do not lead to the imposition of sanction), but, instead, rely on capacity-building measures and management approach, and through employing them, they lead to the improvement in both problem-solving and goal attainment in most of the cases.

Young (1979) also thinks that, the management approach to compliance should be preferable to enforcement, as it is the simple way to rely on enforcement rather than understanding the complex relationship between compliance and behavior. For Young and his colleagues, the reliance of regimes further on capacity building and on management approach than enforcement approach supports their “social-practice perspective” on regimes, because this “reflect[s] a strategy designed to draw individual regime members into an increasingly dense network of relationships that give rise to a situation in which compliance becomes an automatic response rather than a matter requiring an assessment of costs and benefits on a case-by-case basis” (Breitmeier *et al.*, 2006:187).

Young and his colleagues also identify several mechanisms operating to influence state behavior in their work aiming to analyze international environmental regimes (Breitmeier *et al.*, 2006). Indeed, challenging the distinction between the LoC and the LoA, they point to the significance of three sources of behavior: the precepts of a knowledge system or a discourse,

²¹ Enforcement, in fact, is “a multi-faceted concept than often assumed-it encompasses a wide spectrum of means for “compelling compliance” with law” Brunnée, 2006:23). However, it is generally and narrowly defined as “imposition of of legal sanctions, or penalties” (Brunnée, 2006:23). It should be stressed that, enforcement is here taken as “a matter of using threats and punishments to attain results, mechanisms featuring promises and rewards are not coded as cases of enforcement” (Breitmeier *et al.*, 2006: 189).

perceptions of legitimacy, habits or standard operating procedures (Breitmeier *et al.*, 2006:234-35). They argue that all these mechanisms influence the effectiveness of regimes, actors are motivated by not only self interest, enforcement and inducements, but also pressure from society, legitimacy, knowledge system and habits, and that the degree of influence varies across different regimes.

Based on their findings, they conclude that, neither the depth or shallowness argument of enforcement model nor the management approach of Chayeses can render a fully-understanding on the patterns of compliance with international environmental regimes. “[A] composite perspective” (Breitmeier *et al.*, 2006:110) that integrates “incentive mechanisms, juridification, participation of transnational NGOs in the rule-making process, and a responsive approach to the development of compliance mechanisms over time” (Breitmeier *et al.*, 2006:112), raises as a necessary means of ensuring and strengthening compliance with international environmental regimes.

In line with this approach, in practice as well, many international environmental regimes aim not only to promote their “utilitarian” impacts on states (Breitmeier *et al.*, 2006:149), but also aim to deepen “nonutilitarian” (Breitmeier *et al.*, 2006:149), impacts (legitimacy, capacity, socialization, legalization and standard operating procedures(SOPs)) to maximize the opportunities for shared normative understandings, for normative interaction and processes for states to justify their conducts (Bodansky, Brunnée and Hey, 2007).

As a consequence of all those discussions on the issue, it can be argued that, an attempt like Breitmeier *et al.*'s study aiming to test them, can not be admitted as a fully adequate empirical evidence which expresses that one is better than the other, or it is the most or least effective in promoting compliance, altering behaviour, and thus, in providing environmental improvement.

This is firstly because it is not easy “to establish causality in social sciences” (Klabbers, 2007:1004) because of complexity and pluralism inherited in social issues which can sometimes involve multiple and irrational actors in contrary to be assumed generally in theories and so can feature processes that are not easy to understand. The scholars themselves already accept their findings involve

“tensions” (Breitmeier *et al.*, 2006: 236), and they express “the need to move beyond conventional assumptions about the behaviour of actors” (Breitmeier *et al.*, 2006: 238). In addition, because it is difficult to assess compliance in regulatory regimes, as there is no predetermined criteria valid for all regimes, and the present ones are “either quite vague or difficult to identify” (Mitchell, 2007:912). More importantly, to accept one of these approaches as the best one, can result in “ignor[ing] a large variety of ways by which [M]EAs influence state behaviour” (Mitchell, 2007:911), as “in many cases, [M]EAs have components of both models and in others their components do not readily fit into these oversimplified categories” (Mitchell, 2007:911).

All these findings yield the following conclusion, then: it is not possible to lead to an exact conclusion that one approach is better than other one in improving compliance. Depending on the problem and its conditions, each can explain different aspects of compliance processes. Under some circumstances, only management approach or enforcement approach can be used, or under some others, they both can be used in a “proper balance” (Zaelke and Higdon, 2006:383). So, in some cases, instead of abandoning the one for the sake of the other, it appears more appropriate to put emphasis on interaction between these two approaches and try to synthesize them. However, in some others, neither of them can be adequate to explain the situation in which pressure from society, legitimacy, knowledge system and habits or standard operating procedures should be required to be taken into account in line with the views of Young’s social-practice perspective.

Table 4: A Comparative Table on Two Models of Compliance	
Management Model	Enforcement Model
Similarities	
<ul style="list-style-type: none"> • Both are basically interest-based models (but management model has been enriched through constructivist accounts) • Both use regime-generated information to convince or force states for compliance • Both accept the necessity of enforcement tools to facilitate compliance (but, management model is more facilitation-oriented) • Both accept cooperative solutions can result in effective compliance without enforcement tools in coordination problems • Non-participation raises as a missing element in both approaches 	
Differences	
Facilitation-oriented: facilitation is key to compliance	“Sanction-oriented” (Brunnée, 2006:7): using enforcement strategies such as coercive sanctions is the key to compliance
LoC+LoA: Both logics are applied	LoC is dominant logic
Regarding CMs it is expected to find a relationship between the success of MEA and the operation of CMs, not necessarily working through the use of penalties.	Regarding CMs it is expected to find a relationship between the success of MEA and the operation of CMs, which are necessarily capable of generating penalties.
Reasons of non-compliance: non-compliance occurs mainly because of three reasons: ambiguity, incapacity, time lags	Reasons of non-compliance: many violations may not be as disconnected from deliberation, as states can choose deliberately the ambiguity and incapacity.
Forms of sanctions: They argue against hard enforcement tools like sanctions.	Forms of sanctions: It is possible to embody different enforcement strategies which can also involve hard enforcement tools.
Which one is best ?	
Keeping in mind that, management model has been the most effective on the design of the CM specifically with constructivist insights that it has involved over time, it seems more appropriate to assess each case in its own conditions, and to employ one of them, or both of them depending on those conditions.	

* Prepared on the basis of gathered and submitted information in the context of the thesis.

In short, because of the differences among accords and countries, different strategies can work better in different circumstances. So, different approaches can be required for different countries, depending on their features with respect to compliance. The most appropriate strategy to induce compliance by a particular country can also change over time if the country's features change. Yet, it should be kept in mind that, in the current system, combining the two approaches (management approach-enforcement approach), dominantly leaning on the management approach in the short period, and thus, making compliance internalized by the members in line with the Young's social practice approach (Breitmeier *et al.*, 2006; Young, 1999a) which can be led through the ways of management approach in a longer period, raises as the best way, instead of leaning on merely harder mechanisms in line with the enforcement approach.

CHAPTER III

COMPLIANCE MECHANISMS(CMs): A GENERAL OVERVIEW

Here, two important points, first of all, should be indicated regarding the way of examination which will be pursued in this part:

- Firstly, in line with its definition given in the second chapter, CM will be taken with its three components complementing and supporting each other: gathering information on the parties' performance, NCPs, and response measures.

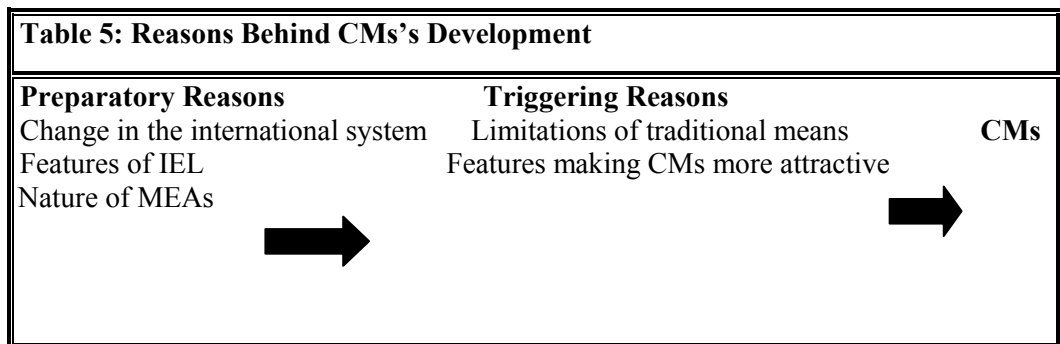
- Secondly, the purpose here is not to make an overall-comprehensive examination of all MEAs and their CMs established so far. It is already so difficult, as each “self-contained”²² (Churchill and Ulfstein, 2000:633; Dagne, 2007:23; Koskenniemi, 2006:65; Koskenniemi, 1992:34) or “tailor-made” (Bodansky, Brunnée and Hey, 2007:23; Brunnée, 2006:22; Széll, 1995:108) MEA has different characteristics, and the CMs in different MEAs can vary depending on the agreement itself and its particular characteristics (Montini, 2009). Therefore, it is not possible to identify a common structure which can be resorted to for all MEAs and their CMs.

However, the CMs in different MEAs share some common elements in each component. Therefore, in this part, the aim is, taking into account these common elements in each component, to present just a general overview on the system of these new complex CMs and their functioning. Yet, before this overview, as a background information, it is questioned why these CMs have come about to the global agenda. While making this survey, the limitations of the traditional means in the compliance issue and the basic features of the CMs making them more preferable to invoke in the eyes of the MEAs' parties are also discussed.

²²See also Dagne (2007) for detailed information on the self-contained regime approach (together with harmonized approach) as one of the approaches to settling disputes.

3.1 Development of Compliance Mechanisms: Reasons Behind Their Development

Development of compliance mechanisms and reasons behind their development can be demonstrated briefly through two types of reasons: preparatory (involving the change in the international system and the concept of sovereignty, features of IEL and MEAs) and triggering reasons (involving the limitations of traditional means and the features making CMs more attractive and preferable).



Preparatory Reasons:

The instruments relied on to protect and enhance the environment have so far reflected the dominant position of sovereign states in both the development and implementation of environmental law and politics. However, in recent decades, the international system based on sovereign states and the concept of sovereignty have altered in many aspects. Particularly, in IEL, the concept of state sovereignty involving two notions, 'territorial integrity and sovereignty,' in itself, can not be revoked absolutely.

In addition, because environmental law has distinct characteristics from other fields of international law (Bodansky, Brunnée and Hey, 2007; Hunter, Salzman and Zaelke, 2002; Lang, 1995), it has addressed not only local, national but also global problems. And, if the issues at stake are of a common or even global nature, environmental problems can concern a great number of actors, not only all states, but a great number of other related actors. This is particularly because, IEL

does not reflect only the interests and concerns of states, but also common concerns and interests of the whole world community. This results in the interdependence between states which necessitates cooperation between them for addressing collective environmental concerns, and allows the application of special treatment for developing and least-developed states through the principle of common but differentiated responsibilities (Bodansky, Brunnée and Hey, 2007; Hunter, Salzman and Zaelke, 2002). That is, although it is generally accepted that, the responsibility for global environmental problems such as global warming, ozone depletion belong more much to the industrialized countries rather than developing countries, the cooperation of all countries (even if they have different responsibilities) in the world is essential to lead to the effective solutions on these problems. This cooperation is to a large extent provided by MEAs based regimes today (Bodansky, Brunnée and Hey, 2007). The main roles are granted to the states in these regimes as well. Indeed yet, even if IEL and also IEP has been to a large extent shaped and improved through a process of inter-state negotiation, that is, “inter-State cooperation” (Hunter, Salzman and Zaelke: 2002:446), nonstate actors and also sub-state actors have also played significant roles in that process (Bodansky, Brunnée and Hey, 2007; Hunter, Salzman and Zaelke, 2002). Furthermore, in line with the fact that “many international environmental problems have significant impacts that are difficult to reverse” (Hunter, Salzman and Zaelke, 2002:457), preventive approach and so “preventative dispute avoidance” (Potzold, 2009:4), instead of “ex-post evaluation” (Enderlin, 2003:155) after the breach or damage has occurred, has become more important and become more favoured in principle in IEL. In fact, in contrast to the traditional means concentrating on dispute settling, it “focuses on the management of environmental problems leading to disputes” (Romano, 2007:1038).

The nature of the MEAs has been also another preparatory reason of the creation of the CMs within MEAs. MEAs are often related to common environmental issues producing global benefits or costs for the whole world community rather than individual interests or costs for any one state. Indeed, non-compliance with a MEA can often damage the interests of the whole world

community, rather than those of any one state. So, non-compliant act of the state can not always be linked smoothly with the injury of another state. Within MEAs, it is indeed difficult, even impossible, to recourse to “the traditional paradigm of bilateralism” (Handl, 1997:34) so, to establish the “casual link” between the injured state or states and non-compliant act of another state (Wang and Wiser, 2002:182). So, MEAs do not involve reciprocal obligations as different from bilateral agreements.

Triggering Reasons:

In recent decades, the limitations inherent in the traditional means of settling disputes and ensuring compliance, such as Law of Treaties, state responsibility and DSPs, have begun to be questioned further and they begun to be found steadily more ill-equipped. All discussion on these limitations have raised the need for the creation of new mechanisms with features making CMs more attractive and preferable to be applied for. In fact, the insufficiency of traditional means and dissatisfaction with them has increasingly motivated the emergence and continuing growth of new mechanisms to address environmental concerns in the management of relations between the contracting parties of the MEAs and in the settlement of the present (and also probable) environmental problems between them (Beyerlin, Stoll and Wolfrum, 2006; Churchill and Ulfstein, 2000; Tanzi and Pitea, 2009; Wang and Wiser, 2002).

It is not within the scope of this study to exhaustively deal with the various aspects of each of these traditional means, yet, merely to clarify their limitations. So, here, each’s limitations will be explained with its significant aspects very briefly.

The Limitations of Traditional Means

Law of Treaties(LoT):

According to Vienna Convention on the Law of Treaties, art. 60, para. 2,²³ if there has been a material breach of a multilateral agreement(for the definition on

²³ Vienna Convention on the Law of Treaties. Retrieved September 13, 2010 from http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

material breach, see paras.3(a) and (b)) by one of the parties, the other parties unanimously can suspend its operation partially or fully, or can terminate it. To this, the party specially affected by the breach has also the same right for suspending it in whole or in part in the relations between itself and the defaulting state. Moreover, any party other than the defaulting state can use this right either, but only if the material breach seriously changes the position of every party with respect to the further performance of its obligations under the agreement.

Here, there are two main points that should be stressed expressing that the LoT does not render effective means to enhance compliance: First of all, it is generally not feasible to determine any one party specifically affected by a breach in MEAs. Secondly, to suspend the agreement is not accepted as a good way of responding to the non-compliance in both intentional and unintentional compliance. This is because, by this way, it is rather unlikely to bring back the non-compliant party to compliance. To illustrate, if there is an unintentional compliance, that is, if the breaching state is generally willing to comply with the provisions of the agreement, but it is unable to comply because of its incapacity, compliance can not be provided by the suspension of the agreement (Matz, 2006). On the other hand, if the state in question does not already want to comply with the agreement, compliance can not be elicited again by withdrawing it from the agreement. Remarkably, MEAs mainly aim to address environmental problems including global significance and common interest, to take the non-compliant part out of the obligations of the agreement undermine seriously this aim. So, it should be argued that, when MEAs are concerned, the application of this measure raises as a “contrary to the objective pursued” (Urbinati, 2009:80) in the MEAs of which basic target is “global membership” (Faure and Levefere, 1999:152). In addition, excluding the party from the agreement prevent its supervision in environmental matters covered by the MEA and can result in worse environmental situation in the related party. So, while punishing the non-compliant party by expulsion, it can in effect punish all the parties, perhaps all world community, as the environmental effects more often go beyond borders.

Responsibility of States:

According to the International Law Commission (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001,²⁴ all acts or omissions of a state in breach of an international obligation which are attributable to the state under international law (art.2), entail the international responsibility of that state (art.1). However, in general, state responsibility (also liability) is also viewed as inappropriate for inducing compliance with MEA obligations protecting the global commons (Birnie, Boyle and Redgwell, 2009; Crossen, 2003; Ehrmann, 2002; Fitzmaurice, 2007; Koskenniemi, 1992; Sand, 1990).

This is firstly due to the difficulty in identifying a casual relationship between the state injured by violation of an MEA obligation and the state that has caused the damage particularly in case of transboundary environmental damages (Crossen, 2003, 2004; Ehrmann, 2002; Koskenniemi, 1992; Werksman, 1998). Secondly, it is also difficult to identify reparation involving restitution, compensation, and satisfaction (arts.34-37) which is determined as the legal consequences of the responsibility for environmental damage. Thirdly, it is nearly impossible to apply them for irreversible-irreparable environmental damages (Koskenniemi, 1992). Fourthly, there is no institutional mechanism designed for specifically addressing compliance problems in the context of the state responsibility (Stephens, 2009). In addition, the states usually are reluctant to bring their claims about the others' responsibility. In fact, the Chernobyl and Sandoz accidents which resulted in huge transboundary pollution were not brought before judicial mechanisms by the victim states. So, the Trail Smelter case between the US and Canada has remained "the only case where a state has been found legally responsible for failure to prevent transboundary pollution" (Bodansky, Brunnée and Hey, 2007:9). Finally, state responsibility covers only the states' activities as the responsible of the environmental damages, yet, does not cover the private activities. The development of civil liability regimes, "recognis[ing]the reality that most environmental problems are caused by private

²⁴International Law Commission (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts. Retrieved September 14, 2010 from http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf.

conduct rather than state activities” (Stephens, 2009:80), can be shown as a cure to this challenge. Nevertheless, experience with existing civil liability regimes also express the inappropriateness of these regimes for environmental issues involving transboundary concerns, due to the fact that they restrict “such regimes to the relationship between an offender and the one whose rights have been infringed” (Wolfrum, 1999:85).

Dispute Settlement Procedures (DSPs):

MEAs include provisions for settling disputes. Like provisions relating to compliance mechanisms, those relating to dispute settlement systems differ according to different MEAs as well. However, on the basis of Rio Declaration and the UN Charter,²⁵ it is possible to scrutinize DSPs generally in two groups:²⁶ 1. diplomatic means, such as negotiation, good offices, inquiry, mediation, conciliation,²⁷ and 2. “judicial” (Ehrmann, 2002:381) (or “legal” (Sands, 1996:74) or “adjudicative” (Romano, 2000:91)) means, such as arbitration and judicial settlement.²⁸ Even though all these means available for ensuring compliance and resolving disputes have considerably improved over time, it is still controversial whether they are well-equipped to deal with the environmental issues, due to the problems inherited within them such as 1. disharmonic dispute settlement clauses, 2. fragmentation and cluster litigation, 3. competing and parallel legal regimes, 4. multiplication of actors and levels (Romano, 2007:1045-1054).

Of these different means, in practice, it is generally observed that diplomatic ones are further revoked than judicial means and further supported by MEAs. This is particularly because, they are more flexible and cooperative, as mostly based on the consensus of the parties. Yet, they can be ineffective in practice, because of having no compulsory nature (Charney, 1996).

²⁵ Principle 26 of the 1992 Rio Declaration clearly sets out that states have to “resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.” Art. 33(1) of the UN Charter states that the settlement of disputes can be provided “by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

²⁶ See (Sands, 1996:71-80) for the details on dispute settlement.

²⁷ See (Romano, 2000:46-65) for the details on diplomatic means of DSPs.

²⁸ See (Romano, 2000:91-129) for the details of judicial means of dispute settlement.

Judicial ones (arbitration/judicial settlement), on the other hand, are usually found inadequate in the field of environmental law in general, and in MEAs specifically.

To illustrate, the ICJ, as a permanent court, is the principal judicial organ of the UN and all members of the UN are automatically parties to its Statute (art.92, 93 (1), UN Charter). Its jurisdiction consists of “all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force” (art.36 (1), ICJ Statute). So it has power on all aspects of IEL, and it is feasible to bring questions arisen regarding environmental issues before it. However, only states have direct access to the cases before the Court (art.34(1), ICJ Statute) and it has no compulsory jurisdiction independent from the consent of the states (see art.36, ICJ Statute for four bases on which the Court's jurisdiction can be founded).²⁹ So, given the acceptance of its compulsory jurisdiction by only sixty-seven states³⁰ with reservations, it becomes clear that, its success depends, to a large extent, on the attitude of states (Petersmann, 1999). To grant access to the ICJ by non-state actors can be quiet influential for “depolicizing international adjudication” (Petersmann, 1999:783). Yet, it requires reform on the ICJ Statute and of the UN Charter, and such a reform “seems to be *unrealistic* at the moment” (Rest, 2000:43)

Its decisions which are binding for the parties to the case become final and without appeal when given (art.59 and 60, ICJ Statute). Yet, the Court does not have to provide the enforcement and implementation of those decisions. In fact, there is no international mechanism which can exercise those functions in international law.

It also issues non-binding advisory opinions on any legal question when requested by states and the General Assembly or authorized organs of the United Nations (art.65, ICJ Statute). However, as they are not legally binding, they can

²⁹ On consent to ICJ's jurisdiction, see details on (Brownlie, 2003:682-690).

³⁰ For the Declarations Recognizing the Jurisdiction of the Court as Compulsory, see <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3>.

only have “the practical value” (Kolari, 2002:57) for environmental issues, if they they are adopted and implemented in practice.

The ICJ also has the power to indicate provisional measures which should be adopted immediately pending the final decision to preserve the rights of the parties to a dispute (art.41(1,2), Statute). These measures can play quite important role in cases concerning environmental protection due to the “irreparability of environmental damage” (Sands, 1996:77). However, it has been usually criticized because of being unsuccessful in either dispute settlement or compliance of environmental questions (Hempel, 1996; Scwabach, 2006), even when the will of both states are rendered for the process.

When all these are considered together with the facts that; ICJ proceedings tend to be slow (Aust, 2000; Kolari, 2002; Wang and Wiser, 2002), expensive (Downes and Penhoet, 1999) and “inherently confrontational, thereby posing political risks to bilateral relationships” (Wang and Wiser, 2002:182), it is often seen as having little or no effect in more specialized areas like protection of the environment. In fact, though *ad hoc* Chamber for Environmental Cases was established in 1993 (art.26(1) ICJ Statute), up to now, no case has been brought to the chamber, so the Court decided not to hold elections for a Bench for that Chamber in 2006.³¹ The ICJ has considered relatively few cases with environmental aspects,³² yet, for the first time, decided about an issue particularly relevant to environmental problems with Gabcikovo-Nagymaros case in 1997.³³

³¹ The ICJ, Chambers and Committees, see at <http://www.icj-cij.org/court/index.php?p1=1&p2=4>.

³²The ICJ has considered/or still considering the following cases with environmental aspects to date: Nuclear Tests (Australia v. France and New Zealand v. France), Certain Phosphate lands in Nauru (Nauru v. Australia), Legality of the Threat or Use of Nuclear Weapons, Fisheries Jurisdiction (Spain v. Canada), Gabcikovo–Nagymaros Project (Hungary/Slovakia), Judgment, Maritime Delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), Request for an Examination of the Situation in accordance with par.63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests(New Zealand v. France), Pulp Mills on the River Uruguay(Argentina v. Uruguay), Aerial Herbicide Spraying (Ecuador v. Colombia), Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). See at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=2>.

³³ ICJ, Gabcikovo-Nagymaros Case, Judgment of 25 September 1997, ICJ Report, 1997. <http://www.icj-cij.org/docket/files/92/7375.pdf>. For the details see (Güneş, 2006: 91-116).

But, contrary to the expectations, in this case, the court failed to examine what the concepts and principles of environmental law are, and only advises to make cooperation referring to the principle of sustainable development.

As an additional information, it should be known that a dispute arisen in the area of IEL can be brought before international courts other than the ICJ for solution. Indeed, different courts can have a role in resolving disputes arisen with relation to international environmental agreements, such as the International Tribunal on the Law of the Sea (ITLOS) established under Annex VI of the United Nations Convention on the Law of the Sea (UNCLOS),³⁴ the Permanent Court of Arbitration (PCA) set up under the Hague Convention for the Pacific Settlement of International Disputes of 1989, the European Court of Justice (ECJ), and courts established by numerous regional human rights treaties-most notably the European Court of Human Rights (ECtHR).

The UNCLOS has “what is probably the most detailed, comprehensive, and complex dispute settlement clause ever” (Romano, 2007:1041). Indeed, it has a “flexibility” (Schiffman, 1998:9) and a “highly consensual nature of Part XV” (Schiffman, 1998:9) which assures several options for states for settling their disputes through informal procedures such as conciliation, arbitration or formal ones like applying to the court. Nonetheless, particularly in the field of environmental protection, it is observed that little activity thus far has occurred under Part XV (arts.279-299, UNCLOS) establishing the dispute settlement system of the Convention (Schiffman, 1998).

It is argued that the International Tribunal on the Law of the Sea (ITLOS), when compared to ICJ, is faster in giving decisions and more eligible “to bear greater specialist expertise” (Downes and Penhoet, 1999:16) on the disputes concerning the interpretation or application of the UNCLOS. Decisions of ITLOS (also decisions given under second section(art.296, (1), (2)) are final (art.33(1), ITLOS Statute³⁵) and have a binding force, but only between the parties and in respect of that particular dispute at issue like the ICJ decisions (art.33(2), ITLOS

³⁴ See United Nations Convention on the Law of the Sea (UNCLOS) at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

³⁵ ITLOS Statute, at http://www.itlos.org/documents_publications/documents/statute_en.pdf.

Statute, art.59, ICJ Statute). It can also establish special chambers for particular categories of disputes like Sea Bed Dispute Chamber available for disputes regarding deep seabed mining (arts.14, 35-40, ITLOS Statute, arts.186-191, UNCLOS). The parties to the Convention can submit disputes concerning the protection of the marine environment (UNCLOS Part XI, XII) to the ITLOS (art.20, ITLOS Statute).

In practice, it is seen that it has decided a large number of cases regarding environmental issues, and has increased its role on environmental questions over time.³⁶ However, it is also seen that, its contribution to the law remains still restricted to the issues relating to prompt release cases, provisional measures pending the establishment of an *ad hoc* arbitral tribunal (Serdy, 2005) and the nationality of ships (Rayfuse, 2005).

Some MEAs can also rely on *ad hoc* arrangements like PCA rather than on standing bodies for dispute settlement. Its “flexible” structure, offering four different dispute settlement methods, inquiry, mediation conciliation and arbitration (art. 33, UN Charter), can make it more favourable for the parties (Rest, 2000:51).

Its Optional Rules for arbitration of disputes relating to natural resources and/or the environment was issued in 2001 (and optional rules for conciliation of disputes relating to natural resources and/or the environment was adopted in 2002).³⁷ Some innovations brought with its Draft Rules -like making available the

³⁶ ITLOS, to date, has considered the following cases involving environmental questions: Southern Bluefin Tuna Cases (New Zealand v. Japan, Australia v. Japan) (provisional measures), Camouco Case (Panama v.France) (prompt release), Monte Confurco Case (Seychelles v.France) (prompt release), Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community) (provisional measures), The MOX Plant Case (Ireland v. United Kingdom) (provisional measures), Volga Case (Russian Federation v. Australia) (prompt release), Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v.Singapore) (provisional measures), Juno Trader Case (St. Vincent and the Grenadines v.Bissau) (prompt release). See at: <http://www.itlos.org/index.php?id=35&L=999999.9>.

³⁷ PCA, to date, has dealt with the following cases involving environmental aspects: Past cases; North Atlantic Coast fisheries Case (Great Britain v.United States of America), MOX Plant case(Ireland v.UK), OSPAR Arbitration(Ireland v.UK), Protection of the Rhine Against Pollution by Chlorides, Arbitration in Application of the Convention of 3 December 1976 and the Additional Protocol of 25 September 1991, Iron Rhine Railway(Belgium v.Netherlands) arbitration, Chemtura Corporation (formerly Crompton Corporation) v. Government of Canada. Pending Cases; Bilcon of Delaware et al v. Government of Canada, Indus Waters Kishenganga

rules for the use of all parties who have agreed to apply them, providing for the optional use of a panel of environmental, or a panel of arbitrators, ordering any interim measures necessary to prevent serious harm to natural resources and the environment- are also raised as supporting elements to the potential role of the PCA in contributing to an improved judicial settlement of environmental disputes. In considering its potential role in the settlement of environmental disputes, some also argue that until an IEC with compulsory jurisdiction comes into existence, the PCA “could be the appropriate forum to settle environmental disputes” (Rest, 2000:50). However, these Draft Rules require further amendments particularly on the problems of “exhaustion of local remedies,” “waiver of immunity” and “legal access and *ius standi* of “non-state actors” and individuals” (Rest, 2000:56).

The ECJ (also Court of First Instance (CFI)) has jurisdiction over environmental disputes³⁸ which can be brought before it by its member states, organizations (such as the Commission, Parliament) and even nongovernmental organizations and individuals (see arts. 257-281, EEC Treaty on the Court, and arts.191-193 on the environment). Its decisions are legally binding, and in general it is observed that compliance with its decisions is highly ensured (Downes and Penhoet, 1999). Nevertheless, according to the restricted regional field of application of European Law, their jurisdiction does not go as far as what is desirable for global environmental protection (Rest, 2000; Romano, 2007).

Several cases that had an environmental aspect have also appeared before the European Court of Human Rights (ECtHR). Any individual, NGO or group of individuals have the right to bring complaints about the violation of the Convention (arts.33, 34, ECHR). Its jurisdiction is compulsory and its decisions are binding for all parties to the Convention (art.46, ECHR). Yet, the complainant must have exhausted all available local remedies prior to revoke to the Court (art.35(1), ECHR). Before having exhausted this “time-consuming, thorny procedure,” the complainant can not have access to the Court (Rest, 2000:48).

Arbitration (Pakistan v. India), The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland. See at: http://www.pca-cpa.org/showpage.asp?pag_id=1029.

³⁸ See the list of the leading cases and judgements of the ECJ on environment, at http://ec.europa.eu/environment/legal/law/pdf/leading_cases_2005_en.pdf.

As more related to the environmental issues, as the Convention does not include a provision particularly on the protection of environment, when the judgements are examined, it is observed that they are given generally as regards to articles (right to life) and 8 (right to privacy) of the Convention, and not have involved aspects peculiar to the right to environment and its protection.³⁹

The International Criminal Court (ICC) has also the competence to decide on war-crime cases which has brought before the Court because of “widespread, long-term and severe damage to the natural environment” emerged from a military attack (art. 5, art.8, para.2, (b), (iv), ICC Statute). However, as this does not provide comprehensive protection of all elements of the environment by the Court and the extension of its jurisdiction to prosecute environmental crimes, its competence on environmental matters remains in “theoretical” manner on “war-crime cases which entail environmental dimensions” (Maljean-Dubois and Richard, 2004:27).

Finally, the WTO DSP is also noteworthy to mention here, as it has an original character when compared with other DSPs. It is based on a system established by WTO Understanding on the Settlement of Disputes (DSU), which renders compulsory and binding settlement of disputes arising under WTO agreements. Its aim is to lead to the “prompt” (art.3.3, DSU) solutions which are “mutually acceptable” to the parties and “consistent” with the covered agreements (art.3.7, DSU). This aim is reflected with its some features, such as its strict time limits on the duration of proceedings (e.g.12.8, DSU), specific deadlines for intermediate steps in dispute settlement process (e.g.art.5.4, DSU, art.8.7, DSU, art.16.1, DSU, art.16.2, DSU..etc.), “quasi-automatic[ity]” (González-Calatayud and Marceau, 2002:277; WTO, 2001:23) in adoption of panel reports, the Appellate Body, its well-qualified and experienced panelists (art.8.1, DSU)and members (art.17.3, DSU), and the possibility of imposition of the suspension of trade concessions or the provision of compensation as measures, provisions aiming to facilitate compliance, such as notification requirements, counter-notifications, transparency,

³⁹ See the factsheet on environment-related cases in the Court’s case law, January 2012. Retrieved February 7, 2012 from http://www.echr.coe.int/NR/rdonlyres/0C818E19-C40B-412E-9856-44126D49BDE6/0/FICHES_Environnement_EN.pdf. For the details on the ECtHR and the right to the environment, see also (Turgut, 2007).

committees for the review of the operation of the related agreement. These features enabled it to be viewed as one of the most effective DSP when compared with the dispute settlement provisions of the WTO with those in the MEAs (WTO, 2001).

When it is examined in terms of environmental cases brought before it, it is seen that, Article XX of GATT (art. XX, GATT, (b), (g), (chapeau)) involves exceptions regarding environmental concerns to trade obligations of the agreement. So, even before the WTO Agreement, there have been cases related to environmental issues.⁴⁰ Of these, particularly Shrimp-turtle case should be emphasized as the first one, that WTO DSP has started to take into account environmental concerns (Cameron, 2005; UNEP, 2005; WTO, 2011; WTO, 2008), while there was less tolerance to environmental issues from 1990 to 1998 (e.g. Tuna Dolphin Case) (Charnovitz, 2005b).

However, the decisions of the WTO DSP on the issues related to the environmental concerns is generally criticized, as it does not sufficiently pay attention to them. To improve the WTO DSP in environment-related cases, there are several recommendations, like the involvement of MEA secretariats, use of environmental experts, to be able to refer to the ICJ where rights and obligations outside of the WTO sphere are applicable (yet, requires the amendment on art.23, DSU), to increase the use of art. 5, DSU methods (mediation, conciliation and good offices)-as they require the agreement of all parties to the dispute, they are rarely used-, and the establishment of an environment advisory board consisting of experts to which the parties to the dispute have to resort before formal DSPs (González-Calatayud and Marceau, 2002). However, all these recommendations still remain to be controversial.

Overall, given the considerations mentioned above, it is not difficult to guess that DSPs' judicial means, like diplomatic means, are rarely used in practice either (Charney, 1996). Even Stephens (2009:346), arguing the "flourish of international

⁴⁰ For the term before the WTO Agreement, Tuna Case (US vs. Canada), Salmon and Herring Case (US vs. Canada), Cigarettes Case (US vs. Thailand), Tuna case (US vs. Mexico), Tuna Case (US vs. EEC), Automobiles Case (US vs. EEC); for the term after the WTO agreement, Gasoline case (US vs. Brazil, Venezuela), Shrimp Turtle Case (US vs. Malaysia, India, Pakistan, Thailand (joint case) and Asbestos case (EC vs. Canada), can be counted as examples (WTO, 2004).

environmental litigation,” accepts that he makes this evaluation taking an expansive definition involving all disputes including at least one issue of environmental protection.

The reasons behind this fact can be summarized at follows:

1. To challenge another state by taking it before a court is often regarded as an “unfriendly act,” (Brownlie, 2003:693) and states usually do not want to damage their relationships by initiating court proceedings against other states (Faure and Lefevre, 1999).

2. Their proceedings are regarded as costly, slow and troublesome (Kolari, 2002), (Charney, 1996).

3. The absence of an enforcement and monitoring mechanism which can provide the implementation and compliance of their decisions also restricts the influence of judicial decisions.

4. Judicial decisions do not prevent the damage before it occurs, but, use measures such as restoration of the previous situation or compensation after it occurs. Given the irreversible character of environmental damages, they do not meet the needs of environmental protection. DSPs of MEAs mostly include judicial means that do not refer to compulsory-binding mechanisms -“exception: ITLOS and the Fish Stocks Agreement”- (UNEP, 2007:12, 120).

It can be argued that, what is needed here is the establishment of an International Environmental Court(IEC) (Pauwelyn, 2005; Rest, 2000) with mandatory jurisdiction, as existing international courts cannot offer an “optimum solution” for environmental problems (Rest, 2000:35) and cannot guarantee the rights of non-state entities on environment (Rest, 2000; Romano, 2000). However, there are also strong arguments showing that, the establishment of a separate IEC can not be the best option, and result in some other problems (Hey, 2000). So, the establishment of an International Environmental Court(IEC) also remains still as a controversial issue and requires to be further discussed.

In sum, DSPs (particularly judicial remedies) are usually “confined to the facts of a specific dispute,” [they] cannot deal with the whole or part of a broader environmental problem” (Guruswamy and Hendricks , 1997:59). In addition, they are confrontational and adversarial and are designed for bilateral disputes (in

particular, judicial means, but, diplomatic means either). Yet, environmental problems are often multilateral in nature. So, in case of violation of an obligation, it is hard to define two sides of the dispute. Remarkably, if the violation does not stem from deliberate non-compliance, but rather lack of inability or incapacity, to address non-compliance through DSPs (particularly through judicial means) becomes also more problematic, and this situation better explains why CMs are more preferred than DSPs in MEAs.

The Features making CMs More Attractive

The features all above mentioned have raised the need for the creation of new mechanisms with features which can cope with these limitations/at least reduce them. They expose also the distinct characteristics between the CMs (particularly the NCPs in these mechanisms) and DSPs in many aspects (see table 6).⁴¹

They can be briefly summarized in the followings:

1. Main purpose: The CMs' main purpose is to identify why non-compliance has occurred and what parties' compliance difficulties are, to suggest ways and means by which the noncompliant parties can satisfy their commitments, re-establish and facilitate better compliance, thus, having a "forward-rather than backward-looking" (Handl,1997:34) to provide "the future integrity of the regime" (Handl, 1997:34).

2. Main approach: CMs are based on preventive approach aiming to determine the possible non-compliance and to prevent it before the damage has occurred through cooperation between parties(Klabbers, 2007; Tanzi and Pitea, 2009). When one of the parties is faced with the procedure submitted against it, it seldom does not cooperate, so, it can be seen as "compulsory in nature" (Klabbers, 2007:999). The parties, usually developing states, are also provided by assistance on technical transfer or capacity-building to promote compliance or to terminate the activities resulting in non-compliance. This is also seen as "new

⁴¹The features' list is compiled utilizing the following articles: (Beyerlin *et al.* 2006; Eritja, Pons and Sancho, 2004;Handl, 1997; Jacur, 2009;Klabbers, 2007;Montini, 2009; Pineschi, 2009;Tanzi and Pitea, 2009; Treves, 2009;Ulfstein and Werksman, 2005; Wolfrum, 1999).

conditionality” (Lang, 1995:288,289) which has to be applied as the price paid for the participation of developing countries.

3. Type of paradigm: The instruments-procedures used in the CMs are not based on the traditional paradigm of bilateralism, building on the bilateral relationship between the non-compliant party and the directly injured party.

4. Terminology: Commitments of the parties to MEAs (rather than obligations), non-compliance/compliance (rather than breach/violation) consequences/response measures (rather than penalties/sanctions/penalties) are the terms which are preferred to be used in CMs.

5. Basis for their application: The existence of a party’s failure to comply with the obligations set out in the MEA or of potential non-compliance is enough to commence the NCPs of the CMs, breach and direct damage is not necessary.

6. Initiation of the mechanism: Each party (even the non-compliant itself), even not suffered, can initiate the CM. It is not necessary to direct to it any party. So, CMs are admitted as non-confrontational and non-adversarial mechanisms (Milano, 2009).

7. Institutional Structure: CMs are not judicial mechanisms in general (Pineschi, 2009;Tanzi and Pitea, 2009), so, they function as “part of the political institutions” (Sands, 2006:357), and “on the basis of more pragmatic rather than legal considerations” (Pineschi, 2009:488). However, two CMs can be defined as quasi-judicial with their features similar to judicial procedures. One of them is the CM under International Treaty on Plant Genetic Resources (ITPGRFA)⁴² (art.21) which offers “a gradual formalization or judicialization of the non-compliance procedure” (Klabbers, 2007:999-1000). The other one is the CM under the Kyoto Protocol, with its provisions on the admissibility of complaints (art.VII), procedural guarantees(art.VIII), the possibility of appeal (art. XI), possible consequences of non-compliance (art. XV) and with its enforcement branch(EB).

8. Decision-making: In principle, political body(for example:meeting of the parties) has been entitled to give decisions on compliance issues. But, in some cases, quasi-judicial body, such as Enforcement Branch functioning under the CM

⁴² See the text of the treaty (ITPGRFA), at: <ftp://ftp.fao.org/docrep/fao/011/i0510e/i0510e.pdf>.

of the Kyoto Protocol, makes decisions on any issue in question within the mechanism.

9. Consequences: Flexible approach is dominantly employed, allowing to apply one or more response measures (positive or negative) among a variety of consequences. Their response measures basically aim to facilitate rather than enforcing the parties in line with their objectives.

In order to make the differences between DSPs and CMs more understandable and visible, here, they will also be revealed in a summary table below.

Table 6: Differences Between DSPs and CMs		
	DSPs	CMs
Main Purpose	to settle the dispute, to find impose penalties to the offender	to identify parties' compliance difficulties, to establish and facilitate compliance
Main Approach	dispute settlement	dispute prevention-avoidance
Type of paradigm	bilateralism	multilateralism
Terminology	- obligations - breach - penalties or sanctions	-commitments-requirements - non-compliance - consequences/response measures
Basis for their application	the causality between the breach and the damage	no requires breach or injury to a state party
Initiation of the mechanism	directed to another party, confrontational and adversarial	not directed to any party, non-confrontational and non-adversarial
Institutional Structure	judicial-or quasi-judicial bodies	non-judicial bodies (in principle)
Decision-making	judicial or quasi-judicial body	political body (in principle)
Consequences	penalties, sanctions	response measures (positive or negative)

* Prepared on the basis of information gathered in the context of the thesis.

To conclude, these features of CMs, making the states more willingful to use them rather than using DSPs, have raised the CMs as more appropriate ways of settling disputes and ensuring compliance. In fact, it has been observed that, in the recent term, states have often preferred to resolve the environmental matters “in-house, and more informally” through CMs, instead of resorting to traditional means (Potzold, 2009:5).

3.2 Main Components of CMs

3.2.1 Gathering Information on the Parties' Performance

In order to go further in details regarding performance review information, it is firstly essential to distinguish it from “operational information” and “overall regime review” (UNEP, 2007:24). Of those, operational information stems from operational obligations of the parties to the MEAs and is provided by exchanging information between parties on environmental conditions, technologies...etc. Overall regime review, on the other hand, is a different form of performance review, but, it focuses on the regime's overall performance rather than a particular party's performance. Then, performance review information should be defined as reporting of the parties (generally as annual reports) on the measures that they have invoked to meet with the obligations of the MEA in question. It can either contain information on the overall importance of the MEA, or information on the implementation of its specific provisions (Sachariew, 1991). Yet, it is usually prepared on the basis of the specific provisions of the MEA concerned.

These different types of gathering information are all inter-related, as data provided by operational information exchanges can be also used for parties's individual performance review. In addition, it is not possible to lead to the overall regime performance without determining the individual parties' performance. So, they can be used as supplementary information, yet, none of them can substitute the performance review information, because none of them provide the assessment of the national environmental responses to MEA obligations.

Performance review information, in general, is rendered by self-reporting of the each state party to the MEA. The commitment to reporting stems from the MEA itself or from a decision adopted by the organ created by the MEA. It is

often made regularly on the basis of standard criteria (if provided) regarding the state's performance in the adoption of necessary measures ("legislative, administrative, technical and other measures") to comply with the provisions of the MEA concerned (Sachariew, 1991:43).

When the performance reports are submitted, they are generally sent to the secretariats which forms another report based on the submitted one. This consolidated report prepared by the secretariat are sent to the competent body of the MEA (MOP/COP or ComplCom/ImplCom) for their discussion and assessment.

The functions of the performance review information can be counted in brief in the followings (Beyerlin *et al*, 2006):

1. Its results can be beneficial to understand whether there is a violation of the related MEA's requirements or the threat of violation, whether targets of the related MEA have been met, and what the related party's past and present compliance problems are.

2. It can lessen the free-rider⁴³ problem making all parties know about each other's situation. In fact, through each party's reporting on its own performance, while the reporting party learns about its own situation, it also learns about the others' performance as well. This provides the information to the parties about whether their own compliance can be interrupted by free-riding, or not.

3. Its results can serve for determining future priorities of the party for compliance to struggle with its problems and to prevent them before they occur, providing a "dialogue" (Beyerlin *et al*, 2006:363) between the competent body of the MEA and the reporting party.

4. It produces the basic data for monitoring (observation of the activities forming that data) and verification (controlling on the straightness of that data).

Monitoring and verification should be distinguished from reporting. While reporting implies the examination whether necessary measures are adopted by the related party to meet the MEA's requirements as detailed above, monitoring

⁴³ Free-riding implies the deliberate attempts to escape the costs of meeting the requirements of the related MEA. It emerges in two ways: a state may prefer not to participate to that MEA to escape its own costs, but to benefit from other parties' efforts (non-participation), or may prefer not to meet its requirements (non-compliance) (Hovi, Froyen and Bang, 2007; Kolari, 2002).

entails their “continuous observation” (Sachariew, 1991:34), and verification means to evaluate the completeness-straightness and certainty of information gathered on compliance.

Through monitoring, the degree of compliance with international environmental requirements can be evaluated and existing environmental standards can be promoted based on its data which can be used as “scientific criteria” (Sachariew, 1991:35) for that promotion. On-site monitoring⁴⁴ can also be used for verification with the consent of the parties (Wang and Wiser, 2002).

5. Finally, it should be underlined that, because of the non-adversarial/non-confrontational character of the CMs, the aim of the reporting processes (self-reporting, monitoring, verification) under MEAs is to find out the compliance problems, to prevent them, or to help the non-compliant parties to cope with them rather than blaming the parties for alleged non-compliance or determining the cases of non-compliance (Treves, 2009a, 2009b) and to adopt specific measures towards the party at stake.

3.2.2 Non-compliance Procedure (NCP)

The Legal Basis of NCPs

NCPs can be established either by the agreement itself, or when the MEA is already in force, in a protocol thereto and sometimes, following a decision by the contracting parties, that is, by MOP/COP. To illustrate, the NCP of the MP was established through a MOP Decision (MOP 4, Decision IV/5, 1992) on the basis of articles 8 and 11(3.d) of the MP, not through an amendment of the Protocol itself or an annex to the Protocol. The method followed in the KP reflects a “compromise solution” (Fodella, 2009:358) that could be employed to the other

⁴⁴ It should be noted here, under MEAs, on-site visits (on-site monitoring or on-site inspections) have not been very much dominant, as they are still heavily debated particularly due to the principle of state sovereignty (Faure and Lefevre, 1999), or some other reasons depending on the features of the related MEA, e.g. under the MARPOL, countries do not want inspections in their ports since they make them less attractive for oil tankers than the neighboring ports (Mitchell (1994). Yet, very recently, it is possible to see the samples of them under some MEAs, like the Ramsar Convention on Wetlands, Montreal and Oslo Protocols. See also Bothe (2006) for the view that as long as the transparency increases and the role of NGOs in submitting information increases, site visits become less important.

mechanisms. It stipulates the adoption of a decision on a provisional basis, with the view of adopting a subsequent amendment afterwards, if necessary. In fact, according to the art.18, KP, the MOP should approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of the Protocol and also develop an indicative list of consequences for the effective operation of these procedures. Based on this provision, the provisions regarding such a procedure were established by a decision of the COP (COP 7, Decision 24, 2001), and then approved by the MOP (MOP 1, Decision 27, 2005a). The same article also stipulates the amendment to the Protocol for the adoption of any procedures and mechanisms entailing binding consequences.

Following the way of the adoption of the procedure in the form of a decision (MOP 1) makes its operation faster and more flexible, but at the same time it can make its binding status blurred. In fact, it is now controversial what forms the binding status of the procedure, as it can be argued that merely the treaty (the protocol as well) under international law can be accepted as legally binding, but the decisions by the MOP can not. Yet, against this argument, it is also possible to raise the view that as the cooperative approach is dominant for its practical application, it is not considerably important to discuss its binding status (Ehrmann, 2002).

With respect to the NCP created on the basis of COP/MOP decision, two different legal basis of the competence of COPs to create NCPs can be mentioned. The first one is 'enabling clause' set out in an agreement provision which clearly provides a task to the COP/MOP to perform. The second one stems from general provisions of the agreement, when it is not clearly stated in the agreement. Yet, the absence of clear provisions on the power of COP to establish these procedures makes complicated the question on the binding effect of the COP decisions establishing them.

If the mechanism established by COP decision is a soft one, that is, if its outcomes would be non-binding, cooperation with the other parties and to respect the agreement in good faith necessitates to meet with the decision. However, if it is a harder mechanism of which outcomes would be binding in the sense of

creating obligations beyond the agreement, the issue becomes more complex to resolve (Fodella, 2009). The doctrine of implied powers can be thought here to be invoked, but, particularly for decisions creating hard mechanisms, it also can not be applied for these mechanisms which are still based on “unstable foundations” (Fodella, 2009:358). Therefore, it can be argued that COP decisions can hardly be used as a legal basis for hard mechanisms with binding outcomes.

Table 7: Legal Basis of NCP	
Legal Basis: COP/MOP Decisions	
1. Enabling clause in the MEA/giving power to the COP	
2. Relying on general provisions of the MEA	
Binding Effect of COP Decisions	
if the MEA includes an enabling clause giving power to the COP/MOP to establish NCP which can produce binding effects.	The parties would be obliged to follow and respect.
if the MEA does not include an enabling clause, and if the COP decision establishes a soft NCP of which outcomes are non-binding.	The parties are expected to respect due to the principle of cooperation and respect the agreement in good faith.
if the MEA does not include an enabling clause, and if the COP decision establishes a hard NCP of which outcomes are binding and have effects in the sense of creating obligations beyond the agreement (new obligations or amending existing ones).	The problem emerges, as the COP decision can not be used as a legal basis for this situation.
Solution to the Problem: Kyoto Protocol’s method can be used as a response to this problem. That is, to adopt a decision on a provisional basis, with the view of adopting a subsequent amendment afterwards, if necessary. Yet, it also has problems in itself (see Chapter 5, section on CM under Kyoto Protocol, for details).	

*Prepared on the basis of information gathered in the context of the thesis.

Institution created under NCP: Committee

Most NCPs have an elected permanent Committee (can be called as Compliance Committee(ComplCom) or Implementation Committee(ImplCom)) which is usually made up of representatives from the contracting parties of the respective MEA(or independent experts(rarely)).

With regard to its tasks and authorities, first of all, it should be stated that, it has the right to regularly evaluate whether the parties comply with the MEA's in question. This evaluation should not be limited only to the compliance with procedural obligations, but also should involve the compliance with substantive obligations(Fodella, 2009). When a party's alleged non-compliance is referred to the body for consideration, in order to assess and report on it, it can seek additional information beyond that provided by the parties, if necessary, either through the secretariat or directly from the party or parties concerned. It is also entitled to investigate the issue through site visits, or "site fact-finding" (Marauhn, 1996:712), but only with the consent of the party concerned. If it finds necessary, it can also cooperate and coordinate with other relevant international organizations and other MEAs. Based on its investigation concerning the matter, it submits its findings in a report with its own recommendation to the COP/MOP. Thus, the settlement of the issue is achieved by the Committee prior to consideration by the COP/MOP, but, the final decision is given generally by the COP/MOP.

Procedural Structure: Phases and Safeguards

Procedural Phases

Another important issue that should be demonstrated here regarding the NCPs applied for the functioning of the CMs, is the question which procedural phases in NCPs are applied.

They can be examined in basically 4 phases: submission (triggering) phase, preliminary phase, substantive phase (including consideration and recommendation phases) and final phase (including decision-making and final resolution phases). The procedure applied for the functioning of the compliance mechanism of the Montreal Protocol can also be illustrated in these four phases.

However, it can be divided into different phases in CMs of different MEAs, e.g. see Chapter 4, Kyoto Protocol CM's NCP phases.

In NCPs, it is possible to assert that the party or parties of the MEA do not comply with its obligations, and it is possible to bring this assertion regarding the parties' compliance problems to the attention of the related bodies of the MEA. This kind of assertion can be brought by the non-compliant party itself ("self-trigger" (Jacur, 2009b:374) which has compliance problems, by the other parties, by the related bodies of the MEA (more often by the Secretariat), and very rarely by the third-parties to the agreement (such as Aarhus Convention NCP, para.18).

In the preliminary phase, a prior consultation is made between the related parties. The Secretariat sends a copy of that submission to the party alleged to be in violation of a particular provision of the relevant MEA. Then, the concerned party has to send a reply. As soon as the Secretariat receives the reply, it transmits the submission, the reply and other necessary information to the Committee for its consideration. The Committee assesses the submission on the basis of the criteria (procedural and substantive) established under the related MEA, then drafts and adopts appropriate recommendations on the parties submitted for consideration, and reports them to the COP/MOP. After receiving the Committee's report, the COP/MOP decides upon the matter, and can apply measures to bring the non-compliant party to full compliance. Until the party in question has achieved full compliance, monitoring of the Committee goes on, it can repeat its consideration, recommendation and reporting phases to monitor the party's progress.

Procedural Safeguards

Although NCPs developed under MEAs do not have "the characteristics of judicial proceedings," but rather have the characteristics of the administrative procedures, they involve some procedural safeguards with "a different nature and degree than those normally available in judicial proceedings" (Montini, 2009:393) for providing fairness.

As regards these safeguards afforded to the parties involved in NCPs, first of all, it should be clarified that NCPs generally consist of two aspects: facilitative

aspect and enforcement aspect, which are best reflected within the context of the Kyoto Protocol.

In the first aspect, the Committee decides on revoking the facilitative measures to the party whose compliance is at stake in order to resolve the matter of non-compliance, after examining the matter based on the information gathered and the report submitted by the party itself.

If the facilitative measures do not work, and the non-compliance continues, in the second stage, the Committee can recommend to the COP to adopt further measures involving the sanctions.

In order to provide a 'due process' for the parties involved in these stages, it is required to provide some rights and safeguards to the parties which can be highly influential on ensuring the parties' voluntary compliance.

The rights granted to the parties can be revealed in two different respects: the rights provided to the parties under scrutiny and the rights provided to the submitting parties. The rights provided to the parties under scrutiny are generally broader than the rights provided to the submitting parties, except in the case of self-triggering. In nearly all procedures, the parties under scrutiny have the right to access documents, to comment and respond on information gathered by other parties and third parties. They also have the right to participate to the Committee meetings, except "the deliberative phase" (Treves, 2009:6) where the Committee adopts the report. Also, when a member of the Committee is a representative of the submitting party, this member is also expected not to participate to this phase "for not prejudicing the impartiality of the Committee" (Montini, 2009:395).

On the other hand, there are no rights adopted specifically for the submitting parties, they have the same rights with any other party to the agreement. This is mostly because due to the non-confrontational character of the procedure, but, in the agreements in which the submitting party defined as "affected" party, e.g. Basel, Espoo, Cartagena Mechanisms, no specific rights adopted for the submitting party can result in difficulties for that party.

Determining specific deadlines for both the submission of the parties and the decisions to be taken by the MEAs' bodies can also be mentioned for improving the fairness of the procedures.

In addition, despite the usage of English as a working language in the procedures, the MEAs' bodies also allow the usage of other languages "for submissions, communications as well as other relevant documents to be filled by the parties" (Montini, 2009:397).

The rights of confidentiality and transparency-publicity within the procedures are also prerequisites of assuring the fairness in NCPs. Of these, the issue of confidentiality should be scrutinized from two perspectives: confidentiality of the information provided for examination on non-compliance and confidentiality in the meetings of the MEAs' bodies. In general, it is observed that all NCPs address the importance of the application of the confidential information in the procedures. On the other hand, confidentiality in the meetings of the MEAs' bodies, whether they will be conducted as open or closed sessions, is usually not designated by the MEAs, but is rather addressed by rules of the procedure(RoP) of the MEA at stake, or more often is decided on "a case-by-case basis by the chair of the committee depending on the matters that will be discussed in the following meeting" (Montini, 2009:400). Making the process more transparent and confidential in the eyes of the parties and public, providing opportunity to access as much as information to parties and also non-parties (IGOs-NGOs⁴⁵) and providing further participation by parties and also non-parties (IGOs-NGOs) to the process, is a also crucial part of the procedural safeguards of the NCP. Through the development of advanced information technology in the new era, it also gets essential to make information about parties' compliance widely available for, respectively, attaining greater public awareness of the process.

The impartiality and independency of the work of the Committee, the application of fixed consequences, assuring proportionality between response

⁴⁵ See (Andresen and Gulbrandsen, 2005) for the detailed information on the strategies(insider-outsider) of NGOs (which are divided into two types: activist organizations and advisory organizations) for promoting compliance, and areas (1.international negotiations and processes, 2. domestic climate policy and ratification, 3. target groups' climate policy and behaviour, 4. public opinion) and bases (1.intellectual base, 2.political base, 3.membership base, 4. financial base) for creating influence. See (Beyerlin *et al.* 2006) for the view arguing that the role of NGOs in compliance mechanisms should be assessed on the basis of the different stages of this mechanism, such as investigation and verification of facts, reporting, evaluation of verified facts and decision-making on responses to non-compliance. See (Epiney, 2006) also for the details on the role of NGOs in ensuring compliance.

measures and different situations of non-compliance, possibility for appeal are also other safeguards that a NCP should involve itself (all will be detailed in Chapter 4, section on case studies).

3.2.3 Non-compliance Response Measures

In IEL, in contrast to other areas of IL, “sanctions are rarely used” (Jacobson and Weiss, 1998b:547) and they can be identified as “largely irrelevant to and ineffective for environmental agreements” (Jacobson and Weiss, 1998b:547). In fact, the UN Charter uses the word “measure” instead of sanctions/penalties in Chapter II, art.39 onwards. Likewise, sanctions/penalties are not used in most of MEAs, e.g. Montreal Protocol(art.8), uses the words “measures” recommending an indicative list of measures. The Kyoto Protocol, referring to “consequences” of non-compliance (art.18), instead of using the word measure. Yet, despite the existence of different examples, using different words to explain the treatment against the parties’ non-compliance, there is no example of a MEA using sanctions/penalties. Therefore, in line with the UN Charter and the existing MEAs, in this study, to explain the type of response to non-compliance, the word “measure” is preferred to be employed rather than sanctions/penalties throughout this thesis.

The determination of non-compliance forms the basis of these measures which can be categorized under two different groups: positive measures and negative measures.

It is generally observed that, due to the non-judicial feature of the CMs established under MEAs, responses revoked to the party is more often in a “facilitative, cooperative manner” (Wang and Wiser, 2002:183) rather than sanctioning manner. Therefore, it is usually seen in the MEAs that, positive measures are further used to enhance the capacity of states to comply with their commitments, while negative measures are usually not much preferred to be used against non-compliant parties (UNEP, 2007).

Positive measures imply here, soft measures consisting of recommendations made by the compliance bodies and technical-financial assistance. Differential implementation schedules and obligations (as set forth in Rio Principle 7) can also

be assessed as one of the positive measures, as it can remove political and economic barriers that might prevent some parties from joining agreements and undertaking to comply with their requirements (Hunter, Salzman and Zaelke, 2002).

Technical assistance generally involves of “the development of internal skills and expertise” (Chapter 37, Agenda 21), in other words capacity-building, and the development of technical, scientific and institutional conditions in which this capacity can be achieved effectively through the transfer of new technology and exchange of information.

Financial assistance is ensured by the funding mechanisms such as Global Environment Facility (GEF) and Multilateral Fund (MF) advanced under Montreal Protocol (MP).

Thus, through both technical and financial assistance, the non-compliant party is not only encouraged to overcome the lack of human resources, but also the lack of material and financial resources and to promote them in the non-compliant party.

Negative measures, on the other hand, include shaming, imposing additional information, the imposition of the suspension of the non-compliant party’s rights or its suspension or expulsion from cooperation under the MEA concerned.

Of those, shaming (or “name and shame effect” (Maljean-Dubois and Richard, 2004: 24, 31, 36)) or “sun shine strategy” (Jacobson and Weiss, 1998a:543) can be counted as one of the softer negative measures which affects the non-compliant party with the publication of the party’s non-compliance through reports, resolutions or discussions at COP/MOP.

Additional “non-compliance response information” (UNEP, 2007:11, 27, 107) implies imposing additional performance review information to the non-compliant party and in some cases subjecting the information to verification.

The suspension of rights of the party under the MEA implies withdrawing the main benefits of the party that it has gained with the status of being a party of that agreement. It can involve the suspension of the party’s voting rights, financial subsidies or suspension of assistance and also the imposition of trade sanctions or threats of trade sanctions and liabilities.

The indicative list used in the MP's NCP can be given as an example to the imposition of trade measures. In fact, under the MP, in accordance with the indicative list of measures in subparagraph B, the MOP has cautioned several parties (these are countries with economies in transition) that measures consistent with subparagraph C, including suspension of the right to trade in ozone-depleting substances under art.4 of the Protocol can be considered for non-compliant parties.

The Kyoto Protocol, on the other hand, involves provisions on the suspension of parties' rights regarding the participation in some mechanisms of the Protocol, like JI, CDM and Emissions Trading and making transfers under the Emissions Trading, and on the diminishment of their future emission quotas.

It is possible to find the basis of the suspension or expulsion of the non-compliant party from the agreement in general international law, in Vienna Convention on the Law of Treaties, art. 60, para. 2. It states that if there has been a material breach of a multilateral agreement (for the definition on material breach, see paras.3(a) and (b)) by one of the parties, the other parties unanimously can suspend its operation in whole or in part or can terminate it. As mentioned in previous section on LoT (The Limitations of Traditional Means), to suspend the agreement is not accepted as a good way of responding to the non-compliance, simply because excluding the party violated the MEA results in the loss of the opportunity to bring it back to compliance, and thus, not only affect negatively that party, but all the parties, even the whole environmental regime at the end.

For the last two measures, it can be argued that, the term 'sanction' can be appropriate to be employed, as they require coercive measures "creat[ing] costs or remov[ing] benefits" (Downs, 1998:320-321) -yet, due to the reasons mentioned above, here, it has been preferred to use the term 'negative measures rather than sanction.'

In practice, these coercive measures are rarely preferred to be used. In fact, among the existing MEAs, the CITES can be indicated as the only MEA that "has consistently and very successfully used coercive [measures] for 20 years now" (Sand, 2006:260).

Finally, it should be noted that, in MEAs, there is no explicit provision clarifying the binding status of these measures. Recommendations, due to their nature, can be assessed as not legally binding, as in some of them, for recommendations, there is “consent requirement” (Milano, 2009:412) by the party concerned. But, what will be the status of more severe negative measures remains still as a problem that should be resolved, as evaluation based on their nature can not be adequate to determine their status(will be discussed in more details in case studies, in Chapter 4).

CHAPTER IV

CASE STUDIES ON COMPLIANCE MECHANISMS: A COMPARATIVE ANALYSIS

In this part of the thesis, based on the background information on compliance mechanisms given in general in the previous chapter, it is aimed to make a comparative analysis between compliance mechanism under Montreal Protocol (MP) to the 1985 Vienna Convention (VC) on Substances that Deplete the Ozone Layer and compliance mechanism under Kyoto Protocol (KP) to the 1992 United Nations Framework Convention on Climate Change (UNFCCC).

While doing this analysis, firstly, it is studied on the concise history of their development up to the present particularly taking the evolution of the NCPs- which have formed the building block of the entire mechanism establishing main institutional and procedural structure of CMs-as basis for examination. Then, to make a comparative analysis between two case studies on the basis of four dimensions: gathering information, procedures/institutional structure, responses and their functioning in practice, a comparative survey is made on both their components, namely, gathering information-NCPs-response measures and also application in practice.

4.1 CM created under Montreal Protocol on Substances that Deplete the Ozone Layer

4.1.1 Development of CM under Montreal Protocol

The Vienna Convention for the Protection of the Ozone Layer (VC) was adopted in 1985 and entered into force on 22 September 1988. As it is a framework convention, it only establishes a framework on parties' obligations. In fact, it includes no substantive-detailed obligations (art.2 and 3, VC), but the possibility of adopting further protocols in the COPs of the Convention (art.8, Convention) when required for coping with the issues regarding the ozone

depletion (see Annex A for a list of COPs to the VC and MOPs to the MP). So, it merely obliges parties only to introduce measures to prevent depletion of the ozone layer which results from human activities, thus, to protect human health and the environment (art.2.1, VC). But, it does not impose obligations to reduce the production or use of CFCs, “even not mentions CFCs” (Chasek, Downie and Brown, 2006:109).

The Montreal Protocol on Substances that Deplete the Ozone Layer (MP),⁴⁶ adopted in 1987 and came into effect on 1 January 1989, on the other hand, occurs with the same aim with the Convention: ‘to prevent depletion of the ozone layer.’ Yet, differently, it submits a more detailed perspective than the Convention.

First of all, it mandates to phase out the consumption and production of chemicals destroying the ozone layer, called as ozone-depleting substances (ODSs). In line with its aim, it establishes precise targets in the production and use of ozone-depleting substances (ODSs) and specified time periods within which these targets should be met (art.2A-2I, MP). It also clearly provides lists of controlled substances in Annexes A (CFCs and halons) -Annex D contains a list of products containing controlled substances specified in Annex A-, B (other halogenated CFCs, carbon tetrachloride and methyl chloroform), C (hydrochlorofluorocarbons and hydrobromofluorocarbons) and E (methyl bromide), in nine groups. Based on these groups, it also sets forth control measures to be applied by parties (art.2, MP) including the reduction of the levels of consumption and production of these substances.

The Protocol is also open to amendments based on the regular assessments of the control measures at least once every four years on the basis of available scientific, environmental, technical and economic information (art.9, VC, art.6, MP). Following such assessments, it has been revised and thus improved for several times through amendments made in numerous MOPs (Jacur, 2009a). These revisions have provided numerous adjustments in the targets and timetable for phasing out the ODSs (like MOP 11), on the lists of these substances (like

⁴⁶ For a detailed information on the history of the creation of the Montreal Protocol, see (Weiss, 1998).

MOP 2- Decision II/1, MOP 4- Decision IV/2-3, MOP 7), and on the institutions of the Protocol, such as making the interim Multilateral Fund permanent (MOP 4- Decision IV/18, Annex IX), and developing non-compliance procedures (MOP 2- Decision II/5, MOP 3-Decision III/2, MOP 4-Decision IV/5, MOP 9-Decision IX/35, MOP 10- Decision X/10) including an Implementation Committee (ImplCom) (MOP 3).

Of these institutional changes, the NCP created under the MP was “the first” of this kind of procedures (Pineschi, 2004:244; Sands and MacKenzie, 2000:13; Wang and Wiser, 2002:183). It was set up by the MOP 4 (Decision IV/5) in 1992 pursuant to art.8 of the MP which requires the parties to design and approve procedures and institutions for determining non-compliance by parties with the Protocol’s requirements and for dealing with parties failures to comply with its terms.

Before its adoption in 1992, an *Ad Hoc* Working Group of Legal Experts was established to develop NCPs by MOP 1 held in 1989 (Decision I/8). The draft procedure adopted by this working group was approved on an interim basis by MOP 2 in 1990 (Decision II/5, Annex III). It was also decided to extend the mandate of the open-ended working group to elaborate further procedures on non-compliance and terms of reference for the ImplCom. In the MOP 3 (Decision III/2), the working group was requested to do some crucial tasks such as to identify possible situations of non-compliance with the Protocol, to develop an indicative list of advisory and conciliatory measures to encourage full compliance, to reflect the role of the ImplCom as an advisory and conciliatory body..etc. A timetable was also adopted in the same meeting for finalization of the draft non-compliance procedures. The procedure was then finalized by MOP 4 held in Copenhagen on 23-25 December 1992. The non-compliance procedure, as set out in Annex IV to the report of the MOP 4, and also the indicative list of measures that might be taken in respect of non-compliance, as set out in Annex V to the report of MOP 4 were adopted by the parties (Decision IV/5, Annex IV-V)-based on the *Ad Hoc* WG Third meeting report, Annex I(NCP) and Annex II, Section II (indicative list of possible measures)-.

Table 8: Development of CM in the Montreal Protocol	
MOP 1, Decision I/8 (Helsinki, 2-5 May 1989)	an open-ended <i>Ad Hoc</i> Working Group of Legal Experts was established to develop NCP
MOP 2, Decision II/5, Annex III (London, 27-29 June 1990)	The draft procedure adopted by the working group was approved on an interim basis
MOP 3 (Nairobi, 19-21 June 1991)	Decision III/2 (further requests to the working group on substantive issues of non-compliance) Decision III/17(requests on considering expedited procedures for amendment(art.9, VC), Decision III/20(increase in the number of the ImplCom from five to ten)
MOP 4, Decision IV/5(Copenhagen, 23-25 November 1992)	The procedure was finalized (Annex IV) and also the indicative list of measures (Annex V)
MOP 9, Decision IX/35 (Montreal, 15-17 September 1997)	review on the procedure for the further elaboration and developing appropriate conclusions and recommendations
MOP 10, Decision X/10, Annex II (Cairo, 23-24 November 1998)	the NCP was reviewed and amended again
MOP 14 (para. 83-88) (Rome, 25-29 November 2002)	The proposed amendments to the procedure raised by the US was withdrawn

* Prepared on the basis of the related MOP Decisions.

When it comes to 1997, as it was realized that, the procedure requires to be reviewed regularly for the effective operation of the Protocol, another *Ad Hoc* Working Group of Legal and Technical Experts composed of fourteen members (seven representatives from parties operating under para. 1 of art. 5 and seven from parties not operating under art. 5) was established to review the non-compliance procedure for the further elaboration and the strengthening of this procedure. In accordance with this aim, a timetable was adopted by the parties for the work of the working group when reviewing the non-compliance procedure and it was decided to consider and adopt any appropriate decision at the MOP 10

on the review of the work of the working group (MOP 9, Decision IX/35, 1997). By the MOP 10 in 1998, the NCP was reviewed and amended again (Decision X/10, Annex II). Among the others, it is noteworthy that, by the MOP 10, it was agreed that in the case of the existence of persistent pattern of non-compliance by a party, the ImplCom should report and make appropriate recommendations to the MOP taking into account the circumstances surrounding the party's persistent pattern of non-compliance to maintain the integrity of the Protocol. During this meeting, the parties also decided to consider again the operation of non-compliance procedure no later than the end of 2003. When it comes to 2002, an attempt to amend the procedure which was aiming to make the ImplCom more effective manner could not be materialized due to the lack of agreement of the parties on all elements of the proposal (MOP 14, 2002:13, paras. 83-88).

Overall, although the main bone structure of the procedure has been developed by the MOP 4 in 1992, the evolution of the NCP under the Protocol has not reached at its end, but it still continues to develop itself by small amendments. So far, its development has experienced three crucial phases: the adoption of a draft NCP in 1990, the adoption of the current NCP in 1992 and its modification in 1998. But, in the future, it can again need further modifications in line with needs for better functioning of the mechanism, and continue to improve itself by those modifications.

4.1.2 Main Components of CM under Montreal Protocol

4.1.2.1 Gathering Information on the Parties' Performance

The Vienna Convention (VC) ensures gathering information from numerous sources stipulating cooperation for research and systematic observations. It prescribes that the parties should initiate and cooperate in the conduct of research and scientific assessments on the various issues related to the ozone layer, such as physical and chemical processes affecting the ozone layer and their effects on climate (art.3.1, VC). In addition, it allows the parties to promote or establish joint or complementary programmes for systematic observation of the ozone layer (art.3.2, VC), and to cooperate in ensuring the collection, validation and

transmission of research and observational data through appropriate world data centres (art.3.3, VC).

Nevertheless, the collection of information from these sources does not essentially give any idea on the performance review of the Convention. For performance review, it is necessary to refer to art.5 of the VC. To this article, the parties should transmit information to the COP on the measures adopted by them in implementation of the Convention and of protocols to which they are party. In accordance with this article, at COP 1(1989), it is decided that a summary of the measures adopted by the parties should be submitted every two years to the secretariat which has also been charged with the preparation of a format for reporting and with the compilation and distribution of the reports among the parties (COP 1, Decision I/2, 1989:9, para.39;Executive Director, 1989:4, para.19).

For the purposes of art.3 and Annex I (Research and Systematic Observations) to the Convention, these reporting provisions and obligations incorporated by the VC are all terminated at COP 3 (Decision III/4, 1990:8), as it is found adequate to report data on ozone-depleting substances under the Montreal Protocol. In addition, at COP 2 (Decision II/2, 1991:8-9, para.33), it was noted that the information exchange obligations under Annex II (Information Exchange) of the Convention would largely be fulfilled by reporting on data under art.7 and by exchanging information on activities in accordance with art.9 of the MP. Then, it is essential here to focus on the MP and its related provisions on gathering information, namely, articles 7 and 9, MP.⁴⁷

First of all, it should be noted that, to request all parties to comply with the provisions of articles 7⁴⁸ and 9, MP and the timely reporting of data and any other

⁴⁷ Besides articles 7 and 9, MP, the parties have to send reports to the Secretariat under art. 4b, protocol as well. Yet, this article is about the implementation of licensing systems for import and export of ozone-depleting substances, and it requires reporting to the Secretariat on the establishment and operation of that system (art.4(3)), not directly related to the gathering information reviewing national performance.

⁴⁸ The MOP 9 approved new formats for reporting data under art. 7, MP. The old data formats used by the parties to report data were replaced, and beginning 1997 onwards, the revised formats have been used. In order to assist the parties in providing the data as required by the revised

required information is a legal obligation for each party (MOP 6, Decision VI/2, 1994:15, para.84).

Under art. 7 (1, 2), each party to the MP is obliged to provide its statistical data⁴⁹ of production, imports and exports of listed certain controlled ozone depleting substances (ODSs) to the secretariat within three months of becoming a party (art.7(1))or within three months of entry into force of the relevant amendments with regard to the listed substances to the MP for that party (art.7(2)).

In addition to this initial report(base-year data) process, in accordance with art.7(3), the parties also must submit statistical data to the secretariat on their annual production of each of the controlled substances. Additionally, for each substance, the parties also must submit amounts used for feedstocks, destroyed by technologies approved by the parties, and also imports from and exports to parties and non-parties for the year during which related provisions concerning the substances entered into force for that party. They must submit them for each year thereafter which should be not later than nine months after the end of the year to which the data relate. They also must provide statistical data on the annual imports and exports of each of the controlled substances in Group II of Annex A and Group I of Annex C that have been recycled.

Article 9, on the other hand, obliges the parties to cooperate in promoting research, development and exchange of information on best technologies for improving the recovery, recycling, or destruction of controlled substances, on possible alternatives to controlled substances, and on costs and benefits of relevant control strategies (art.9(1)) and awareness of the environmental effects of the emissions of ODSs (art.9(2)).

formats, the handbook on data reporting under the montreal protocol was prepared and distributed to all parties by UNEP -division of technology, industry and economics (UNEP-TIE).

⁴⁹ To collect the required data, parties have relied heavily on customs statistics, organised in most countries according to the Harmonised Commodity Description and Coding System elaborated in the framework of the World Customs Organisation (WCO) on the basis of the Harmonised System Convention (Oberthür, 2001).

It also requires the submission of a biannual report to the secretariat including a summary of their activities that they have undertaken pursuant to this article(art. 9(3)). Thus, as well as the annual reports, parties must also provide the secretariat with a biannual summary of their activities on research, development, public awareness and exchange of information every two years.

When these reports come to the secretariat, it makes them available to the parties and provides information to non-party observers (art.12c, 12f, MP). It analyses and assesses the data reported during the course of preparing its report. When it finds the signs of possible non-compliance by any party with the obligations under the MP, it can ask for more information and data from the party in question (NCP, para.3). However, while it has entitled to seek for clarification on data, if an agreement can not be reached on it, it has to use the data provided by the party (MOP 7, Decision VII/20:37, para.94).

The secretariat prepares reports on such information, merely “filtering” (Marauhn, 1996:715) it in order to reach to a summary report on data gathered from related sources. Through this summary report, it also provides information to the ImplCom on the parties’ failures or possible failures concerning compliance with the provisions of the MP.

The ImplCom, where it considers necessary, can also request further information through the secretariat (NCP, para.7c). The Committee can undertake information-gathering in the territory of that party to carry out its functions (NCP, para.7e) However, such on-site visits is only possible if the party concerned invites the ImplCom for information-gathering in its territory, so in practice-in the context of Kyoto Protocol’s CM, site visits are exercised within the in-depth reviews-, the ImplCom can only rely on the reports provided by the parties. Another important issue that should be taken into account regarding on-site visits is that for the conduct of such visits, it is necessary to develop procedural safeguards, to agree on a set of rules for every single visit or a set of rules for all on-site visits made by the Committee under the MP (Marauhn, 1996).

Regarding developing countries, there is an important way of forcing them to give further information and to fulfil their data-reporting requirements. In fact, parties classified as developing country parties under art. 5, MP can lose their

status if they do not report their base-year data as required by the MP within one year of the approval of their country programme and their institutional strengthening by the Executive Committee (MOP 6, Decision VI/5, 1994:15-16, para.84).

Table 9: Gathering Information under MP	
Initial Report (art.7(1,2))	Within three months of becoming a party or within three months of entry into force of the relevant amendments with regard to the listed substances to the Protocol for that party, the parties must submit their base year data on certain listed controlled ozone depleting substances(ODSs) to the secretariat.
Annual Report (art.7(3))	The parties also must submit their annual statistical data on the controlled substances to the secretariat.
Biannual Report (art.9(3))	The parties must submit a biannual report to the secretariat including a summary of their activities that they have undertaken pursuant to the art. 9 involving activities on research, development, public awareness and exchange of information.

4.1.2.2 Non-Compliance Procedure (NCP)

The NCP of the MP was designed with the aim of finding amicable solutions on matters involving possible non-compliance problems pursuing a non-confrontational way, and so involves features appropriate to this aim. Through its features, it has had the potential to be followed taken as a reference by the other MEAs' CMs (Ehrmann, 2002; Handl, 1997; Pineschi, 2004; Raustiala, 2000; Sands and MacKenzie, 2000; Wang and Wiser, 2002).

In this part, it will be analyzed in details with these features enabling it to be accepted as model for other CMs, stressing the ImplCom, procedural phases and safeguards functioning under it.

Institution created under the NCP: Implementation Committee

The creation of the ImplCom occurs at the end of studies under three MOPs: MOP 2, 3 and 4. Firstly, MOP 2 (Decision II/5) decides to extend the mandate of the *Ad Hoc* Working Group of Legal Experts to elaborate further procedures on terms of reference for the Implementation Committee (ImplCom). MOP 3

(Decision III/2), on the other hand, goes a step further and establishes the ImplCom as an advisory body leaving the final decision to the MOP. Finally, the Implcom is adopted as a body which primarily assures the operation of the whole procedure under MOP 4 (Decision IV/5).

The Committee can operate as both a “standing body” (Downes and Penhoet, 1999:24) meeting periodically (twice a year) (NCP, para.6) to address issues on compliance, and as an “*ad hoc* mechanism” to address specific submissions regarding non-compliance and respond to them (Downes and Penhoet, 1999:24; Raustiala, 2000:418-419).

It consists of ten representatives of the parties elected by the MOP for two years. It is based on equitable geographical representation of both developed and developing parties, and can elect elect its own President and Vice-President (the rapporteur of the ImplCom) to serve for one year (NCP, para.5). A party has not the right to be re-elected for a third consecutive two-year term on the Committee, only after an absence of one year from the Committee, it becomes eligible to be re-elected for further terms of up to four years (NCP, para.5).

It should be here noteworthy that its current size was agreed by the *Ad Hoc* WG report with the recognition of a possible need of increasing its number of representatives in parallel with the increasing of its workload in the future. So, although its current size was found appropriate for its “smooth functioning,” amendments can be found necessary in the future (*Ad Hoc* WG, 1998:4).

In principle, the ImplCom meets twice a year. If any interested party requests an additional meeting, then, the ImplCom can decide to arrange further meetings in different periods of time (NCP, para.6). In order to provide the continuity in attendance to the meetings, each party elected to the ImplCom should also notify the secretariat of the individual to represent it and should ensure that such representation remains throughout the duration of the term (NCP, para.5).

Its decisions can be taken by a majority of the parties present and voting (RoP, 26.6b)- parties present and voting means that parties present at the voting session and casting an affirmative or negative vote, parties abstaining from voting are considered as not voting (RoP, 40.5)-. In the case of the adoption or rejection of a proposal, if the meeting decides in favor of reconsideration by a two-thirds

majority of the parties present and voting, it may only be reconsidered at the same meeting (RoP, 38).

In the report of the *Ad Hoc* WG of 1998, a proposal making a reference to a “specified majority vote” was presented to be discussed. Yet, it was refused on the ground that the RoP dealt satisfactorily with the decision-making rules for adoption of recommendations (*Ad Hoc* WG, 1998:7, para.38).

Its functions are determined in the para. 7, NCP as in the followings:

1. To receive, consider and report on any submission made by self-triggering, by other parties, or the secretariat.

It should be highlighted that although it has the authority of receiving, considering and reporting on submissions, it does not have not a function of initiating reports and recommendations for consideration by the MOP.

2. To receive, consider and report on any information or observations forwarded by the secretariat concerning compliance with the provisions of the Protocol.

This function of the ImplCom involves also to consider on the preparation of the parties’ reports and to discuss on “the general quality and the reliability of the data” contained in these reports (Faure and Lefevre, 1999:153).

3. Where it considers necessary, to request further information on matters under its consideration through the secretariat.

This implies that, it is entitled to request information not directly, but, necessarily having to go through the secretariat. In addition, as it does not specify any bodies which can be gathered information, it allows information-gathering in an unlimited manner.

4. To identify the facts and possible causes relating to individual cases of non-compliance and to make appropriate recommendations to the MOP for the party concerned on the ways to remedy the non-compliance.

This function of the ImplCom means that, the Committee has not been given the authority to determine non-compliance, but only to identify (not to determine, because of the possible misinterpretation of the meaning of the word “determine” (para.29)) the facts and possible causes and to report to the MOP, including any recommendations it considers appropriate (NCP, para.9). Here, its purpose is only

to make recommendations relating to non-compliance not directly to the concerned party, but, to the MOP which is empowered with determining the non-compliance on the basis of the information gathered, and with taking measures to assist a party's compliance and to further the Protocol's objectives (*Ad Hoc* WG, 1998:5-6, paras.27, 28). This is also confirmed by the the para. 14 of the procedure which clarifies that the ImplCom does not have judicial or quasi-judicial powers.

5. To collect information relating to a party's compliance in the territory of that party, only if that party has invited it to do so.

Together with its function to request further information through the secretariat, its this function can be identified as “[r]eactive” inspection, the most sophisticated form of investigation” (Maljean-Dubois and Richard, 2004:21).

6. To maintain an exchange of information with the Executive Committee of the Multilateral Fund for providing and arranging for assistance of financial and technical cooperation, and the transfer of technologies to art.5 parties of the Protocol.

Overall, on the basis of its functions above mentioned, it can be argued that the ImplCom relies on facilitation rather than enforcement and employs an administrative rather than a judicial approach to non-compliance (Raustiala, 2000).

Procedural Structure: Phases and Safeguards

Phases of the CM

Following the division of phases made in the primer for members of the ImplCom (Ozone Secretariat, 2007), the procedure applied for the functioning of the compliance mechanism of the Montreal Protocol can be scrutinized in four phases: submission (triggering) phase, preliminary phase, substantive phase (consideration phase and recommendation-reporting phase), and final phase (decision-making phase and monitoring-final resolution phase). Based on this division, the procedure works in the following order:

Submission (triggering) Phase: Under the Montreal Protocol, the NCP can be initiated by parties to the Protocol against another party, by the Secretariat against

any party to the Protocol or by self-triggering (that is, by the non-compliant party in respect to itself).⁵⁰

Firstly, if one or more parties have “reservations” (NCP, para.1) about another party’s implementation of its obligations under the Protocol, they can apply to the Secretariat in writing form for triggering the NCP. While making their submission, they do not have to prove the causality between the non-compliance and its effect on them, but they have to support their submission by “corroborating information” which has the potential to be “a useful tool to avoid abuse of the procedure” (Marauhn, 1996:702) by the parties to each other (NCP, para.1). However, it should be clarified that, during the period between notification and the MOP’s decision on the appropriate action, the NCP should not be invoked against a party, which has notified that, having taken all practical steps, it is unable to implement any or all of the control measures due to the inadequate implementation of articles 10 and 10A which are on financial and technical cooperation (art.5, para.7, MP).

The submission by the Secretariat, on the other hand, can be made if the Secretariat becomes aware of possible non-compliance by any party with the Protocol's provisions, while it is preparing that party’s report. In such a case, the Secretariat can request the concerned party for further necessary information about the matter. If the party does not reply in three months -or such longer period which can be required-, or if the issue can not be resolved through administrative or diplomatic efforts, the Secretariat has to include the matter in its report submitted to the MOP and to inform the ImplCom (NCP, para.3).

Finally, the submission by the non-complying party in respect to itself can be raised when a party concludes that, it is unable to comply with its obligations with some proof that it has made its best to comply. That party, then, can make a submission in writing with an explanation of the specific circumstances considered to be the cause of its non-compliance. The Secretariat receiving this submission transmits it to the ImplCom for consideration (NCP, para.4).

⁵⁰ During the negotiations of the NCP, some other triggering methods are also debated, yet, were rejected (Jacur, 2009a).

Preliminary Phase: After the submission phase, the Secretariat sends a copy of that submission to the party alleged to be in violation of a particular provision of the Protocol within two weeks of its receiving a submission. Then, in three months after the Secretariat sends the submission, the concerned party has to send a reply. Otherwise, the Secretariat sends a reminder to make it reply.

As soon as it receives the reply from the party-it does not extend six months after receiving the submission-, it transmits the submission, the reply and other information- which the Secretariat found to be beneficial for the ImplCom in its consideration of the party's situation- to the ImplCom for the purpose of determining whether the concerned party is unable to comply with its obligations under the Protocol (NCP, para.2).

Substantive Phase: While considering on the submission, the ImplCom uses the information provided by the parties under consideration, and can request any additional information, if it finds necessary, on matters under its consideration and can undertake information-gathering in the territory of the party concerned which invited it (NCP, para.7). In addition, it discusses the draft recommendations suggested by the Secretariat on each matter under its consideration.

However, in some cases, through a process of “blanket approval” (Ozone Secretariat, 2007:14), recommendation and reporting phase can be commenced omitting the consideration phase. In this process, the Secretariat asks the ImplCom to inform it of the draft recommendations that it wants to review. Those that were not so identified by the ImplCom are considered to be approved without additional deliberation, in other words, to be having “blanket approval” (Ozone Secretariat, 2007:14). After asking the ImplCom whether it will make individual review or not, on the ground that the Secretariat receives further relevant information on the concerned party, the draft recommendation given “blanket approval” (Ozone Secretariat, 2007:14) still can be put forward by the Secretariat for individual review in the consideration phase.

As its one of main tasks is “to identify the facts and possible causes relating to individual cases of non-compliance” (NCP, para. 7d, MP), the ImplCom drafts and adopts also appropriate recommendations to the MOP on the parties

submitted by the secretariat for consideration. While making recommendations and trying to find “an amicable solution of the matter” that can be accepted by all the parties involved (NCP, para.8, MP), it performs the tasks of “factual and legal evaluation” (Marauhn, 1996:712) together -it should be stressed that this is not a strict legal evaluation, as the solution is found in accordance with the provisions of the Protocol (NCP, para.8, MP), but not the regulations of international law (Ehrmann, 2002)-.Therefore, a concerned party, even if it is not a member of the ImplCom, or itself makes such a submission, is empowered to participate in the consideration of that submission (NCP, para.10, MP) reflecting the existence of a dialogue with the ImplCom and the party concerned. However, no party-even if it is a member of the ImplCom- involved in a matter under consideration by the ImplCom, can participate to the ImplCom in the phase of the elaboration and adoption of recommendations on that matter to be included in the report of the ImplCom (NCP, para.11, MP). Moreover, the representatives of the Multilateral Fund and the implementing agencies do not also participate directly in the elaboration and adoption of the recommendations. Only if the ImplCom requests them to be present for answering questions relevant to the finalization of recommendations, they can participate to this process (Ozone Secretariat, 2007).

Recommendations adopted by the ImplCom can name specific parties or do not name any specific party. Of those, the ones that name specific parties can involve requests for information from that party, proposals for the approval of that party’s plan of action by the MOP, acknowledgments of that party’s progress in implementing its plan of action. The ones that do not name specific parties usually address compliance issues relevant to more than one party, such as the reporting of ODSs data, notifying the secretariat of the establishment of an ODS import and export licensing system..etc. (Ozone Secretariat, 2007).

On “less complex compliance matters” (Ozone Secretariat, 2007:16) considered by the ImplCom regularly, the ImplCom uses “a set of standardized recommendations” (Ozone Secretariat, 2007:16) which are known as “routine procedural matters of non-compliance” (Ozone Secretariat, 2007:16) in order “to manage its increasing workload more efficiently and effectively and to ensure the

equitable treatment of Parties in comparable circumstances” (Ozone Secretariat, 2007:16).

The ImplCom reports these recommendations that it finds necessary to the MOP not later than six weeks before their meeting (NCP, para.9). This report is made available to any person on request, on condition that it does not contain any information received in confidence (NCP, para.16).

Final Phase: After receiving the ImplCom’s report, the MOP decides upon the matter (39-40, RoP) and can apply measures to bring the non-compliant party to full compliance with the Protocol (NCP, para.9). Indeed, even though the report and data provided to the MOP by the ImplCom constitutes a *de facto* determination of non-compliance and its recommendations have often been adopted without any change by the MOP –e.g. in the meeting of the ImplCom 30 (2003:para.57), the representative of the Secretariat noted that “all past decisions of MOP on non-compliance had often been based on the ImplCom’s recommendations and had never returned for revision”⁵¹, the final determination of non-compliance is considered as a matter for the parties. So, the MOP is the only body which has decision-making power about non-compliance.

Each party in every MOP has one vote as a rule except they are regional economic integration organizations which have right to vote with a number of votes equal to the number of their member states which are parties to the Protocol (RoP 39(1-2)). Again as a rule, decisions of the MOPs on all matters of substance should be taken by a two-thirds majority vote of the parties present and voting (RoP 40(1)). Decisions on matters of procedure, on the other hand, should be taken by a simple majority vote of the parties present and voting (RoP, 40(2)).

Besides its functions granted in art. 11.4(a-j), Protocol, through art.11.4(j), it is also granted by the power “to consider and undertake any additional action that may be required for the achievement of the purposes of th[e] Protocol.”

The decisions taken by the MOP are sent to all parties in its report at which the decisions are adopted and also are published at the Ozone Secretariat’s website.

⁵¹ See also (Ozone Secretariat, 2007:18), as it clearly states that: “To date, virtually all draft decisions proposed by the Committee have been adopted by the Meeting of the Parties.”

The Secretariat also informs the parties concerned, when it finds relevant, the secretariat of the Multilateral Fund or any implementing agencies assisting the party in returning to compliance by letter regarding the adopted decisions (Ozone Secretariat, 2007:18).

After the decision-making phase, monitoring-final resolution phase starts. The framework for addressing issues of non-compliance after the decision-making phase has been clearly identified by the report of the 20th Meeting of the ImplCom (ImplCom, 1998: paras.31-33). To this framework, after the identification by a party in non-compliance, the ImplCom reviews the concerned party's plan to achieve compliance. In the next step, it determines specific criteria including specific policy measures or steps for reduction and phase-out for the concerned party to undertake in a proposed decision on that party. These benchmarks are used to monitor the party's efforts for coming into full compliance with the Protocol by both the ImplCom and the party in non-compliance. Throughout this process, the Secretariat keeps the party fully informed of the reasons of its identification as being in non-compliance. Finally, parties that have fully met agreed commitments within their plan are treated as being in compliance with the Protocol and are recommended for favourable consideration for financial assistance from GEF and the Multilateral Fund. Nonetheless, parties that have failed to meet their commitments can face with additional measures such as not offering additional financial assistance or prohibition on exporting to that party until they meet their commitments or come into full compliance with the Protocol (ImplCom, 1998: paras.31-33).

Overall, until the ImplCom records that the concerned party has complied with all requirements included in the decision pertaining to it, it continues to monitor the party's compliance status. Based on the list of the decisions requiring further action by parties prepared by the secretariat, it can repeat its consideration, recommendation and reporting phases to monitor the party's progress. Even if the party returns to compliance, it continues its monitoring function if there are still some measures and "time-specific milestones" (Ozone Secretariat, 2007:19) that should be completed in its plan of action.

Procedural Safeguards

Rights of the Party Concerned: In the case of the MP's NCP, the party whose compliance is at issue has the right to receive a copy of the submission and have the possibility to reply and send any related information to the secretariat and to the other parties involved (NCP, paras. 2, 3, MP). In addition, when there is self-triggering by the party itself, it has the right to explain the specific circumstances that it considers as the reasons of its non-compliance (NCP, para. 4, MP). Finally, it has the right to be represented during the consideration of the ImplCom of that submission (NCP, para. 10, MP), except during the elaboration and adoption of recommendations on that submission to be involved in the report of the ImplCom (NCP, para. 11, MP).

Predetermined Time Tables: There are some time restrictions such as sending a copy of submission to the concerned party within 2 weeks of its receiving that submission by the secretariat (NCP, para.2, MP), sending any reply and information to the secretariat and to the parties involved within 3 months of the date of the dispatch (or such longer period as the circumstances of any particular case may require-so not so much strict limitation) (NCP, paras.2, 3, MP), transmitting the submission, the reply and the information provided by the parties to the ImplCom as soon as the reply and information from the party are available-not later than 6 months after receiving the submission- (NCP, para.2, MP).

Impartiality and Independency: As mentioned above, an ImplCom can consist of ten parties elected by the MOP for two years based on equitable geographical distribution (NCP, para.5, MP), so, not of experts serving in their personal capacity and also there is no criteria in the NCP in terms of requirements on parties' expertise representatives. This situation arises the questions in minds about the independency of the ImplCom.

Regarding the impartiality of the work of the ImplCom, the procedure does not allow any concerned party, whether or not a member of the ImplCom, to take part in the elaboration and adoption of recommendations on that matter to be included in the report of the Committee (MOP 10, 1998:paras.10, 11; NCP, para.11, MP).

Predetermined Consequences: The Protocol includes an indicative list of measures, yet, no list of possible situations of non-compliance. In the third

meeting report, the *Ad Hoc* WG(1991) attempts to identify seven such situations which can be categorised as non-compliance. These situations are:

1. Non-compliance with provisions relating to control measures (art.2, MP),
2. Non-compliance with provisions relating to the control of trade with non-parties (art.4, MP),
3. Non-compliance with time schedules and non-reporting of specified data (art.7, MP),
4. Failure to report and co-operate in the activities under art. 9, MP,
5. Failure to comply with the provisions concerning the operation of the financial mechanism and the payment of contributions to the financial mechanism (art.10, Protocol),
6. Failure to take necessary steps for the transfer of technology, and
7. Non-compliance with the decisions of the MOP.

However, since the parties to the Protocol failed to agree on whether or not contributions to the financial mechanism should be regarded as non-compliance, the adoption of this kind of list could not be achieved (*Ad Hoc* WG, 1991:5, para.37). So, the scope of the term ‘non-compliance’ has remained unclear with a general reference to the MOP’s decision (NCP, para.9, MP) to bring the non-compliant party back to full compliance through measures to assist the parties’ compliance with the Protocol, and to the Protocol’s objectives (Ehrmann, 2002; Marauhn, 1996).

The *Ad Hoc* WG (1998: 7, para.39) also received a proposal on revising this indicative list of measures, but, the WG did not consider it due to the fact that revision of the indicative list had been excluded from its mandate by the MOP.

Proportionality:As there has been no consensus on determining the possible situations of non-compliance, it is stated in the *Ad Hoc* Report (*Ad Hoc* WG, 1991: 6, para.44) that in selecting appropriate response measures in practice, ‘flexibility’ should be taken as a basis among different situations of non-compliance. That is, while deciding on responses, the nature, degree and reason behind non-compliance, as well as with the importance of the provision itself should be assessed carefully. In addition, assistance measures should be applied prior to stronger measures for encouraging parties to comply with the Protocol.

Transparency: While the ImplCom's reports are available to anyone upon request, all information exchanged by or with the ImplCom related to its any recommendation to the MOP is also available to any party upon its request (NCP, para.16, MP).

On the other hand, NGOs's participation to the ImplCom proceedings and to the processes of monitoring compliance with the Protocol have been so limited. There is no formal way of participation for NGOs to the ImplCom proceedings, only the secretariat's notification any body or agency, whether national or international, governmental or nongovernmental, can provide their participation as 'observers' without having the right to vote (RoP, 6-7). These bodies should be qualified in fields relating to the protection of the ozone layer(RoP, 7) and there should be no objection from the parties present.

Possibility for Appeal: Within the MP's NCP, appeal opportunity is not possible. Because if it has been made possible, it would be against decisions of the MOP, not to the decisions of the Committee, as different from the appeal process applied in the Kyoto Protocol's NCP.

4.1.2.3 Non-Compliance Response Measures

Once a party is determined as non-compliant party (art.8, MP), the MOP can take some measures based on the report of the ImplCom and its recommendations it considers appropriate in respect of that non-compliance (MOP 10, Decision X/10).

The indicative list of measures that might be taken by the MOP was set forth by the Annex V(A-B-C), in Decision IV/5(para.3) of the MOP 4(1992) pursuant to the *Ad Hoc* WG (1991)third meeting report, Annex II, Section II (indicative list of possible measures). This list includes both positive and negative measures:

- A. Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training.
- B. Issuing cautions.
- C. Suspension, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty [arts.60-64, VCLT], of specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization,

production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements.”

Positive Response Measures

Appropriate Assistance to the Non-compliant Party: Even if there was no CM under the MP, and so no response mechanism, there has already been provisions providing means to ensure support to the parties for promoting their compliance efforts under the Convention and under the Protocol. Their creation purpose was naturally not to ensure measures as response to non-compliance of the parties, yet, they have also been used for this purpose after the creation of the CMs..

To illustrate, regarding technical assistance, gathering and sharing of information is stressed “as an important means of implementing the Convention” (VC, Annex II, para.1). In fact, art.4, VC obliges the parties to facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information (see Annex II, paras.3-6 for the elaboration of these types of information) relevant to the Convention (art.4.1) and to cooperate in promoting the development and transfer of technology and knowledge (art.4.2). Article 9, Protocol also includes similar provisions which require the cooperation of the parties in promoting research, development and the exchange of information on several issues which have the potential to improve the compliance of the parties. Article 10A, Protocol also provides that each party should take necessary steps to ensure that the best available environmentally safe substitutes and related technologies are transferred to developing parties under fair and most favourable conditions.

With respect to the financial assistance, Trust Fund (later becomes the ‘Multilateral Fund’) is established by COP 1 (1989) (Decisions I/5, I/9) in order to strengthen the capacities of developing countries. At MOP 1 (1989), the parties agreed to consider at MOP 2 (1990) the development of a programme including workshops, training courses, the exchange of experts and the provision of consultants on control options to promote the exchange and transfer of environmentally sound substitutes and alternative technologies for developing countries (Decision I/4).

Then, through the amendment of Article 10, Protocol at MOP 2 (see also MOP 4, Decision IV/18), it is decided to establish a mechanism for the purposes of financial and technical cooperation, including the transfer of technologies, to meet all the agreed incremental costs⁵² for developing countries and to enable them to comply with control measures (art.10(1)).

This financial mechanism would include a Multilateral Fund(MF) which would meet the agreed incremental costs (art.10.2a), finance clearing-house functions to identify the needs of developing parties, to facilitate technical cooperation to meet these needs, to distribute information, hold workshops and training sessions for developing parties and to facilitate and monitor other multilateral, regional and bilateral cooperation for them (art.10.2b(i-iv)), and also would finance the secretarial services of the Fund and related support costs (art.10.3c)).

In line with this article, a Multilateral Fund(MF) was established in 1990 (MOP 2, Annex II, 1990) by the aim of strengthening the capacity of the developing countries to comply with the obligations of the Protocol. In order to materialize its aim in practice, it provides financial assistance contributed by developed country parties for the incremental costs of developing country parties. That is, only countries that qualify as art.5 countries can benefit from its assistance after submitting a country programme (involving production and consumption of the regulated substances and an institutional structure) (Weiss, 1998).

This Fund functions under the authority of an Executive Committee (Decisions II/8, IV/18) in which “industrialized and developing countries were participating as equal partners in financial decision-making” (Wolfrum,1999:127). This Committee exercises its tasks with the cooperation and assistance of the World Bank, the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies (art.10.5).

⁵²“[T]he term “incremental costs” indicates that only the additional costs namely costs resulting from environmental efforts normally not undertaken will be covered by the solidarity of the community of states” (Wolfrum1999:136). On incremental costs, see Decision IV/18, Annex VIII (MOP 4, 1992), providing a list of incremental costs and allowing the Executive Committee of the MF to interpret the costs and when it finds necessary, to add to this list.

Through the approval of the projects involving these programmes by the Executive Committee, countries found as being eligible for receiving assistance from the Fund have the opportunity “to develop programs for controlling CFC production and consumption and to move from use of ozone-depleting substances to use of ozone-friendly substitutes, or to close their production facilities” (Weiss, 1998:170).

The Global Environment Facility (GEF), on the other hand, has been established (in 1991) to assist the countries in their implementation efforts concerning not only the ozone depletion, but also climate change, biodiversity and pollution of international waters. The list of parties recognized by GEF as eligible for assistance includes both developing countries (also eligible for MF assistance) and CEITs not classified as developing countries (not eligible for assistance by the MF) (Madhava, 2005). However, the parties had invited the GEF to support specifically the monitoring of ozone and related research in developing countries (COP 4, 1996).

It should be finally stressed that, the activities by the GEF should not compete with those of the other MEA-specific funds, such as Montreal Multilateral Fund, but, they should supplement each other (Wolfrum and Matz, 2003).

Negative Response Measures

Under the CM, the MOP has the power to issue warnings and also to suspend rights and privileges against the non-compliant party besides providing technical or financial assistance to that party.

During the 15th meeting of the open-ended working group (OEWG) of the parties to the MP, Canada also proposes an amendment to the Protocol to the effect that a non-compliant party with the Protocol should be treated a state as ‘non-party’ to the Protocol for the purposes of art. 4 and so be subject to art. 4 trade measures for the substance for which it is in non-compliance (OEWG, 1997:4). It elaborates its proposal suggesting that this consequence, which would fall under item C of the list of indicative measures, would only be applied in the situations representing a “persistent pattern of non-compliance” (which should be defined based on principles such as, frequency of non-compliance, length of non-

compliance, and reasons for non-compliance (para.19)) with key provisions (counted in para.18) of the Protocol (OEWG, 1997:4, paras.17-19). However, this proposal resulted in discussions between parties, so while some representatives expressed concern about the fact that the application of sanctions (OEWG, 1997:paras.104-109) could threaten the Protocol's central goal of protecting stratospheric ozone. Therefore, they proposed, as "[a] better approach," "to focus, on a case-by-case basis, on the factors responsible for the instances of non-compliance, on the negative potential economic and social repercussions that sanctions could have, and on methods of assistance the Parties could provide to help address and alleviate the non-compliance" (OEWG, 1997:23, para.107).

As a result of these discussions, the main aim of the CM has again arisen as not to impose any punitive measures against the non-compliant party, but, to endeavour to bring it back to compliance (*Ad hoc* Report, 1998, par.7, p.2). So, this proposal was not accepted, and even the accepted negative measures have been rarely adopted against non-compliant parties by the MOP (see the section on the CM of the MP in practice).

Issuing cautions: Under the CM, warnings can be issued by the MOP to non-compliant parties, when the ImplCom finds out that, those parties have not showed adequate efforts to comply with the obligations of the Protocol. The importance of this measure stems from the threat it involved in itself which can result in the application of the measures consistent with item C of the indicative list of measures in the event that the parties have failed to return to compliance in a timely manner with regard to the phase-out of ODSs.

Suspension of specific rights and privileges under the MP: The rights and privileges that can be suspended in the case of a non-compliance of a party, as mentioned above, involves "those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements" (Annex II, Section II, para.C). This provision implies that, the parties can lose their rights to transfer their production rights for ODSs to each other and consumption rights for HCFCs (art.2, paras. 5 and 5 bis, MP), to receive assistance from MF or GEF (art.s 10 and 10A, MP) and their rights under art.4, MP regarding trade.

With respect to the rights on receiving assistance, it should be emphasized that, to continue to be entitled as eligible for receiving assistance from the Fund has been made contingent on improving compliance for developing parties. Nevertheless, “there is no measure for promoting compliance by developed countries equivalent to the placing of conditions on financial assistance that is employed with developing countries” (Downes and Penhoet, 1999:25). This can result in the view that the procedure has been applied “inequitably as between developed and developing countries” (Downes and Penhoet, 1999:25).

For developing parties, it is applied in the following way: if a developing party fails to fulfil its obligations under the Protocol, to “report base-year data as required by the Protocol within one year of the approval of its country programme and its institutional strengthening by the Executive Committee” (MOP 6, Decision VI/5(a-iii), 1994), and also to submit its complete data to the Secretariat establishing that its annual calculated per capita level of consumption is below 0.3 kg” (MOP 2, Decision II/10, 1990), its access to the Fund can be suspended, as it can lose its status of being developing and so not be eligible for art.5, para.1 treatment. This kind of threat on the access of the developing party to the Fund can be applied effectively, forming conditionality between fund granted and compliant behaviour (Raustiala, 2000). “[S]uch measures have been recommended only for failures to supply initial baseline data” (Downes and Penhoet, 1999:25), although Decision VI/5 of the MOP stated that, not only parties not reporting their baseline data within one year of approval of their MLF country program, but also their progress in strengthening their institutional capacity, would be encountered with cutting funding (Victor, 1996).

Regarding trade measures employed against non-compliant parties, a distinction between trade provisions employed for the operation of the related agreement and trade provisions used for enforcing it can be beneficial to understand the characteristics of these measures adopted in the Protocol. The second ones have the characteristics of sanctions, and so they are “punitive” (Jenkins, 1996:228) and “extend beyond the range of operation of the trade provisions” (Jenkins, 1996:228). But, the first ones, incorporated into the MP,

“which act as a disincentive” (Potzold, 2009:10) are only used as a means of operation, but not as trade sanctions as a means of enforcing it.

Article 4, MP which involves provisions requiring that parties to the Protocol should ban the import of the controlled substances in Annex A, B,C,E from any non-party to the Protocol(art.4(1)) from 1990, the import of products containing controlled substances in Annex A from 1992(art.4(3)), the import of products produced with, but not containing, controlled substances in Annex A from 1994 (art.4 (4)), and the export of any controlled substances in Annex A, B,C, E to any non-party to the Protocol from 1993(art.4(2)). Thus, it requires the parties to limit its trade in certain substances for a specified period with non-parties to the Protocol. However, it can also be used as “an important potential tool for use against non-complying parties” (Brack, 2003:220) to the Protocol. In fact, if a party's rights under art. 4 are suspended, other Parties cannot trade in ODSs with that Party. That Party cannot export products containing CFCs (air conditioners, etc.) to those parties, e.g. Russia and the Ukraine, which have been subjected to trade measures (MOP 10, Decision X/26, 1998).

Binding Effect of the Response Measures

In the first *Ad hoc* meeting report (*Ad Hoc* WG, 1989:4, para.9i), it is suggested that, decisions of the MOP should be recommendatory rather than mandatory. But, in the third report (*Ad Hoc* WG, 1991:6, para.41), non-compliance with decisions of the MOP is also counted as one of the possible situations of non-compliance (*Ad Hoc* WG, 1989:10, situation vii, Annex II). This has caused discussions of the binding status of the decisions, while some representatives stated that, decisions of the parties do not have the same legal status with the provisions of the protocol; some argued that, not all decisions have the binding status on the parties; and some pointed out that, if they relate to matters of substance, they have the binding status. Since then, no consensus has been able to achieve on the binding status of the MOP’s decisions.

4.1.3 Montreal Protocol's CM in Practice

Until the end of 2012, while the MOP has held twenty-four sessions in some of which it has dealt with giving decisions on non-compliance (or potential non-compliance) of the parties to the Protocol (see Annex B to the thesis). The ImplCom, on the other hand, has held forty-nine sessions in which it has reported non-compliance cases to the MOP, reviewed the status of compliance with specific decisions of the parties and adopted its recommendations on non-compliance related issues (see Annex C to the thesis). Thus, up to now, both have examined the issues related to non-compliance with procedural (failure to report fully or on a timely basis) or substantive obligations (failure to comply with control measures, targets and timetables) (see Annex D for an overall list of decisions on compliance of the all related parties to the MP).

Until the year 1995 when the formal procedure firstly was initiated through the acceptance of the joint statement made Russian Federation and others as a submission under para. 4 of the NCP of art. 8 of the MP, the ImplCom had focused primarily on parties' non-reporting and incomplete or late reporting.⁵³

Beginning with the year 1995, in addition to the consideration of the issues with data reporting, the ImplCom has begun to address individual cases of non-compliance and to review whether the parties fulfil their substantive obligations under the Protocol such as those related to control measures, targets and timetables.

In the following part, these cases are examined basically taking into account the ImplCom and the MOP reports. As there is no new information about some cases in recent reports, it could not be possible to find the recent developments on those cases. So, the explanation on each case was completed with the last report involving information on that case.

⁵³ For a detailed information on the early phases of the NCP, see Victor(1996).

Table 10: Montreal Protocol CM in Practice*		
Triggering by parties to the Protocol against another party (NCP, para.1)	Self-triggering (NCP, para.4)	Triggering by the Secretariat against any party to the Protocol (NCP, para.3)
No submission till today	<ol style="list-style-type: none"> 1.The Russian Federation and others(Belarus, Bulgaria, Poland and Ukraine) 2.Latvia and Lithuania 	All submissions have been brought to the ImplCom’s agenda via the Secretariat (with the exception of self-triggering by the Russia Federation and others, Latvia and Lithuania)

* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at: http://ozone.unep.org/new_site/en/index.php.

The cases of non-compliance can be examined in three distinct groups which can be formed on the basis of three ways of the initiation of the NCP by parties: triggering by parties to the Protocol against another party (NCP, para.1), self-triggering (NCP, para.4), triggering by the secretariat against any party to the Protocol (NCP, para.3) (see also Table 10 above).

4.1.3.1 Triggering against Another Party (NCP, para.1)

There has been no submission by parties against another party to the Protocol, so this type of triggering has not arisen to date. The most important reason of this is that, this type of triggering requires an “adversarial action” (Faure and Lefevre, 1999:153) against another party, and parties in general remain reluctant to be part of this kind of action against other parties and to initiate proceedings against them seeing it as a risk which can demolish their bilateral relationships with these parties.

4.1.3.2 Self-triggering (NCP, para.4)

1. The Russian Federation and Others

The process started with a joint statement made by the countries with economies in transition (CEITs), namely Russian Federation, Belarus, Bulgaria, Poland and Ukraine, at the eleventh meeting of the Open-ended Working Group (OEWG). It was about these parties' possible inability to comply with their obligations under the MP.⁵⁴ Through this joint statement, expressing their domestic difficulties, such as political, geopolitical and social change and the transition to a market economy, as a reason of their possible non-fulfillment of the requirements of the MP, the so-called countries requested to be granted a five-year grace-period, from 1 January 1996, for compliance with the obligations under the MP (ImplCom 11, 1995:4, para.15; ImplCom 11, 1995:14-15; OEWG 12, 1995; Annex II).

After the discussions about the matter, it was decided that this statement constituted a submission under para. 4 of the NCP of art. 8, MP that a party may trigger the procedure with respect to itself. So, it was referred to the ImplCom by the secretariat for the consideration of the matter. In the tenth ImplCom meeting, it was decided that the joint submission should not be considered as a joint case, but, in contrary, should be divided into five different cases. So, the consideration first focused on the Russian Federation (the cases of other four countries to be discussed at a later stage), because of the special conditions of the Russian Federation, such as being a major producer of controlled substances (producing and exporting them to the other states of the commonwealth of independent states (CIS)), -while the other parties were primarily consumers-, and being the only one among others that had not reported data in line with its reporting obligations under art. 7 (ImplCom 10, 1995:7, para.32).

⁵⁴ Similarly, at the MOP 5, through a declaration, the heads of the delegations representing the governments of Belarus, Bulgaria, Romania, Russian Federation and Ukraine had also requested the parties to decide at the MOP 6 on the question of the special status of countries with economies in transition which would provide concessions and a certain flexibility in the fulfilment of their obligations under the MP (MOP 5, 1993, Annex VII).

The Russian Federation: Based on the recommendations of the ImplCom which were the results of intensive consultations and of information and data submitted by the Russian Federation (ImplCom 11, 1995; ImplCom12, 1995), the MOP decided that, the Russian Federation was in compliance with its obligations under the MP in 1995, but, possibly, it would not be in 1996 (MOP 7, Decision VII/18, 1995). So, despite the efforts of the Russian Federation to provide necessary data requested by the ImplCom and the commitment for further action to phase out ODSs in production and consumption, it was agreed by the MOP that, it should provide more additional and detailed information on the areas determined by the MOP. In addition, it should be benefited from international assistance of GEF and World Bank provided that it carried out some provisions such as submitting annual reports on progress in phasing out ODS in line with the schedule given by the ImplCom, which should be submitted in due time to enable the secretariat and the ImplCom to review them, and the settlement of the problems related to the reporting requirements and the actions of the Russian Federation with the ImplCom. Thus, international assistance was clearly contingent on reporting on progress in phasing out ODS and the settlement of related problems with the ImplCom. More importantly, the Russian Federation was allowed to export substances controlled under the MP to parties operating under art. 2 of the Protocol that are members of the Commonwealth of Independent States (CISs), including Belarus and Ukraine. Thus, it restricted its export to other countries in an indirect manner in order to assist it to drive exports in controlled substances impeding efforts to phase them out as required by the Protocol (MOP 7, Decision VII/18, 1995).

The Russian Federation did not agree with paras. 8 and 9 of the draft decision which were about restricting its trade and conditional international assistance, as they allowed the MOP to adopt “discriminatory measures and sanctions” against itself, and such “punitive measures” could not be accepted by it. It also stressed that, according to the indicative list of measures that might be taken in respect of non-compliance, the first measure that the MOP could apply was appropriate assistance to the party in breach of its obligations, and it had sought such assistance from the GEF, the World Bank and other international financial

organizations. Another measure was the issuance of a caution to the party concerned, but without applying that measure, the ImplCom recommended to take measures under item C (sanctions) of the indicative list. On the basis of these views, it proposed that paras. 8 and 9 of the draft decision should be deleted and replaced with the wording acceptable to the Russian Federation. It also underlined that it would vote against them, if they continued to stand in the decision.

Although the Russian Federation objected to the draft decision due to the reasons mentioned above, the decision was carried by consensus reflecting the position of the dissenting party in the meeting's report (MOP 7, 1995:53, para. 130). This procedure called as "consensus minus one" (Werksman, 1996b:771), in which a draft decision can be carried by consensus when a only one party (claimed as non-compliant party in that decision) objects to it, has highly enhanced the ability of the MOP to address the non-compliance of a particular party authorizing it to adopt necessary decisions to override the objections of that party (Werksman, 1999).

In brief, through its decision on the Russian Federation, the MOP came to an agreement on three elements for compliance: monitoring the Russian Federation regarding the phase-out of ozone depleting substances, restricting its trade and threatening it by the provision of financial assistance. Thus "[t]he 'carrot' of financial assistance was offered in conjunction with 'stick' of financial conditionality and trade restrictions to encourage Russia to fulfill its obligations" (Potzold, 2009:10).

On the basis of these three elements, its situation regarding the phase-out of ODSs were kept under review by the ImplCom and the MOP, its trade was restricted and the disbursement of financial assistance for ODS-phase-out continued to be contingent on developments with regard to non-compliance and the settlement of any problems with the ImplCom in the subsequent years as well (yet, usually considered favourably in order to provide funding for projects to implement the programme for the phase-out of the production and consumption of ODSs in the country).

However, in 1996, it was found in a situation of non-compliance (ImplCom 16, 1996; MOP 8, Decision VIII/25, 1996) and also possible non-compliance with the

Protocol in 1997 (MOP 9, Decision IX/31, 1997), according to its own written submissions and the statements of its representative at the meetings of the ImplCom 13-19(1996-1997), although it was acknowledged that, the Russian Federation made the considerable progress in addressing non-compliance issues raised by the MOP 7.

In fact, the Russian Federation made great progress particularly after Decision VIII/25. To illustrate, it reported detailed information on quantities of imports and exports of ODS and products containing such substances, data on the type of ODS (new, recovered, recycled, reclaimed, reused, used as feedstock), details of suppliers, recipient countries and conditions of delivery of the substances for 1996, on details of imports and/or exports of ODS from it in 1996, provided by some parties mentioned its submission to the ImplCom, on ways in which it was maximizing the use of its recycling facilities to meet internal needs and to diminish production of new CFCs. It also started implementation of its exports control of ODSs from July 1996 by not exporting any ODS(used, new, recycled or reclaimed), to any party with the exception of art.5 parties and of parties that are members of the CISs, including Belarus and Ukraine.

The appreciation of the MOP on the Russia Federation's efforts in coming into compliance with the MP continued in its MOP 10, Decision X/26(1998) as well. In that decision, it was underlined that, it reduced consumption of CFCs from 20,990 ODP tonnes in 1995, to a level of 12,345 ODP tonnes, submitted a country programme in October 1995 (revised in November 1995) involving specific benchmarks and a phase-out schedule and achieved to produce only 16,770 ODP tonnes from Annex A, Group I, substances which was below the benchmark of 28,000 ODP tonnes determined in the country programme in 1996. In October 1998, through "Special Initiative for ODS Production Closure in the Russian Federation (Special Initiative)," it also committed to reduce consumption of Annex A, Group I, substances to no more than 6,280 ODP tonnes in 1999, to reduce consumption of Annex A, Group II, substances to no more than 960 ODP tonnes in 1999, to reduce consumption of Annex B, Group I, substances to no more than 18 ODP tonnes in 1999, and to phase out the production of Annex A substances by 1 June 2000 and the consumption of Annex A and B substances by

1 June 2000 (Decision X/26). In the same decision, it was also noted that, the Russian Federation should continue to be treated in the same manner as a “party in good standing” on the grounds that it works toward and meet the specific time-based commitments in its country programme and the Special Initiative and continues to report annual data demonstrating a decrease in imports and consumption. If it could provide these conditions, then, it should continue to receive international assistance to meet its commitments in accordance with item A of the indicative list of measures. Regarding this decision, it is also noteworthy to mention that, the Russian Federation was also cautioned through this decision in accordance with item B of the indicative list of measures. It was stressed in the decision that, if the country fails to meet its commitments according to their time schedule, measures contained in the item C of the indicative list of measures, i.e. suspension of specific rights and privileges under the Protocol, would be considered for the country.

When it came to 2000s, the Russian Federation failed to complete the closure of ODS production facilities by June 2000 as agreed, so it appealed to the parties for more understanding stating that it would end all ODS production by 20 December 2000. Then, the ImplCom agreed to give time to it until 20 December 2000 to halt all production of CFCs (ImplCom 25, 2000:2-3, paras.9-11). As it undertook, by 20 December 2000, all ODS-producing enterprises in the country had completed closure activities and it achieved production sector phase-out (ImplCom 27, 2001: 6, para.32). Nonetheless, it was gain found in non-compliance with the phase-out benchmarks for 1999 and 2000 for the production and consumption of the ozone-depleting substances in Annex A (MOP 13, Decision XIII/17, 2001).

After the data reported by the Russian Federation for 2001 confirmed the complete phase-out of production and consumption of ODSs in Annexes A and B, as noted by the Decision XIII/17 (ImplCom 29, 2002:12, para.66;MOP 14, Decision XIV/35, 2002), the MOP decided that it returned to full compliance with its obligations (MOP 14, 2002:20, para.133).Its success to comply with its commitments was indicated as an illustration of the success of the non-compliance system of the MP by the ImplCom (MOP 14, 2002:20, para.133).

However, it was found in non-compliance with the provisions of art. 4 of the MP prohibiting trade with non-parties to the MP, as it reported the export of 70.2 metric tonnes of Annex C, group I, HFCs in 2009 to the state classified as not operating under para. 1 of art. 5 of the MP, and not party to the to the Copenhagen Amendment to the Protocol in that year (MOP 23, Decision XXIII/27, 2011). It was decided to monitor closely its progress with regard to the implementation of its obligations under the Protocol.

Belarus: After the acceptance of the joint statement as a submission under para. 4 of the NCP, on the basis of the consultations of the ImplCom with the representatives of Belarus regarding possible non-fulfilment of that party's obligations under the MP (ImplCom 11, 1995) and the information submitted by Belarus related data and measures on the phase-out of ozone-depleting substances (ImplCom 12, 1995), the MOP gave a decision on Belarus's status of compliance (MOP 7, Decision VII/17, 1995).

To this decision, Belarus was found in compliance with its obligations under the Protocol in 1995, yet, in possible non-compliance in 1996. So, it was obliged to provide information on the political commitment on the phase-out programme for ODSs, and if the ImplCom finds necessary, additional information on further certain elements, such as the gradual achievement of the proposed phase-out plan. In addition, its benefiting from international assistance was bound to some conditions, such as submitting annual reports on ODS phase-out progress in line with the schedule included in the country programme, settling the questions related to the reporting requirements and the actions of Belarus with the ImplCom..etc. It was not allowed to export any virgin, recycled or recovered substance controlled under the Protocol to any party operating under art.2 of the Protocol not member of the CISs (MOP 7, Decision VII/17, 1995).

After a very short period from that decision, the ImplCom noted that, while the information available showed a situation of non-compliance for 1996 for Belarus, it had taken important steps in complying with Decision VII/17 and towards achieving full compliance with the control measures of the Protocol (ImplCom 13, 1996). This status of non-compliance of Belarus continued till 2000s, and emphasized in different ImplCom reports (like 15, 20, 21) and also Decision

X/21. In the Decision X/21 (MOP 10,1998) it was also noted that although Belarus submitted a list of specific projects with international financing that will reduce national consumption, it did not submit a phase-out plan with specific benchmarks to the Impl Com. Belarus' commitment to a phase-out in the consumption of Annex A and B substances by 1 January 2000 was also underlined. "Closely monitoring" the progress with regard to the phase-out of ODSs was also another important point of the decision that should be mentioned. Finally, as in the case of the Russian Federation (MOP 10, Decision X/26, 1998), the decision made it clear that to be treated "as a party in good standing" and to continue to be benefited from international assistance, Belarus should continue to work toward and meet its specific time-based commitments and report related data annually demonstrating a decrease in imports and consumption. It cautioned Belarus that, if it fails to meet its commitments, the measures mentioned in item C of the indicative list of measures should be considered.

In its another meeting, the ImplCom found it being in non-compliance with the control measures under art. 2, Protocol in 2000 stressing its reporting data on consumption of substances in Annexes A or B to Protocol in 2000 above control levels as provided in art. 2, Protocol. Therefore, "as a matter of urgency," it was requested to provide necessary explanations for its non-compliance (ImplCom 29, 2002; MOP 14, Decision XIV/28, 2002).

Bulgaria: Bulgaria was also found in possible non-compliance in 1996 (despite its compliance status in 1995) in Decision VII/16 (MOP 7, 1995), and it continued to be in non-compliance in 1997 (ImplCom 22; MOP 11, Decision XI/24, 1999) despite its efforts to implement the Protocol fully.

However, in Decision XI/24 (MOP 11, 1999), it was appreciated by the MOP since it acceded to the Vienna Convention and the MP on 20 November 1990 and acceded to the London and Copenhagen Amendments on 28 April 1999, and since it had worked for developing a country programme and establishing a phase-out plan that brought it into compliance with Protocol by 1 January 1998.

As in the cases of the Russian Federation and Belarus, monitoring the progress towards meeting the specific commitments and treating the country in the same manner as a party in good standing provided that it works for meeting the specific

time-based commitments and reports data annually demonstrating a decrease in imports and consumption, were again emphasized by the MOP.

In addition, like in these cases, it was cautioned that if it fails to meet its commitments, it could encounter with measures consistent with item C of the indicative list of measures, involving the the possibility of actions available under Article 4, such as ceasing the supply of CFCs and halons and enabling the exporting parties to be in compliance. In 2001, it was again warned for its situation of potential non-compliance and explanatory information about its consumption figures was requested by the ImplCom 26 (2001).

In 2002, in the context of the regular review of the ImplCom on the the status of compliance with decisions of the parties and recommendations of the ImplCom on non-compliance issues, Bulgaria requested a revision of its baseline figure for methyl bromide consumption. It reported that it had been incorrectly reported as zero for 1991 and so cause it to be found to be in non-compliance last year (ImplCom 28, 2002: para.28). After gathering sufficient information from all relevant sources, the ImplCom considered Bulgaria's request its next meeting and decided to accept its request to change baseline consumption data for Annex E substances in 1991 from zero to 51.78 ODP-tonnes (ImplCom 29, 2002:10-11, paras.50-51, 53, 55, MOP 14, Decision XIV/... (requests for changes in baseline data), 2002: 24).

Poland: Due to its problems in reducing CFC consumption in the years 1994 and 1995, Poland wanted to join the limits for the two years and import the maximum possible in 1994 and 1995 to avoid tensions within its industry and the economy. Yet, since it had not yet ratified the Copenhagen Amendment, it was not legally bound by article 2, para. 3 of the MP. So, it was decided by the ImplCom that, once Poland had ratified the Amendment, it could explain its non-compliance under par. 4 of the NCP (ImplCom 9, 1994).

After the acceptance of the joint statement as a submission under par. 4 of the NCP (ImplCom 10, 1995), its compliance with the protocol was also considered by the MOP 7(1995) in Decision VII/15. In this decision, the assurance was given by Poland that it was in compliance with its obligations under the Protocol for the year 1995 and would likely to be in compliance in 1996 as well. However, it was

warned that, if some doubts emerge about its compliance in the year 1996, it should submit the information to the secretariat as soon as possible so that the necessary action can be initiated.

After this decision, Poland ratified both the London and Copenhagen Amendments to the Protocol and its consumption of CFCs in 1996 became below the level of the essential-use exemptions granted it by the MOP 6 (ImplCom 17, 1997).

Ukraine: The MOP's first decision on Ukraine's status of compliance (MOP 7, Decision VII/19, 1995) follows in the same manner particularly its first decisions on the Russia Federation (MOP 7, Decision VII/18, 1995) and Belarus (MOP 7, Decision VII/17, 1995) and contains similar provisions, such as being obliged to provide information on the political commitment on the phase-out programme for ODSs, and if necessary, additional information on further certain elements, such as the gradual achievement of the proposed phase-out plan, being bound with some conditions, such as submitting annual reports on ODS phase-out progress..etc to receive international assistance. As different from the Russian Federation, like in the case of Belarus, it was not allowed to export any virgin, recycled or recovered substance controlled under the Protocol to any party operating under art.2 of the Protocol not member of the CISs (MOp 7, Decision VII/19, 1995).

After this decision, Ukraine continued to improve its compliance status taking crucial steps in line with the decision (ImplCom 13, 1996), so, its development was welcomed by the ImplCom 15(1996), as it was in the process of ratifying the London Amendment, had established a final phase-out for ODS in 1999, drafted provisions to license the import and export of ODS, submitted data on consumption and production of ODS up to 1995 and also phased out the production of carbon tetrachloride, the only ODS produced in Ukraine, by 1994. However, in the ImplCom 20 (1998), it was listed as one of the parties of which data was in non-compliance in 1996 with the control measures in art.2 of the Protocol. Then, in Decision X/27 (MOP 10, 1998), it was found in non-compliance with its control obligations under articles 2A through 2E of the Protocol in 1996. Especially, the significant increase in consumption of ozone-

depleting substances in Ukraine from 1995 to 1996 was stressed and Ukraine's commitment to phase-out of the consumption of Annex A and B substances by 1 January 2002 was noted.

Due to the difficulty that can raise out in phasing out consumption in the domestic refrigeration sector phase-out by 1 January 2002, Ukraine was warned to plan carefully for its future refrigerant servicing needs and invite the Technology and Economic Assessment Panel to help it. As in the cases of the Russian Federation (Decision X/26)-Belarus (Decision X/21) and Bulgaria (Decision XI/24), in the other provisions of the decision, monitoring the progress towards meeting the specific commitments, treating the country in the same manner as a party in good standing in certain conditions and applying measures consistent with item C of the indicative list of measures if it fails to meet its commitments were again stressed. In its twenty-sixth meeting, while considering the status of compliance of Ukraine with Decision X/27, the ImplCom agreed that no action needed to be taken, as the series of benchmarks agreed between the ImplCom and Ukraine had not come into operation before 2000 (ImplCom 26, 2001:8, para.40). In its another meeting, the ImplCom found it being in non-compliance with the control measures under art. 2, Protocol in 2000 stressing its reporting data on consumption of substances in Annexes A or B to Protocol in 2000 above control levels as provided in art. 2, Protocol. Therefore, "as a matter of urgency," it was requested to provide necessary explanations for its non-compliance (ImplCom 29, 2002).

Nevertheless, Ukraine was not included in the Decision XIV/28 regarding non-compliance with consumption phase-out by parties not operating under art. 5 in 2000 which included the countries Belarus and Latvia, due to the fact that under the terms of Decision X/27 it was still in compliance (MOP 14, 2002:21, para.140). However, after ten years, in 2012, it becomes again the part of a decision of non-compliance. In fact, in Decision XXIV/18 (MOP 24, 2012), while appreciating its efforts to comply with the MP, the MOP stressed it is still in non-compliance with the consumption control measures under the MP for HCFCs in 2010 and 2011; and so, it has to follow up its commitments in its plan of action and also work with the relevant implementing agencies to implement

them to phase out its consumption of HCFCs. In the same decision, it was also warned that its progress would be monitored, and continue to be treated in the same manner as a party in good standing and continue to receive international assistance to the extent that it continues to comply with its commitments. Otherwise, it could encounter with measures consistent with item C of the indicative list of measures.

2. Latvia and Lithuania

In December 1995, the secretariat received a letter from Estonia, Latvia and Lithuania requesting a longer time schedule for phasing out ODSs, showing the institutional and financial problems of their countries to justify their request. While Estonia was not taken into account by the secretariat- as the NCP was only applicable to parties-, Latvia and Lithuania was requested to make a formal submission under para. 4 of the NCP. In response to the Secretariat's request of 27 December 1995 for information pursuant to para. 4 of the NCP, Lithuania submitted a plan of action to phase out ozone depleting substances, while no response was received from Latvia (ImplCom 13,1996). After the requests of the ImplCom 13, Latvia also submitted a report on measures adopted to phase out ozone-depleting substances and its country programme for phasing-out ozone-depleting substances (ImplCom 14, 1996). Although both countries did not make formal submissions for triggering the NCP, the ImplCom considered their reports and action plans as a submission under para.4 of the NCP, and thus, the NCP was initiated.

The ImplCom reported that, based on the information given by the countries, they would be in a situation of non-compliance with the Protocol in 1996 and possible non-compliance in 1997. It also stressed that, even if the ratification of the London Amendment was a prerequisite for them to receive assistance from the GEF, international funding agencies should consider favourably the provision of financial assistance to them for necessary projects to phase out ozone-depleting substances in the countries (ImplCom 14,1996). In line with the recommendations of the ImplCom, the MOP 8(1996) decided that, both countries should be kept under review with regard to ODS phase-out in their countries, the provision of

financial assistance, particularly by the GEF, should be considered favourably to provide funding for projects on phasing out ODSs to implement their programmes, they should be urged to ratify the London Amendment to the Protocol as soon as possible (MOP 8, Decision VIII/22-23, 1996). In accordance with these decisions, the situation regarding ODS phase-out in these countries was kept under review (ImplCom 17, 1997) and it was determined that they were in a situation of non-compliance in 1997 and would be probably in non-compliance in 1998 as well (ImplCom 18, 1997; MOP 9, Decision IX/29-30, 1997).

After these decisions, while Lithuania acceded to the London and Copenhagen Amendments on 3 February 1998, Latvia acceded to them on 2 November 1998. Together with these positive developments, their other efforts to achieve compliance, like reducing their consumption of ODSs, were also indicated as the signals of their commitment to become parties in full compliance with the Protocol through Decisions X/24-25 (MOP 10, 1998).

In the Decision X/24 on Latvia's situation, on the basis of Latvia's statements to the ImplCom, it was supposed that, Latvia committed to observe the ban on the production and import of Annex A, Group II, substances imposed on 12 December 1997, to limit consumption of Annex A, Group I, substances to no more than 100 metric tonnes in 1999, and to ban the production and import of Annex A, Group I, and all Annex B substances by 1 January 2000.

In the Decision X/25 on Lithuania's situation, it was also supposed that, it committed to ban the import of CFC-113, carbon tetrachloride and methyl chloroform by 1 January 2000 and to reduce the consumption of Annex A and B substances by 86 per cent from 1996 levels by 1 January 2000.

In both decisions, considering the plans produced by them, it was expected that they would be able to achieve a total phase-out of Annex A and B substances by 1 July 2001. In addition, in line with the decisions on the Russian Federation (Decision X/26)-Belarus (Decision X/21)-Bulgaria (Decision XI/24) and Ukraine (Decision X/27), monitoring the progress towards meeting the specific commitments, treating them as parties in good standing as long as they worked toward and met specific time-based commitments and applying measures consistent with item C of the indicative list of measures if they fail to meet their

commitments as indicated in their timetables, were again stressed in both decisions.

The ImplCom continued its review of the status of compliance with specific decisions of these parties and recommendations of the ImplCom on non-compliance in the coming years as well. In its twenty-ninth meeting, it clearly stated that, Latvia was among the non-article 5 parties which were determined as in non-compliance with the control measures under Articles 2A to 2H, stressing that Latvia had reported consumption of ODSs in 2000 in excess of the control limits which could not be explained by allowed exemptions (ImplCom 29, 2002:11-12, para.59). Therefore, it decided to forward the issue to the MOP 14, containing a draft decision, declaring that Latvia was in non-compliance with the control measures in 2000 (ImplCom 29, 2002: para.60). This draft decision was then approved by the MOP 14 with its all provisions (MOP 14, Decision XIV/28, 2002). Monitoring on the country was continued in the subsequent year as well. Because it reported its annual data for 2001 above its requirement for a 50 % reduction in consumption of the controlled substance in Annex E (methyl bromide), it was found as being in non-compliance with its obligations under art. 2H of the Protocol for that year. Nevertheless, it was able to provide an explanation for its non-compliance and subsequently reported Annex E data for 2002 indicating its return to compliance (MOP 15, Decision XV/24, 2003).

4.1.3.3 Triggering by the Secretariat

1. The Countries with Their Economies in Transition (CEITs)

The CEITs, which came to notice as non-compliant and so were reported to the ImplCom by the secretariat to date, have been Armenia (subsequently reclassified as developing country operating under art. 5),⁵⁵ Azerbaijan, Czech Republic,

⁵⁵ Taking into account its difficult economic situation, its classification as a developing country by the World Bank and the UNDP and its low *per capita* consumption of ODSs, MOP 14 decided to accept the application of Armenia to be listed as a developing country (MOP 14, Decision XIV/2, 2002). So, it is involved here in the section titled as 'Triggering by the Secretariat against any party to the Protocol, Non-compliance by the countries with their economies in transition (CEITs).

Estonia, Kazakhstan, Tajikistan, Turkmenistan (subsequently reclassified as developing country)⁵⁶ and Uzbekistan (see Annex E to the thesis).

Armenia: Armenia was firstly found in non-compliance with data reporting requirement under art. 7 of the Protocol in 2001 through Decision XIII/18 (MOP 13, 2001). Then, it was also found in non-compliance with the control measures under art. 2 of the MP in 2000, as it reported data on consumption of substances in Annex A to the Protocol in 2000 above control levels in 2002 through Decision XIV/31 (MOP 14, 2002). Through these both decisions and also Decision XV/27 (MOP 15, 2003), it was recommended to ratify the London Amendment in order to benefit from financial assistance for projects to phase out ODSs in that country. Then, it applied for reclassification as a developing country operating under art. 5 of the Protocol, and its application was accepted under Decision XIV/2 (MOP 14, 2002). In addition, it ratified the London and also Copenhagen Amendments on 26 November 2003, thus, it has attained the right of financial assistance to enable its compliance.

When it reported its annual consumption for the controlled substance in Annex E (methyl bromide) for 2004 of 1.020 ODP-tonnes, as this exceeded its maximum allowable consumption level of zero ODP-tonnes for that controlled substance for that year, it was again found in non-compliance with the control measures for methyl bromide under the Protocol in 2005 (MOP 17, Decision XVII/25, 2005). Therefore, the MOP requested Armenia to submit a plan of action with time-specific benchmarks- including the establishment of import quotas to support the phase-out schedule and necessary policy and regulatory instruments - to the ImplCom at its next meeting “as a matter of urgency.” The MOP also decided (MOP 18, Decision XVIII/20, 2006 as well) to monitor closely its progress and to treat it in the same manner as a party in good standing and continue to receive international assistance as long as it works towards and meet the specific Protocol control measures. In this decision of the MOP, Armenia was also cautioned (in accordance with item B of the indicative list of measures) that it can be faced

⁵⁶ Due to the fact that *per capita* consumption of Annex A and Annex B substances of the party is below the limits specified under art. 5 of MP and the party is classified as a low income country by the World Bank, MOP 16 decided to accept the application of Turkmenistan to be listed as a developing country (MOP 16, Decision XVI/39, 2004; MOP 17, 2005).

with measures consistent with item C of the indicative list of measures which can involve stopping the supply of the controlled substance in Annex E (methyl bromide) in accordance with art.4, if it fails to return to compliance in a timely manner (MOP 17, Decision XVII/25, 2005).

After this decision of MOP, Armenia submitted its plan of action for complying with the Protocol's methyl bromide control measures and committed itself to maintain methyl bromide consumption at no more than zero ODP-tonnes from 2007, save for critical uses that may be authorized by the parties after 1 January 2015 and to introduce a system for licensing the import and export of ODSs that includes import quotas by 1 July 2007.

Its these achievements and also its reporting on methyl bromide consumption for 2005 which shows its return to compliance in that year were welcomed by the MOP 18. However, as Armenia itself was not sure about its ability to sustain its phase-out of consumption of methyl bromide, the MOP recommended it to work with the relevant implementing agencies to implement the remainder of the plan of action (MOP 18, Decision XVIII/20, 2006). For 2006, Armenia submitted that, as preliminary data for 2006 shows, it would maintain total phase-out of methyl bromide consumption in that year (ImplCom 38, 2007).

Regarding its commitment on introducing the licensing the import and export of ODSs and quota system in accordance with Decision XVIII/20 (MOP 18, 2006), it should be stated that it completed implementation of its commitment in 2007 in the last week of June (ImplCom 39, Recommendation 39/2, 2007).

On the other hand, with respect to its commitment not to exceed zero consumption of methyl bromide from 2007 again in accordance with Decision XVIII/20, Armenia achieved to report its methyl bromide consumption at zero ODP tonnes for 2007 and also for 2008 maintaining its compliance with its commitment contained in Decision XVIII/20 (ImplCom 40, Recommendation 40/4, 2008; ImplCom 42, Recommendation 42/4, 2009).

Azerbaijan: Azerbaijan was firstly found in non-compliance with its control obligations under articles 2A through 2E of the MP in 1996 through Decision X/20 (MOP 10, 1998). Since it was believed by the country that this situation would continue through at least the year 2000, in order to achieve the virtual

phase out of CFCs and a complete phase-out of halons by 1 January 2001, it committed itself to manage the following measures:

- To phase-out of Annex A, group I, substances (CFCs) by 1 January 2001 (save for essential uses authorized by the parties),
- To establish, by 1 January 1999, a system for licensing imports and exports of ODS,
- To establish a system for licensing operators in the refrigeration-servicing sector,
- To tax the imports of ozone-depleting substances, to enable it to ensure that it meets the year 2001 phase-out,
- To ban, by 1 January 2001, on all imports of Annex A, group II, substances (halons)
- To consider by 1999, a ban on the import of ODS-based equipment,

In line with other similar decisions on non-compliant parties, in this decision as well, it was again stressed that if Azerbaijan does not work for meeting its commitments mentioned above on the basis of the time schedule pre-determined, the parties would have the opportunity to consider measures to be applied against it.

Based on the Decision X/20 (MOP 10, 1998), Azerbaijan prohibited the import of halons in 1999, however, data submitted by Azerbaijan for 2001, 2002 and 2003 showed consumption of CFCs putting Azerbaijan in non-compliance with its obligations under art. 2A of the Protocol and it also failed to fulfil its undertaking, contained in Decision XV/28, to ban the consumption of CFCs from January 2003 (MOP 15, Decision XV/28, 2003; MOP 16, Decision XVI/21, 2004). Although it confirmed the introduction of a ban on the import of controlled substances in Annex A group I (CFCs), unfortunately, as it did not achieve total phase out of these controlled substances by 1 January 2001, 1 January 2003, 1 January 2005, respectively, it was further cautioned that, if it fails to achieve total phase out of Annex A, group I, controlled substances (CFC) by 1 January 2006, implementation of item C of the indicative measures, which could include action available under Article 4 to cease supply of Annex A, group I, controlled substances (CFCs) to Azerbaijan would be considered by the subsequent MOP (MOP 17, Decision XVII/26, 2005). This caution was recalled again through

respectively Recommendation 36/3 and Recommendation 37/2 of the ImplCom (ImplCom 36, 2006; ImplCom 37, 2006).

It then managed to return to compliance in 2006 with the consumption control measures for Annex A, group I, controlled substances (CFCs) and also to achieve total phase-out of those substances by 1 January 2006. Nevertheless, it reported consumption of Annex B, group I (other CFCs) in that year for the first time, and this report showed that there was an apparent inconsistency with the Protocol's requirement to maintain total phase-out of those substances in 2006 (ImplCom 38, Recommendation 38/2, 2007). In response to this deviation, Azerbaijan explained that it resulted from a misclassification of imports and its corrected data expresses its compliance with the Protocol's requirement to maintain total phase-out of those substances in that year (ImplCom 39, 2007).

As regards receiving institutional strengthening assistance from the GEF, Azerbaijan was requested by the ImplCom 38(2007), through in Recommendation 38/2, to submit to the Secretariat as soon as possible, and no later than 1 August 2007, a status report on its efforts in conjunction with the UNEP to expedite implementation of the additional institutional strengthening Project. This Project was comprising national (such as the preparation of work plans and the acquisition of additional staff, expertise and equipment) and regional activities (such as activities conducted through the regional network of ozone officers for Eastern Europe and Central Asia and the UNEP Green Customs Initiative on regional or transboundary issues (like illegal trade, stockpiling and destruction of ODSs) for four countries with economies in transition: Azerbaijan, Kazakhstan, Tajikistan and Uzbekistan (approved by GEF on 9 April 2007), for institutional strengthening and customs officer training components of a capacity-building assistance. It responded to this request of the ImplCom, yet, it could not achieve to start the implementation of the project, so advised to work in cooperation with the UNEP to expedite the implementation (ImplCom 39, Recommendation 39/3, 2007). Finally, in Recommendation 40/5 (ImplCom 40, 2008), it was requested to complete the necessary operations for signing the pending agreement for the full implementation of the project.

Czech Republic: Because of the operation of special industrial cooling equipment for the chemical industry in the country, the Czech Republic was not able to be in compliance with the halon phase-out in 1994 and also in 1995 (MOP 8, Decision VIII/24, 1996). It imported a total of 11.16 ODP tonnes of methyl bromide exceeding its freeze level of 6.0 ODP tonnes. As only 7.9 ODP tonnes of this amount was consumed in 1996 and no methyl bromide was imported in 1996, the average annual consumption for the two years remained below its freeze level (MOP 9, Decision IX/32, 1997). Thus, it evaded to be faced with measures due to its non-compliance.

However, it was found in non-compliance with its control obligations under articles 2A through 2E of the Montreal Protocol for 1996. This was named as “technical non-compliance,” due to the fact that the Czech Republic had imported ODSs in 1996 without obtaining an essential-use authorization from the parties to the Protocol. So, even though it claimed that some part of its CFC consumption was for essential uses for metered-dose inhalers, as it had no authorization, it was still in state of technical non-compliance (MOP 10, Decision X/22, 1998).

It was celebrated by the report of the ImplCom 23 because of its reporting the seizure of illegal imports of ODSs in the country, and it was decided in this report that all parties should be supported for active struggle with illegal trade in ODSs (ImplCom 23, 1999). In 2001, the ImplCom finally decided on the Czech Republic that it was in compliance according to the consumption figures that it reported, so no action needed to be taken against it (ImplCom 26, 2001).

Estonia: Despite its major efforts to come into compliance with the MP and its consumption’s reduction from 131 ODP tonnes in 1995 to 36.5 tonnes in 1996 as a result of these efforts, Estonia was found in non-compliance with its control obligations under articles 2A through 2E of the Protocol in 1996. Because its this situation was likely to continue through at least the year 2000, it committed a few reductions targets for a complete phase-out (MOP 10, Decision X/23, 1998). These interim targets were the followings:

- To reduce consumption to no more than 23 ODP tonnes for Annex A and B substances by 1 January 1999,

- To establish a harmonized system for monitoring and controlling imports of ODSs in 1999,
- To completely phase out consumption of Annex B substances and to reduce consumption to no more than 14 ODP tonnes of Annex A substances by 1 January 2000,
- To reduce consumption of CFC-12 to all but 1 tonne in 2001,
- To a complete phase out of Annex A substances by 1 January 2002,

In the Decision X/23 (MOP 10, 1998), similar to other decisions of the MOP with regard to other non-compliant parties, Estonia was also cautioned that if it fails to meet the specific time-based commitments noted above, the parties had the opportunity to consider measures which could include the possibility of ceasing the supply of CFCs and halons that is the subject of non-compliance. In 2000, however, due to the fact that its consumption of Annex B/I substances increased in 1998 and that it did not meet its target for Annex A and B substances, the ImplCom decided to alert the country concerning the deviation from the reduction schedule and to ask for clarification on the reasons of the deviation by the secretariat (ImplCom 24, 2000:3, para. 10).

Finally, in its twenty-sixth meeting, the ImplCom decided to take no action on Estonia, as the consumption levels reported by the country fell within its specific commitments (ImplCom 26, 2001: para.36).

Kazakhstan: The first decision on Kazakhstan, concerning its non-compliance with its control obligations under articles 2A through 2E of the Protocol, is Decision XIII/19 (16-19 October 2001). This decision particularly indicated that the data reported by Kazakhstan for the years 1998–2000 with the Protocol's requirement showed its non-compliance obviously. It also recorded the party's commitment to return to compliance by, among other ones (see Decision XIII/19 (MOP 13, 2001), phasing out its consumption of CFCs and methyl bromide by 1 January 2004 and establishing a ban on the import of equipment that used ODSs by 1 January 2003. In the para.4 of same decision, the agreement of MOP 13 to monitor the progress of Kazakhstan with regard to the phase-out of ODSs, particularly towards meeting the specific commitments contained in the decision was also stressed. To this provision of the decision, likewise in other decisions of

the MOP on non-compliance, if it fails to meet them, it would be not treated in the same manner as a party in good standing and could be faced with measures, consistent with item C of the indicative list of measures which could include the possibility of actions that may be available under Article 4. In the subsequent decision on Kazakhstan, namely Decision XVII/35 (MOP 17, 2005), this paragraph of Decision XIII/19 (MOP 18, 2006) was reminded to the party again. It was also underlined that, although Kazakhstan's reported CFC consumption for 2004 was less than its reported consumption in 2003, it was still inconsistent with the party's commitment contained in Decision XIII/19 to reduce its consumption of the controlled substances in Annex A, group I (CFCs), to zero in 2004. Moreover, Kazakhstan was warned about its non-compliance on submitting the requested explanation for the deviation and reporting on its commitment to implement a ban on the import of equipment using ODSs (ImplCom 35, Recommendation 35/20, 2005).

After this decision, with respect to its apparent deviation in 2004, it submitted an explanation referring to the administrative changes in the country which had resulted in delays in enforcement of the ban on the import of ODSs and products containing such substances. It also submitted its 2005 data consistent with its commitment to return to compliance with the Protocol's control measures, reporting CFC and methyl bromide consumption of zero ODP-tonnes, and completed implementation of its commitment to introduce a ban on the import of equipment using ODSs (ImplCom 36, Recommendation 36/23, 2006).

Another important issue that should be mentioned about Kazakhstan case is on non-compliance in trade with non-parties, that is, art. 4 of the Protocol, as introduced by the 1999 Beijing Amendment. This issue raised after the Republic of Korea exported to Kazakhstan HCFCs in 2008 and also in 2009, since to the art. 4(par.2), parties to the amendment should ban the export of HCFCs to any state not party to the Protocol. The definition of the term "state not party to the Protocol" should be clarified here in order to understand the situation of Kazakhstan. The term "state not party to the Protocol" is defined as a state that had not agreed to be bound by the control measures in effect for those substances.

In the case of HCFCs, control measures were imposed under the Copenhagen (controlling consumption) and Beijing Amendments (controlling production) (art.4, para.9). It was defined by Decision XV/3 (MOP 15, 2003) to include all other states that had not agreed to be bound by the Copenhagen and Beijing amendments (Decision XV/3, para. 1b). This term does not apply to those states operating under par. 1 of art. 5 until 1 January 2013 (Decision XV/3, para. 1a, as amended by Decision XX/9), and it does not apply also to those states which were determined to be in full compliance with art. 2 (2A–2I) and art. 4 by the MOP (yet, the MOP should decide on the matter following a request from the concerned state, (art.4, para.8), and had submitted data in accordance with art. 7, the exports of ODSs (like HCFCs) might be allowed to that state (art.4, para.9).

When Kazakhstan's case is examined, it becomes clear that, the Republic of Korea was bound by the requirements of the Beijing Amendment as a party of that amendment, while Kazakhstan was not a party to the Copenhagen or Beijing amendment, it was a non-art.5 party and finally its consumption of both HCFCs and methyl bromide for 2006-2008 was found above the control levels that would be required. Such situation of Kazakhstan provided all the conditions of preventing it from trading in ODSs, and particularly in HCFCs, with parties to the Protocol.

Therefore, the ImplCom recommended it to ratify the Copenhagen and the Beijing amendments to the Protocol (ImplCom 45, Recommendation 45/6, 2010) and prepared a draft decision for consideration by MOP 22(2010).

Tajikistan: Tajikistan was identified in Decision XIII/20 (MOP 13, 2001) as being in non-compliance with its obligations under the Protocol (articles 2A-2E). So, it committed to a series of measures (listed in para. 2 of the Decision) to achieve the near total phase-out of all Annex B substances by 1 January 2002, all Annex A substances by 1 January 2004 and the Annex E substance by 1 January 2005, to return to compliance. The decision (para.4), similar to the cases mentioned above, also cautioned it that the parties could consider measures, consistent with item C of the indicative list of measures, if it did not meet its specific time-based commitments. The ImplCom noted some inconsistencies concerning the dates when some commitments were expected to be completed in

its progress report on its commitments (ImplCom 28, 2002: para.71; ImplCom 29, 2002: para.70), and further noted that regarding the progress made to implement these agreed benchmark commitments, no data could be received from the country (ImplCom 30, 2003: para.88). Its compliance with its commitments contained in Decision XIII/20 was declared after its submission of its data through the secretariat's report and it was also congratulated on its complete phase out methyl bromide consumption even though it was not yet a party to the Copenhagen amendment (ImplCom 31, 2003: para.77). However, despite its achievement on phasing out by 2003, as it failed to submit its 2003 data, its compliance status could not be evaluated (ImplCom 32, 2004). After its reporting data for CFC consumption in 2003 as meeting its benchmark its efforts and progress towards complying with the requirements of Decision XIII/20 was appreciated by the ImplCom (ImplCom 33, 2004:para.86).However, about its data for 2004, it was again warned by the Committee to submit it to the Secretariat as soon as possible (ImplCom 34, Recommendation 34/41, 2005:para.188).

With regard to its commitment to phase out the consumption of CFCs by 1 January 2004 contained in decision XIII/20, it achieved to report zero CFC consumption in its 2004 data (ImplCom 35, Recommendation 35/38, 2005: para.202-203). On its commitment to phase out its consumption of the Annex E controlled substance (methyl bromide) by 1 January 2005, reported zero consumption of methyl bromide, but it had not submitted data for 2005. After it was recommended to submit it by the ImplCom 36 as soon as possible (ImplCom 36, Recommendation 36/43, 2006) and submitted it based on this recommendation, it was found as successful to achieve total phase-out of the methyl bromide in that year (ImplCom 37, Recommendation 37/35, 2006). Thus, it achieved to complete the implementation of all its commitments contained in Decision XIII/20 to return to compliance with the Protocol.

Turkmenistan: Through Decision XI/25 (MOP 11, 1999), Turkmenistan was declared by the MOP 21(2009) as being in non-compliance with its control obligations under the Protocol in 1996. In this Decision, it also committed to a series of specific time-based commitments (para.3) and was cautioned with the application of the measures consistent with item C of the indicative list of

measures when it failed to meet its obligations (para.4). After 10 years of this decision, when it came to the year 2009, this caution was repeated with regard to the phase-out of carbon tetrachloride in Decision XXI/25, paras.3-4 (MOP 21, 2009), as Turkmenistan reported its annual consumption for carbon tetrachloride (Annex B, group II) for 2008 of 0.3 ODP-tonnes which shows a deviation from its maximum allowable consumption of carbon tetrachloride to zero ODP-tonnes for 2008. After its submission of its plan of action explaining that the imported amounts of 0.3 ODP-tonnes in 2008 and 0.7 ODP-tonnes in 2009 were necessary for the analysis of mineral oil in water, it requested that its situation should be re-examined in the context of Decision XXI/6 on the global laboratory-use exemption (which allowed art.5 parties to deviate from existing laboratory and analytical use bans in individual cases until 31 December 2010, and extended global laboratory-use exemption until 31 December 2014). On the basis of this decision, it was recommended by the ImplCom 44 (2010) in Recommendation 44/5 to re-examine its compliance situation after 31 December 2010, in respect of laboratory and analytical use exemption.

Uzbekistan: Although Uzbekistan managed to decrease its consumption from an estimated 1,300 tonnes in 1992 to 275 tonnes in 1996, as it reported positive consumption of 272 ODP tonnes of Annex A and Annex B substances for 1996, it was found being in non-compliance with its obligations under the Protocol for that year through Decision X/28 (MOP 10, 1998). ‘Caution and monitoring clause’ located in para.4 of similar decisions of the MOP was also repeated for the country in this decision as well. So, its specific commitments included in its country programme such as, to establish policy instruments and regulatory requirements, import quotas, bans on imports of ODS and equipment using and containing ODS to support the phase-out schedule in 1999, and to reduce consumption of CFCs, carbon tetrachloride, methyl chloroform completely by 2002, were continued to be monitored by the parties in the upcoming years as well. The ImplCom requested the secretariat to alert the country to its state of potential non-compliance because of its failure to report data for 1999. So, it was alerted because of its failure to report data for 1999 (ImplCom 26, 2001) and to remind it to report data for the year 2000 (ImplCom 27, 2001).

When it came the year 2007, it could barely submit its all outstanding data in accordance with its data-reporting obligations under the Protocol and Decision XVIII/34 (para.2) requesting Uzbekistan to report its 2005 ODSs data. Therefore, it was declared as being in compliance with the Protocol's control measures in 2005 (ImplCom 38, Recommendation 38/49, 2007). It was also found as being in compliance with its obligations under art. 4B of the Protocol (among others, such as Kiribati, Niue, Sao Tome and Principe, United Republic of Tanzania) in 2008, due to its establishment and operation of a licensing system for the import and export of controlled ODSs (ImplCom 40, 2008: paras.248, 252).

2. Developing Countries

The Montreal Protocol invokes the principle of differentiated responsibility granting a ten years period allowing a delay to developing parties to implement necessary control measures set forth in the Protocol (art.5.1, MP). In line with this principle, it also states that, developed countries should provide the financial cooperation (art.10, MP) and transfer of technology (art.10A, MP), and thus, the implementation of developing countries (art.5.5, MP). Furthermore, it obliges the parties to cooperate taking into account particular the needs of developing countries, in promoting research, development and exchange of information on best technologies for improving the containment, recovery, recycling, or destruction of controlled substances, possible alternatives to controlled substances, costs and benefits of relevant control strategies (art.9.1, MP).

Thus, through the principle of 'common but differentiated responsibility,' developing countries have been granted some privileges by the MP, such as being allowed to implement the control measures under a "grace period" (art. 5), to benefit from the MF for their incremental costs (art.10) and from other parties for transferring the best available substitutes and technologies (art. 10A), and to be evaluated on the basis of the effective implementation of articles 10 and 10A (art. 5, paras. 5-6).

In line with this principle, they have become ready to be assessed based on the substantive obligations under the Protocol in 1999, with the end of the grace period. Therefore, in Decision XI/23, the MOP (1999) had requested the ImplCom

to conduct a full review of their data before the MOP 12(2000) through gathering information on failures to comply with obligations for 1998 and 1999. However, this could not be achieved, and so the ImplCom advised the MOP to urge parties to send their data as no later than 30 September 2001, as it would commence to review data relating to the first year of compliance for Article 5 Parties in 2001 (ImpCom 25, 2000:6).

Thus, beginning from the year 2001, Article 5 parties were also began to be assessed according to their compliance status, as being in potential non-compliance or being in non-compliance (see Annex F to the thesis), greatly augmenting the number of cases that should be examined by the Committee.

With respect to be identified as being in potential non-compliance;

In 2001, Bangladesh, Chad, Comoros, Dominican Republic, Honduras, Kenya, Mongolia, Morocco, Niger, Nigeria, Oman, Papua New Guinea, Paraguay, Samoa and Solomon Islands, were found above their individual baselines. As they did not respond to the request from the Secretariat for data for the control period from 1 July 1999 to 30 June 2000, all are presumed to be in potential non-compliance with the control measures under the Protocol (MOP 13, Decision XIII/16, 2001).

In 2002, potential non-compliance was identified for Guatemala, Malta, Pakistan and for Papua New Guinea again (MOP 14, Decision XIV/17, 2002).

In 2003, it was also determined for Dominica, Haiti, Saint Kitts and Nevis, and Sierra Leone for the consumption of CFCs (MOP 15, Decision XV/21, 2003), for Malaysia, Mexico, Nigeria and Pakistan with consumption of halons (MOP 15, Decision XV/22, 2003), for Morocco for the consumption of hydrobromofluorocarbons (MOP 15, Decision XV/23, 2003), for Barbados, Egypt, Paraguay, Philippines, Saint Kitts and Nevis, and Thailand for the consumption of methyl bromide (MOP 15, Decision XV/25, 2003).

In 2004, through the MOP Decisions (XVI/19-20), Somalia (MOP 16, Decision XVI/19, 2004) for the consumption of Annex A, group II, ozone-depleting substances (halons) for both 2002 and 2003 and also Bangladesh, Bosnia and Herzegovina, Ecuador and the Islamic Republic of Iran (has a request for a change in its baseline data for methyl chloroform) (MOP 16, Decision XVI/20, 2004) for

the consumption of the controlled substance in Annex B, group III (methyl chloroform) for 2003 were found in potential non-compliance status.

In 2005, China (its reported annual consumption for the controlled substances in Annex B, group I (other CFCs), for 2004 exceeded its maximum allowable consumption level for those controlled substances for that year) (MOP 17, Decision XVII/30, 2005) and Kazakhstan (its reported annual consumption for the controlled substances in Annex A, group I (CFCs), in 2004 was not zero as committed in Decision XIII/19) (MOP 17, Decision XVII/35, 2005) was declared as being in potential non-compliance.

In 2006, Eritrea (its reported annual consumption for the controlled substances in Annex A, group I, (CFCs) for 2005 exceeding its maximum allowable consumption level of for those controlled substances for that year) (MOP 18, Decision XVIII/24, 2006) and the Islamic Republic of Iran (its reported annual consumption for the controlled substance in Annex B, group II, (carbon tetrachloride) for 2005 exceeded its maximum allowable consumption level for that controlled substance for that year) (MOP 18, Decision XVIII/27, 2006), both were identified as being in potential non-compliance.

In 2007, Saudi Arabia (its reported annual consumption for the controlled substance in Annex E (methyl bromide) for 2005 exceeded its maximum allowable consumption level for that controlled substance for that year) (MOP 19, Decision XIX/23, 2007), was also assessed as being in potential non-compliance.

In 2008, Solomon Islands annual consumption for the controlled substance in Annex A, group I (chlorofluorocarbons), for 2006 of 1.4 ODP tonnes exceeded its maximum allowable consumption level of 1.1 ODP tonnes for that controlled substance for that year. So, it was presumed to be in non-compliance with the control measures under the MP. Furthermore, as it did not report its ODSs data for 2007, it was also found as being in non-compliance with its data-reporting obligations under the MP (MOP 20, Decision XX/18, 2008).

In 2011, Libya was found as being in potential non-compliance, due to its exceeding in its maximum allowable consumption of zero ODP-tonnes for that controlled substance for that year, to its reporting of annual consumption for the controlled substances in Annex A, group II (halons), for 2009 of 1.8 ODP-tonnes

(MOP 23, Decision XXIII/23, 2011). But, only after one year, it was admitted as being in compliance with its commitments recorded in Decisions XV/36 and XVII/37 to phase out its chlorofluorocarbon and methyl bromide consumption, according to its explanation on its halon consumption in 2009 and the submission of its ozone-depleting substance data for 2010 and 2011 (ImplCom 49, Recommendation 49/4, 2012:8-9, paras.45-54).

As regards being identified as being in non-compliance;

In different years from 2001 to 2010, different developing countries (see Annex F) were all identified as being in non-compliance status based on their submitted data.

Of those, Albania, through its plan of action, committed itself to reduce gradually its CFC consumption from 69 ODP-tonnes in 2001 to 2.2 ODP-tonnes in 2008 (phasing out by 2009), to establish a system for licensing imports and exports of ODS, including quotas and to ban imports of ODS-using equipment by 2004 (MOP 15, Decision XV/26, 2003).

Bolivia promised to reduce its CFC consumption from 65.5 ODP-tonnes in 2002 to 11.35 ODP-tonnes in 2007 (phasing out by 2010), to monitor its system for licensing imports and exports of ODS, including quotas, introduced in 2003 and its ban on imports of ODS-using equipment, introduced in 1997 for CFC-12 and extended to other ODS in 2003 (MOP 15, Decision XV/29, 2003).

Bosnia and Herzegovina specifically committed itself to reduce CFC consumption from 243.6 ODP-tonnes in 2002 to 3 ODP-tonnes in 2007 (phasing out by 2008) and methyl bromide consumption from 11.8 ODP-tonnes in 2002 to 5.61 ODP-tonnes in 2005 and in 2006 (phasing out by 2007), to establish a system for licensing imports and exports of ODS, including quotas by 2004 and to ban imports of ODS-using equipment by 2006 (MOP 15, Decision XV/30, 2003).

While Botswana's baseline for the controlled substance in Annex E was 0.1 ODP-tonnes, its reported consumption in Annex E in 2002 was 0.6 ODP-tonnes. So, it was decided as being in non-compliance with its obligations under Article 2H of the Montreal Protocol for 2002. Its plan of action included to reduce methyl bromide consumption from 0.6 ODP-tonnes in 2002 to 0.2 ODP-tonnes in

2004 (phasing out by 2005), and to establish a system for licensing imports and exports of methyl bromide, including quotas (MOP 15, Decision XV/26, 2003).

For 2002, Cameroon was stated as being non-compliant with its obligations under Article 2B and also under Article 2H of the MP, since its baseline for Annex A, group II substances was 2.38 ODP-tonnes, for the controlled substance in Annex E was 18.09 ODP-tonnes, whereas its reported consumption was 9 ODP-tonnes for Annex A, group II substances, 25.38 ODP-tonnes for the controlled substance in Annex E. Therefore, besides its plan of action on the control measures for Annex A, group II substances, it was also requested to submit a plan of action with time-specific benchmarks with respect to consumption of the controlled substance in Annex E (MOP 15, Decision XV/32, 2003).

For 2002, the Democratic Republic of the Congo was also determined as being in non-compliance with its obligations under Article 2B of the MP, as while its baseline for Annex A, group II substances was 218.67 ODP-tonnes, it reported consumption of 492 ODP-tonnes in 2002. It was requested to submit a plan of action which can include the establishment of import quotas to freeze imports at baseline levels and support the phase-out schedule, a ban on imports of ODS-using equipment, and policy and regulatory instruments that can ensure progress in achieving the phase-out (MOP 15, Decision XV/33, 2003).

Ecuador, which was regarded as being in potential non-compliance with the control measures under the Protocol in 2003 (MOP 16, Decision XVI/20, 2004) and also with the control measures for methyl bromide under the Protocol for methyl bromide in 2007 (MOP 20, Decision XX/16, 2008), in 2008, was stated as being in compliance with its commitment recorded in Decision XX/16 to limit its consumption of methyl bromide to no greater than 52.8 ODP-tonnes in that year, to its reporting data on consumption of ozone-depleting substances for 2011 (ImplCom 49, Recommendation 49/3, 2012:8, paras.42-44).

Guatemala reported consumption of Annex A, group I substances in 2002 and the controlled substance in Annex E exceeded Guatemala's baseline for these substances, so for 2002, Guatemala was found in non-compliance with its obligations under Articles 2A and 2H of the MP even if it was appreciated due to

its plan of action under which it specifically committed itself to phase out CFC consumption by 1 January 2010 and methyl bromide consumption by 1 January 2015 (MOP 15, Decision XV/34, 2003).

Honduras's non-compliance with its obligations under Article 2H of the MP stemmed from its consumption of the controlled substance in Annex E exceeding its baseline. Its efforts to recover the increase in use of methyl bromide resulted from Hurricane Mitch in October 1998 and submission of its plan of action involving commitments to mitigate its methyl bromide consumption were welcomed by the MOP (MOP 15, Decision XV/35, 2003).

The Libyan Arab Jamahiriya submitted its plan of action including commitments for reducing CFC consumption from 985 ODP-tonnes in 2001 to 107 ODP-tonnes in 2007 (phasing out by 1 January 2010), establishing by 2004, a system for licensing imports and exports of ODS, including quotas, monitoring its ban on imports of ODS-using equipment, introduced in 2003 (MOP 15, Decision XV/36, 2003).

Maldives submitted its plan of action including commitments like reducing CFC consumption from 2.8 ODP-tonnes in 2002 to 0 ODP-tonnes in 2008 and 2009 (phasing out by 1 January 2010), monitoring its existing system for licensing imports of ODS, including quotas, introduced in 2002 and banning, by 2004, imports of ODS-using equipment (MOP 15, Decision XV/37, 2003).

Namibia's plan of action included commitments such as reducing CFC consumption from 20 ODP-tonnes in 2002 to 1.0 ODP-tonnes in 2009 (phasing out by 1 January 2010), establishing, by 2004, a system for licensing imports and exports of ODS, including quotas and banning, by 2004, imports of ODS-using equipment (MOP 15, Decision XV/38, 2003).

For the July 2000-June 2001 control period, as its consumption (94 ODP-tonnes of Annex A, group I substances) exceeded its baseline (27 ODP-tonnes), Nepal was also found in non-compliance with its obligations under Article 2A of the MP. Nevertheless, Nepal subsequently wished to report 74 ODP-tonnes as illegal trade under the terms of Decision XIV/7, as this amount of imports of CFCs was detained by its customs authorities as the shipment lacked an import license. However, since Decision XIV/7 (para.7) provides that "the illegally

traded quantities should not be counted against a Party's consumption provided the Party does not place the said quantities on its own market," it was put forward by the MOP that, if Nepal decides to release any of the seized quantity of CFCs into its own market, it would be considered to be in non-compliance with its obligations under Article 2A of the MP (MOP 15, Decision XV/39, 2003).

For the July 2000-June 2001 control period, Papua New Guinea was in non-compliance with its obligations under Article 2A of the MP as well. Its plan of action included commitments like reducing CFC consumption (phasing out by 1 January 2010), establishing, by 2004, a system for licensing imports and exports of ODS, including quotas and banning, on or before 31 December 2004, imports of ODS-using equipment (MOP 15, Decision XV/40, 2003).

Qatar failed to report data for consumption of Annex A, group I substances for the control period from 1 July 2001 to 31 December 2002, and has reported annual data for 2002 which was above its requirement for a freeze in consumption. So, it was assessed as being in potential non-compliance with the control measures under the Protocol, but also as being in non-compliance with its obligations under Article 2B of the MP because its consumption of Annex A, group II substances was above its baseline (MOP 15, Decision XV/41, 2003).

Due to the fact that the consumption of Saint Vincent and the Grenadines for Annex A, group I substances was above its baseline in 2000, 2001 and 2002 respectively, and it failed to report data for CFC consumption for the control period of 1 July 2001 to 31 December 2002, it was regarded as being in non-compliance with its obligations under Article 2A of the MP for the period 2000-2002. It was also stressed that it also failed to meet with the requirements of Decision XIV/24 and to submit a plan of action to the ImplCom to monitor its progress towards compliance (MOP 15, Decision XV/42, 2003).

Uganda was also identified as being in potential non-compliance with its obligations under Article 2A of the MP, as there was no clarification on its annual data for Annex A, group I substances, because of its failure to report data for either of the control periods 1 July 2000- 30 June 2001 and 1 July 2001-31 December 2002 and its failure to report data for 2001 which was not above its baseline.

Its request for change in its baseline consumption of the controlled substance in Annex E which followed the methodology described in Decision XV/19 was approved as the information submitted to justify its request was found adequate for that change. However, even after that change, it was found in non-compliance for 2002 with its obligations under Article 2H of the Protocol because of its 30 ODP-tonnes consumption of the controlled substance in Annex E exceeding its revised baseline as well, even though the appreciation was noted on its plan of action to comply with the control measures for the controlled substance in Annex E (MOP 15, Decision XV/43, 2003).

In 2002, Uruguay was also amongst the developing parties found in non-compliance with its obligations under Article 2H of the Montreal Protocol, due to its consumption of the controlled substance in Annex E exceeding its baseline. However, its plan of action including commitments like phasing out methyl bromide consumption by 1 January 2005 and monitoring its system for licensing imports and exports of ODS including quotas, was found promising for its future consumption (MOP 15, Decision XV/44, 2003).

For 2002, finally, Viet Nam was in non-compliance with its obligations under Article 2B of the MP, with respect to its consumption Annex A, group II substances which was above its baseline (MOP 15, Decision XV/45, 2003).

3. Developed Countries

It is not possible to find any example of non-compliance decisions by developed countries. However, Decision XV/24 (MOP 15, 2003) can be given as an example to the decision adopted on a developed country's potential non-compliance.

In fact, it was adopted on Israel's potential non-compliance because of its excess consumption of the controlled substance in Annex E (methyl bromide) in 2002. To this decision, Israel reported its annual data for 2002 which are above its requirement for a 50 % reduction in consumption of the controlled substance in Annex E (methyl bromide), and it was considered as being in non-compliance with the control measures under the Protocol. Therefore, it was requested to submit an explanation for its excess consumption with a plan of action which may involve the establishment of import quotas and policy and regulatory instruments to the

ImplCom as soon as possible. To the ImplCom report (ImplCom 32, 2004:paras.56-58), Israel subsequently submitted data for 2003 showing it to be in compliance and also clarified the 2002 situation explaining that excess consumption was stemmed from one company's export a quantity of methyl bromide to a non-party and the inclusion of this amount to the total consumption. It also underlined that after having ratified the Montreal amendment-as in 2002 the country was not a party to it-, it was in no way allowed to export methyl bromide to non-parties to the Copenhagen amendment.

It is possible to see 'monitoring and caution clause' which has become usual in the decisions of the MOP on non-compliance for Israel in the para.5 of the Decision XV/24 (MOP 15, 2003) as well. To this paragraph, like in the others, Israel was cautioned that, in the event that it fails to meet its time-specific benchmark commitments in its plan of action and thus to return to compliance in a timely manner, then, it could face measures consistent with item C of the indicative list of measures. As different from others, there is no statement about receiving international assistance on the ground that it continued to be treated in the same manner as a party in good standing, mostly because it has been defined as a developed country.

Furthermore, the European Union's case should also be noted here, as it was also stated as being in non-compliance with art. 4, MP, prohibiting trade with any state not party to the Protocol, due to its reporting the export of 16.616 metric tonnes of Annex C, group I, HFCs in 2009 to a state classified as not operating under art. 5, para.1 of the MP that was also a state not party to the Copenhagen Amendment to the Protocol in that year (MOP 23, Decision XXIII/26, 2011). Within the decision of the MOP on the case, it was stated that, no further action was required on the basis of the party's implementation of regulatory and administrative measures to ensure its compliance. Yet, still, it was decided to monitor closely its progress regarding the implementation of its obligations under the MP (MOP 23, Decision XXIII/26, 2011).

4.2 CM created under Kyoto Protocol to the United Nations Framework Convention on Climate Change

4.2.1 Development of CM under Kyoto Protocol

The UN Framework Convention on Climate Change (UNFCCC) was signed at the UN Conference on Environment and Development (UNCED) held in Rio, Brazil in 1992 and entered into force in 1994. The Kyoto Protocol which sets out more detailed policies and measures that may be implemented by each party to achieve their commitments was adopted at the third Conference of the Parties (COP 3, 1997) to the UNFCCC in 1997 in Kyoto, Japan (see Annex G for the list of COPs to the UNFCCC and MOPs to the Kyoto Protocol).

It came into force on 16 February 2005 after two conditions were provided by reaching 55 parties that were approved the Protocol with the ratification of Iceland on 23 May 2002, and 55% of the total carbon dioxide emissions for 1990 of the Annex I countries with the ratification by Russia on 18 November 2004 after the required 90 days passed (art.25, KP). Thus, “in gaining entry into force without the US, [it] has become a symbol of hope for the lead coalition favoring a regime to mitigate climate change” (Chasek, Downie and Brown, 2006:127).

In the article 2 of the Convention, its ultimate objective is clearly stated as to provide “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (art.2, UNFCCC). In the subsequent article, the Convention sets out the basic principles with which the parties to the convention are guided to fulfil its obligations and accomplish its objective. These are: equity (art.3.1), common but differentiated responsibility (art.3.1 and 3.2), the precautionary principle (art.3.3), sustainable development (art.3.4.), an open international economic system (art.3.5).

Of these principles, on the basis of the common but differentiated responsibility which is also emphasized in Principle 7, Rio Declaration, the Convention categorizes the parties into different groups:

In its Annex I, it lists the developed country parties including, Western countries and ex-Soviet bloc countries, parties with economies in transition. So, developing countries are defined as ‘non-annex I’ countries.

In its Annex II, it separates Annex I Parties, including OECD countries, which are obliged to provide financial and technological assistance to developing countries.

Developed countries are also distinguished according to the percentage of base year or period of the quantified emission limitation or reduction commitment. In fact, country-specific quantified emission limitation and reduction commitments determined according to the developed country party's own characteristics are included in Annex B and article 3.7 of the Kyoto Protocol.

Based on this categorization, the Convention contains general obligations which are valid for all parties and specific ones which only Annex I parties are required to meet.

The obligations with which all parties have to comply are counted in article 4.1, such as to develop national inventories of greenhouse gases (4.1.a) and to implement measures to mitigate climate change and facilitate adequate adaptation (4.1.b)...etc.(art. 4.1(a-j)). On the other hand, specific commitments imposed on Annex I parties are indicated in the other paragraphs of the same article (art.4.2-5). Under art.4.2(a-g), it is stated that the developed country parties and other parties included in Annex I have to adopt policies and take corresponding measures on the mitigation of climate change, by reducing their greenhouse gas emissions, protecting and enhancing its greenhouse gas sinks and reservoirs, "taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention" (art.4.2a) and "with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol"(art.4.2b). Thus, it only obliges developed country parties to undertake to return to their 1990 levels of greenhouse gas emissions.

Additionally, according to the Convention, the developed country parties and other developed parties included in Annex II have to provide "new and additional financial resources" to developing parties for complying with their obligations under art. 12.1. and for implementing measures that are covered by art.4.1. and that are agreed between a developing country party and the international entity or entities referred to in art. 11 (art. 4.3). They also have to assist them in meeting

costs of adaptation to adverse effects of climate change (art. 4.4). Furthermore, they have to assist them to promote, facilitate and finance the transfer of environmentally sound technologies and know-how to developing country parties (art. 4.5). Developing country parties' implementation of their commitments under the Convention is also evaluated on the implementation of developed country parties' commitments under the Convention related to financial resources and transfer of technology (art. 4.7).

In accordance with UNFCCC, the Kyoto Protocol also contains no specific commitments for developing countries related emission limitations and reduction commitments of the greenhouse gases "so-called "six gas basket"" (Oberthür and Ott, 1999:95) (carbondioxide(CO₂), methane(CH₄), nitrous oxide (N₂O), hydrofluorocarbons(HFCs),perfluorocarbons(PFCs)and sulphurhexafluoride(SF₆)) listed in Annex A of the Protocol. In accordance with art.4.1, Convention, their general obligations are counted in general through art.10, Protocol. They are also entitled to be provided by financial resources by developed country parties through art.11, Protocol in parallel with arts.4.3. and 11, Convention.

Like the UNFCCC, the Protocol only precribes quantified limits and reduction obligations for Annex I parties to reduce their overall greenhouse gas emissions by an average of at least 5 % below their 1990 levels in the commitment period 2008-2012 (art.3.1, KP). For this purpose, each Annex I party is assigned an individual target amount -Assigned Amounts (AAs)- of greenhouse gas emissions listed in Annex B to the Protocol.

These commitments by developed states in the Convention generally and in the Protocol more elaborately were supplemented by a compliance mechanism (developed primarily by the contributions of the Joint Working Group (JWG)) with a decision of the COP (not by an amendment to the Protocol) in Marrakesh, Morocco (so called as 'Marrakesh Accords') in 2001 (COP 7, Decision 24, 2001:64).

In the process of negotiations,⁵⁷ developed countries took a leading role in designing the Kyoto Protocol's compliance mechanism. To illustrate, the US

⁵⁷ See Werksman (2005) for details on the negotiation of Kyoto compliance system.

succeeded in achieving agreement on clearly defined consequences -suggestion was to make compliance procedure part of the Protocol prior to its entry into force to provide for binding consequences-. Yet, paradoxically, the USA did not ratify the Protocol. The debate on the legal status of the consequences, on the other hand, still can not be resolved. The more reluctant Annex I parties like Japan, Australia and the Russian Federation, succeeded in preventing a clear definition on the legal status of the response measures/consequences. Developing countries, on the other hand, supported a strong enforcement mechanism under the Protocol contingent on the application of its provisions only to Annex I parties (Oberthür and Lefeber, 2010).

Before Decision 24 (COP 7, 2001) through Decision 1 (COP 4,1998) COP had adopted the Buenos Aires Plan of Action in 1998 which is specified in its separate decisions. The beginning of negotiation of the Kyoto compliance mechanism can be traced back to this Action Plan which sets out a programme of work on issues under the Protocol for the future entry into force of the KP (Werksman, 2005). At COP 4, deadline for completion was established as COP 6 (2000). However, at COP 6 (2001) in the Hague (Part I), an agreement on the decisions under the Buenos Aires Action Plan could not be reached. With respect to compliance issue, key issues such as the consequences of non-compliance and the membership of the Compliance Committee could not be resolved, so they were resumed in Bonn (COP 6, 2001, Part II). At COP 6 (2001) (Part II), parties adopted the Bonn Agreements on the Implementation of the Buenos Aires Plan of Action (COP 6, Decision 5, 2001) on key issues including compliance (COP 6, 2001:48-49). However, because the main points regarding compliance mechanism under the Kyoto Protocol could not be resolved fully, so draft decision proposed by the co-chairmen of the negotiating group on these procedures and mechanisms was forwarded to COP 7 for further elaboration and adoption.

After their adoption by COP 7(2001), the MOP -the Conference of the Parties serves as the meeting of the Parties to the Kyoto Protocol- also approved them to determine and address cases of non-compliance with the Protocol on the basis of art. 18 of the Kyoto Protocol calling on the MOP to approve them. Thus, through the confirmation of the Decision 24 (COP 7, 2001) in Decision 27 (MOP 1,

2005:92) held in Montreal, Canada in 2005, many of the outstanding issues necessary to bring the Protocol into operation-except the legal status of enforcement consequences- were resolved (see Table 11). MOP 1 decided to consider the issue of an amendment to the Kyoto Protocol in respect of CMs and to make a decision on the issue at the MOP 3. It also entrusted the SBI to study on the issue and report on the outcome to the MOP 3.

Table 11: Development of CM in Kyoto Protocol	
Decision 1/COP 4	Negotiation of the Kyoto compliance mechanism begins through Buenos Aires Plan of Action in 1998
Decision 5/COP 6	Parties adopted the Bonn Agreements on the Implementation of the Buenos Aires Plan of Action on key issues including compliance (COP 6, 2001:48-49). However, the main points regarding compliance mechanism under the Kyoto Protocol could not be resolved fully
Decision 24/COP 7	Adoption of the CM in Marrakesh, Morocco (so called as 'Marrakesh Accords') in 2001
Decision 27/MOP 1	The confirmation of the Decision 24/ COP 7 in Montreal, Canada in 2005, many issues regarding the operation of the CM -except the legal status of enforcement consequences- has been resolved.

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at: <http://unfccc.int/documentation/decisions/items/3597.php>.

When the related parts regarding this issue in the reports of the SBI are examined, it is observed that, beginning from 24th session till to 33rd session (SBI, 24-33, except 31st session), the SBI reports incorporate a separate section on the amendment of the Kyoto Protocol in respect of procedures and mechanisms relating to compliance. Yet, while, till 27th session (2007), it plans to complete its consideration at its 27th session; beginning from this session, it decides to continue to discuss it further at its subsequent sessions in which it again decides to discuss the issue further, and so to include it to the provisional agendas of the subsequent sessions till to 37th session. Finally, in the draft conclusions of this session, it was decided that, no further discussion was required under this issue, and the SBI (SBI 37, 2012) recommended that, the MOP should complete its consideration of

the proposal from Saudi Arabia (MOP 1, 2005d, paras.54-59) to amend the KP in respect of procedures and mechanisms relating to compliance. Thus, proposal by Saudi Arabia to incorporate the compliance procedures into the Protocol through an amendment has remained on the agenda of the MOP till to the 37th session of the SBI.

In conclusion, it should be emphasized that, this compliance mechanism has been the third effort which have been attempted by negotiators. The previous two efforts were abandoned due to the art. 13 of the Convention which calls upon the COP to consider the establishment of a multilateral consultative process for the resolution of questions regarding the implementation of the Convention.

4.2.2 Main Components of CM under Kyoto Protocol

4.2.2.1 Gathering Information on the Parties' Performance

The UNFCCC and the Kyoto Protocol each involve provisions for gathering information reviewing the parties' performance (see Table 12).

The word 'reporting' is not used throughout the Convention, instead, the word communication is preferred to be used. Yet, the parties' communications of their implementation of the Convention (art.12, KP) have the same character with reporting (Faure and Lefevere, 1999).

There are four types of reports submitted under the Convention:

1. Annex I parties' communications: Submissions made by regular intervals by developed countries (Annex I parties) covering all aspects of implementation and compliance.

2. Non-Annex I parties' communications: Submissions made at regular intervals by non-Annex I parties on all aspects of implementation and compliance.

3. Inventories: Annual submissions by developed countries on greenhouse gas emissions and removals.

4. National adaptation programmes of action (NAPAs): Submissions by least-developed countries on their needs for adaptation.

The first three reports are basically important on the determination of non-compliance. So, merely they will be revealed in this part.

Under the Convention, it is clearly admitted that, all parties to the Convention should communicate to the COP in line with art.4.1.(art.12.1) which prescribes all parties to design national inventories on the basis of the common and differentiated principle enshrined in the Convention (art.4.1, UNFCCC). That is, the obligations for developing national inventories can alter according to the country's being developed, developing or least-developed country and also to the "content, timing and the availability of financial resources" (Werksman, 1996a:89).

These inventories should be periodically updated, of emissions by sources and removals by sinks of all GHGs not controlled by the Montreal Protocol (art.4.1a, UNFCCC). The inventories and also the measures taken by the parties to implement the Convention should be conveyed to the COP through the UNFCCC secretariat (art.4.1j, art.12.1, UNFCCC). The secretariat located in Bonn makes these communications publicly available when they are submitted to the COP (art. 12.10, UNFCCC).

While all parties, involving both developed and developing country parties, are obliged to provide information on emissions by sources and removals by sinks under the Convention, only developed country parties are obliged to provide a detailed description of policies and measures that they have adopted to implement their commitment (art. 4.2b, UNFCCC). In addition, through articles 4.3, 4.4 and 4.5 of the UNFCCC, developed parties and other developed parties included in Annex II, are required to provide new and additional financial resources to developing country parties in meeting their reporting obligations under art.12 and also to assist them in meeting costs of adaptation to the adverse effects of climate change and in promoting and financing the transfer of environmentally sound technologies and know-how to help them in complying with their obligations under the Convention. More importantly, developing country parties' implementation of their commitments under the Convention is bound to the developed country parties' effective implementation of these provisions related to providing financial resources and transfer of technology to the developing country parties (art.4.7, UNFCCC). That is, financial assistance and technology transfer of developed country parties are regarded as prerequisites for developing country

effective compliance. However, regarding the assessment of compliance with financial resource and technology transfer commitments of developed country parties, it is generally argued that, while developed country parties are required to incorporate details of measures that they employ under art. 4, there is no agreed methodology for explaining “the nature and extent of these resources” (Werksman, 1996a:99), and this can make the assessment more difficult.

The Convention does not only oblige developed country parties to assist to developing country parties, but also prescribes them not to ignore the specific needs and special situations of the least developed country parties while providing financial resources and technology transfer for other parties (art.4.9, UNFCCC).

Regarding least developed country parties and their specific situations concerning funding and technology transfer, there are also important COP decisions. To illustrate, while Decisions 5 and 7(COP 7, 2001) establishes least developed countries fund, Decision 27(COP 7, 2001) adopts a guidance for the operation of this fund. Thus, it is aimed to support the work programme for the least developed countries including their preparation and implementation of national adaptation programmes of action (NAPAs) referred to in para. 11 of Decision 5 (COP 7, 2001). In order to provide guidance on the preparation and implementation of NAPAs, Decision 28 (COP 7, 2001) sets out the guidelines and Decision 29 (COP 7, 2001) establishes an expert group just to work on this issue.

As seen by the examination on the Convention, the Convention does not entrust any institution to review the compliance of the parties with their obligations under the Convention. The Convention’s review mechanism containing guidelines⁵⁸ for the preparation of national communications and procedures was established by COP decisions (Decisions 2, 3, 4) in 1995 (COP 1, 1995).

Through these developments, communications from parties to the Convention have been subjected to a in-depth review (IDR) process which should undertake six tasks described in Annex 2 to the Decision 2, involving reviewing key qualitative information and quantitative data points, policies and measures contained in national communications, assessing the progress on achieving the

⁵⁸ See Decisions 9, 10 (COP 2, 1996) and Decisions 3, 4 (COP 5, 1999) for more extensive guidelines drawn up for the country reports.

objectives of the Convention, revealing the expected progress in the limitation of emissions, getting together data across national communications with respect to inventories, projections, effects of measures and financial transfers (COP 1, Decision 2, Annex 2, 1995).

Such review process is conducted by expert review teams under the authority of the subsidiary bodies (COP 1, Decision 2, 1995, para.2a). These review teams carry out their work basically through parties' submitted communications (COP 1, Decision 2, 1995, para.2b). However, it is also possible to make "in-country visits" for these teams (Goldberg, Wiser, Porter and Lacosta, 1998:10;Ulfstein and Werksman, 2005:44) taking the approval of the party concerned (COP 1, Decision 2, 1995, para.2c).

After each in-depth review of a communication, each review team produces a report "written in non-confrontational language" (COP 1, Decision 2, 1995:8, para.2d) in line with the purpose of the review process which is revealed in Annex I to the Decision 2 (COP 1, 1995) as providing an assessment "in a facilitative, non-confrontational, open and transparent manner" (COP 1, Decision 2, Annex I, 1995:9). In the same Annex, it is also indicated that, this comprehensive technical assessment is made on the implementation of the Convention commitments by not only individual Annex I Parties and but also Annex I Parties as a whole. This means that, there have been two kinds of review made by the expert team, one is for evaluating the overall effect of the compliance by all parties, and the other is for evaluating the individual party's commitments.

Draft of the review report should be presented to the party being reviewed to comment on it. Then, the summary of the review report is circulated to all parties and accredited observers to the COP by the secretariat (COP 1, Decision 2, 1995, para.2d).

Under the Kyoto Protocol, on the other hand, there are five types of reports. Two of them, communications provided by Annex I and non-Annex I country parties and GHG inventories by developed countries, are built basically on the system of the Convention. Three others, named as "one-time reports"⁵⁹ and

⁵⁹ See at:
http://unfccc.int/national_reports/reporting_and_review_for_annex_i_parties/items/5689.php.

submitted by Annex I parties have different characteristics (Yamin and Depledge, 2004):⁶⁰

1. Initial report: A report including information on GHG inventory time-series, the party's calculation of its assigned amount and of its commitment period reserve (CPR), a description of its national registry and national system..etc. This is presented particularly for facilitating the calculation of the relevant party's assigned amount and demonstrating its capacity to account for its emissions and assigned amount. These reports should be submitted by Annex I parties by 31 December 2006 or one year after the Protocol's coming into force for that party, i.e. at the beginning of the commitment period.

2. Report on the demonstrable progress: A report which should be prepared at the middle of the commitment period in the context of art.3.2. stipulating Annex I parties to make demonstrable progress in achieving their commitments under the Protocol.

3. Report on true-up period: A report involving final information on the party's assigned amount, on all units retired for compliance purposes. It provides the determination of compliance with art. 3.1 at the end of the commitment period.

The Protocol contains mainly three articles related to reporting and review: art.7 on communications and on implementation review by expert review teams (art.8) which actually "provide, without explicitly referring to non-compliance, for the first and the last step of a multilateral procedure for the implementation and treatment of non-compliance under the Protocol," and Article 5 on methodologies for inventories (Oberthür and Ott, 1999:211).

Article 5 addresses the issues regarding the estimation of greenhouse gas emissions by sources and removals by sinks. It states that Annex I parties should establish national systems for the estimation of emissions (art.5.1, KP). Guidelines for national systems should be set out by the MOP at its first session (art.5.1, KP). Methodologies employed for estimating the emissions in the reports should in a

⁶⁰ See also at:
http://unfccc.int/national_reports/reporting_and_review_for_annex_i_parties/items/5689.php.

uniform form provided by the expertise of the Intergovernmental Panel on Climate Change (IPCC) and agreed upon by the Decision 2 (COP 3,1997).

Where such methodologies are not used, “appropriate adjustments” should be applied according to methodologies agreed upon by the MOP 1 (art.5.2, KP). MOP should regularly review, and if it finds necessary, can revise such methodologies and adjustments, but only for assessing compliance with commitments under art. 3 (art.5.3, Protocol).

Regarding submitting supplementary information in greenhouse gas inventories (art.7.1) as well as communications (art.7.2), art. 7 requires Annex I parties to submit them to demonstrate their compliance situation with art. 3 of the Protocol. The supplementary information required for greenhouse gas inventories should be submitted annually, while that required for national communications can be submitted periodically according to the dates set by the decision of MOP based on any timetable that the COP has decided for the submission of national communications (art.7.3).

Annex I parties also have to report about their programs and activities undertaken under art.10 in their communications (art. 10b(ii), Protocol). This obligation is valid for also non-annex I parties (art. 10f, Protocol).

Article 8, on the other hand, sets out that, expert review teams should review the information submitted under art. 7 (communications) by Annex I parties as part of the annual compilation and accounting of emissions inventories and assigned amounts, if it is submitted under art.7.1. or as part of the review of communications, if it is submitted under art.7.2 (art.8.1, KP). The report of the team includes an assessment on the implementation of the commitments and identification of any potential problems in the fulfilment of them (art.8.3), and thus assists the MOP on giving the decision on any matter on the related party’s compliance situation (at.8.6).

Table 12: Gathering Information under the UNFCCC and the Kyoto Protocol	
Under the UNFCCC	
Annex I parties' communications	submissions made by regular intervals by developed countries(Annex I parties) covering all aspects of implementation and compliance.
non-Annex I parties' communications	submissions made at regular intervals by non-Annex I parties on all aspects of implementation and compliance
inventories	annual submissions by developed countries on greenhouse gas emissions and removals
<u>national adaptation programmes of action (NAPAs)</u>	submissions by least-developed countries on their needs for adaptation.
Under the Kyoto Protocol	
communications provided by Annex I and non-Annex I country parties	are built basically on the system of the Convention
inventories by developed countries	
initial report	report including the party's calculation of its assigned amount submitted by Annex I parties at the beginning of the commitment period.
report on the demonstrable progress	report which should be prepared at the middle of the commitment period by Annex I parties showing their demonstrable progress in achieving their commitments under the Protocol.
report on true-up period	report involving final information on the party's assigned amount, at the end of the commitment period.

* Prepared on the basis of the provisions of the UNFCCC and the Kyoto Protocol.

The elements of additional reporting that is required for Annex I Parties by articles 5, 7 and 8 under the Protocol are further elaborated by Decisions 20-23 (COP 7, 2001) and the remaining work with respect to the guidelines under these articles is figured out by the decisions of COP 8 (Decision 22), COP 9 (Decisions 20,21), COP 10 (Decisions 16, 18) and COP 11 (Decision 15). The Protocol also states that guidelines for national systems (art.5.1), the preparation of inventories(art.7.4) -see also COP 7 (Decision 19)- as well as for for the review of implementation of the Protocol by expert review teams(8.4) should be adopted by

the MOP 1 and reviewed periodically thereafter (e.g. the MOP 1(2005a, 2005b) adopted the following decisions relating to articles 5, 7 and 8, KP (Decisions 13-15, 19-25, 27).

Given the analysis on the reporting and review process of the Kyoto Protocol made above, it becomes clear that, although it builds fundamentally on the Convention's procedures on reporting, it involves more detailed rules than the Convention. And through these rules, it promises a system leaning towards a faster and more accurate reporting and review process.

4.2.2.2 Non-compliance Procedure (NCP)

The Protocol calls for the approval of procedures and mechanisms to determine and to address cases of non-compliance with the provisions of the Protocol (art.18, KP). Hence, through Marrakesh Accords adopted at COP7, a set of NCPs was adopted to enforce its rules, to address any compliance difficulties and to prevent calculation errors regarding emissions data and accounting of transactions under the three Kyoto mechanisms (JI, ET and CDM).

In this part, this set of non-compliance procedures will be analyzed in details, focusing on the institution created under these NCPs (the ComplCom), procedural phases and safeguards functioning under it, in parallel with the way pursued under the NCP part of the CM under Montreal Protocol.

Institution created under the NCP: Compliance Committee

The NCP adopted by Decision 24 (COP 7, 2001) on the basis of art.18 of the Kyoto Protocol is fundamentally built on its functional body, ComplCom and its two important branches, the Facilitative Branch (FB) and Enforcement Branch (EB). This is particularly because, the Committee considers questions of implementation pursuing a "double track system" (Montini, 2009:409) through these two branches.

In addition to them, its structure is based also on a plenary and a bureau in line with Section II (2) of Annexes to the Decision 24 (COP 7, 2001:65) and to the Decision 27(MOP1, 2005:93), and subsidiary bodies such as the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and

Technological Advice (SBSTA), carrying out specific, delegated tasks to consider specific issues necessary to promote effective implementation of the Protocol on the basis of the art.13.4h, KP (also art.7.2i,UNFCCC).

It has twenty members elected by the MOP, ten of whom are elected to serve in the FB, and other ten are to serve in the EB (NCP, Section II (3)). Thus, both branches are composed of ten members, including one representative from each of the five official UN regions (Africa, Asia, Latin America and the Caribbean, Central and Eastern Europe, and Western Europe and others), one from the small island developing states, and two each from Annex I and non-Annex I Parties (NCP, Section IV (1); NCP, Section V(1)). For each member, an alternate member is also elected by the MOP (NCP, Section II (5)). Members and their alternates, who should be qualified in climate change and in relevant fields (the scientific, technical, socio-economic or legal fields) (for the EB, members have also legal experience (NCP, Section V(3)) should serve in their personal capacities (NCP, Section II (6); RoP, 4).⁶¹ Alternate members can participate in the proceedings of the plenary or the respective branch that they belong, yet, they can not vote on the decision (RoP, 3.2). They can have voting rights only if they serve as the member during the absence of a member or when a member resigns or is unable to complete the assigned term or the functions of a member (RoP, 3.3, 3.4).The Committee meets at least twice each year in line with the desirability of holding such meetings together with the meetings of the subsidiary bodies (NCP, Section II (10)).

It adopts decisions by at least three quarters majority of the members to be present (NCP, Section II (8)). It should try to decide by consensus, yet, when all the ways are exhausted for reaching consensus, as a last resort, it can adopt its decisions by a three quarters majority of the members present and voting (NCP, Section II (9)). While deciding, it should take into account any degree of flexibility allowed by the MOP for Annex I parties undergoing the process of transition to a market economy (NCP, Section II (11)).

⁶¹ Rules of procedure of the Compliance Committee of the Kyoto Protocol (RoP) is adopted by Decision 4 (MOP 2, 2006), and is then amended by Decision 4 (MOP 4, 2008).

Its functions and powers, here, will be examined according to its bodies, the plenary, the bureau and its two branches, the EB and the FB, each of which has different functions and powers.

The Plenary: The Committee also meets in a plenary made up of members of both branches (NCP, Section III (1)). The functions of the plenary can be counted as to report on the activities of the Committee to each ordinary session of the MOP, to apply the general policy guidance received from the MOP pursuant to Section XII(c), to submit proposals on administrative and budgetary matters to the MOP, to develop any further rules of procedure that may be needed for adoption by the MOP, to perform such other tasks which may be requested by the MOP for effective operation of the ComplCom. Regarding developing new rules of procedure, it should be stressed that, the rules of procedure may be amended by a decision of the MOP after the plenary has approved the proposed amendment and reported on the matter to the MOP (RoP, 26.1). Any amendment by the plenary should be provisionally applied pending their adoption by the MOP (RoP, 26.2). Its meetings are held in public, unless it decides otherwise because of the presence of very important reasons, of its own accord or at the request of the party concerned (RoP, 9).

The Bureau: The bureau is consisted of four members, a chairperson and a vice-chairperson of each branch, two of whom is from Annex I parties and two from non-Annex I parties, elected for a term of two years (NCP, Section II (4)). It allocates questions of implementation (QoI) to the appropriate branch based on its mandates (NCP, Section VII (1); RoP, 19.1). It requires a majority of its members to decide on allocating a QoI to the EB, rather than the FB. The provisional agenda for each meeting of the plenary is drafted by the secretariat in agreement with the bureau (RoP, 7.1), and the bureau may entrust one or more members of one branch to contribute to the other branch's work on a non-voting basis (NCP, Section II (7)).

The Facilitative Branch(FB): The FB aims to provide advice and facilitation of assistance to parties (particularly to developing countries and to Annex I economies in transition countries) to promote their compliance with their commitments under the Protocol on the basis of the principle of common but

differentiated responsibilities and the circumstances pertaining to the questions before it (NCP, Section IV, 4).

On the basis of this aim, it has some tasks. First of all, it is responsible for providing facilitation specifically for compliance of Annex I parties with the provisions stipulating to reduce the overall emissions of GHGs by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012 and not to exceed the assigned amounts (art.3.1, KP), to establish national systems for the estimation of emissions (art.5.1, KP), to invoke methodologies and appropriate adjustments for estimating emissions (art.5.2, KP), to incorporate the necessary supplementary information in its annual inventory of emissions (art.7.1, KP) and to adopt guidelines for the preparation of the supplementary information and to decide on modalities for the accounting of assigned amounts (art.7.4, KP; NCP, Section IV, 6). Moreover, it addresses QoIs to determine whether Annex I parties are complying with their commitments on qualified emissions limitation or reduction commitments, reporting requirements and methodologies, and eligibility requirements to access the flexible mechanisms (arts.6, 12, 17, art.3.2, KP; NCP, Section IV, 5). It is also entrusted to apply the consequences, aimed at mitigating climate change minimizing their adverse impacts on developing countries (art.3.14, KP), such as advice and facilitation of assistance, facilitation of financial and technical assistance, including technology transfer and capacity building, formulation of recommendations, set out in Section XIV after its examination (NCP, Section VI, 7).

The Enforcement Branch(EB): The EB is a quasi-judicial body which has discretionary power to impose strict consequences.⁶² Therefore it has competent to decide on questions of implementation relating to Annex I parties's reduction commitments under art. 3.1, methodological and reporting requirements for greenhouse gas inventories under arts.5 and 7 (art.5.1.2, art.7.1.4, KP) and eligibility requirements for the Kyoto mechanisms under arts. 6, 12 and 17, KP (NCP, Section V(4)). In addition, in the case of a disagreement between a party involved and an expert review team, it can also decide on whether to apply

⁶² See (Güneş, 2011) for the view stating that CM under the KP can guide to the other MEAs on the establishment of their CMs, particularly with respect to the powers used by the EB.

adjustments to greenhouse gas inventories or to correct the compilation and accounting database for accounting of assigned amounts (NCP, Section V(5)). When it finds non-compliance of Annex I parties to their emission target related commitments mentioned above, it is responsible for resolving that compliance question by applying the consequences set out in Section XV (NCP, Section V(6)). These consequences applied by the EB differ depending on the type of each non-compliance.

The adoption of decisions by the EB requires three-quarters majority of the members present and voting. In addition, it requires a majority of present and voting members of Annex I and Non-annex I parties (NCP, Section II (9)). That is, while deciding on non-compliance of the parties, three-quarters majority of the members present and voting is not enough to decide, a majority of present and voting members of Annex I and Non-Annex I parties is also necessary. So, both Annex I and Non-annex I parties can block EB decisions. It is argued that, through this provision, it has been aimed to prevent the control of the parties (developing countries) that do not have any reduction commitments, upon Annex I parties (developed countries) obliged with such reduction commitments (Brunnée, 2003; Wolfrum and Friedrich, 2006).

In conclusion, it should be noted that, there is no hierarchical relationship between the EB and the FB. They should cooperate in their operation (NCP, Section II (7)). In fact, a question of implementation sent to the FB for examination can subsequently reach the EB, and the EB, if finds it necessary, can refer a question of implementation to the FB for consideration (NCP, Section IX(12); RoP, 23).

Procedural Structure: Phases and Safeguards

Phases of the CM

The procedure applied in the branches can be scrutinized in 4 phases. Based on this division, the procedure in the branches works in the following order: Submission and allocation of question of implementation(QoI) phase, the preliminary examination phase, the substantive examination phase (involving the procedure before the Facilitative Branch (FB) (NCP, Section VIII; RoP, 24) and

the procedure before the Enforcement Branch(EB) (NCP, Section IX-X), and the appeal phase (NCP, Section XI).

Submission Phase: The NCP may be triggered with a submission raising a question of implementation(QoI) in three different ways: by any party with respect to itself (self-triggering or “self-denunciation” (Urbinati, 2009:72), (NCP, Section VI(1a); RoP, 14), or by any party with respect to another party (NCP, Section VI(1b); RoP, 15), or by the reports of expert review teams under art. 8, Protocol (NCP, Section VI(3)).

However, it does not allow the IGOs and NGOs to trigger the NCP. Also, in contrast to the MCP referred by the Convention(art.13) which contains triggering by the COP (in addition to the party itself and by a party to another party) (COP 4, Decision 10, para.5), the NCP of the Protocol does not include the initiation of the procedure by the COP/MOP.

Beside, the secretariat, is also not entitled to trigger the procedure, thus, not entitled “with a stronger role regarding implementation supervision” (Oberthür and Ott, 1999:214). Due to the fact that, the secretariat established under the Convention serves as the secretariat of the Protocol (art.14.1, KP), its functions comprise those stipulated in art.8, UNFCCC and other functions assigned to it under the Kyoto Protocol (art.14.2, KP, see also RoP, 12, 16, 19.2-3, 20.2-3, 22.2 and 23.2). To these functions, it is only entitled to notify the members and alternate members of the branches (NCP, Section VI(1); RoP, 19.2-3) and also the party in question (NCP, Section VI(2)) in respect of which the QoI is raised, and to convey the reports of expert review teams to the Committee.

The function defined under art.8.2-3, Protocol can be seen as one of its most important functions, since it provides the secretariat to coordinate expert review teams and circulate their reports, involving technical assessment of all aspects of the implementation by a party of the Protocol, to all parties to the Convention. It also has competent to list those questions of implementation indicated in such reports for further consideration by the MOP. This provision of the Protocol in fact had been applied in practice under the Convention, despite the non-existence of a specific provision about it (Oberthür and Ott, 1999). The Protocol, through this provision, formally incorporates this practice into the Protocol. Thus, it has

further improved the position of the secretariat in evaluating the parties' implementation of the Protocol through expert review process.

The role given to the reports of expert review teams under art. 8, Protocol (NCP, Section VI.(3)) forms the most outstanding issue that should be underlined concerning the submission phase, since their role "has the potential to de-politicise the process and lead to more acceptance of the procedures" (Wolfrum and Friedrich, 2006:59). When it is thought that, the parties are generally reluctant to trigger the procedure with regard to the compliance of any other party with its target, their role on triggering the procedure becomes more significant. The survey in practice acknowledges this significance, as the procedure in the EB has always been triggered by a question raised by an ERT up to now (see Table 23). Even if a party ventures to rise a QoI directly against another party, the reports of the ERT again play an extremely effective role in determining the decision and the consequences applied to the party. However, even though they have remarkable roles on the operation and the results of the procedure, they are not authorized to make decisions on non-compliance.

The ERTs are composed of experts selected from those nominated by parties to the Convention and, as appropriate, by IGOs and are coordinated by the secretariat (art.8(2), KP). They review the information submitted under art.7, Protocol by each party included in Annex I pursuant to the relevant decisions of the COP and in accordance with guidelines adopted for this purpose by the MOP. Indeed, they review the information submitted under art.7(1), KP as part of the annual compilation and accounting of emissions inventories and assigned amounts, and the information submitted under art.7(2) as part of the review of communications (art.8(1), KP).

The coordination of expert review teams, selected from those nominated by parties and by IGOs, is conducted by the secretariat (art.8.2). On the basis of the review process which should provide a "thorough and comprehensive technical assessment" (art.8(3)) of all aspects of the implementation by a party of the Protocol, they prepare a report to the MOP involving their assessment on the implementation of the party, identification of any potential problems in meeting its commitments and questions of implementation (art.8(3), KP). When the report

comes before the MOP, the MOP decides on any matter on the related party's compliance situation (art.8.6), based on the information submitted by parties (art.7, art.8.5a) and the questions of implementation listed by the secretariat (art.8.5b).

The Preliminary Phase: After the allocation of questions of implementation to the relevant branch as the competent branch by the bureau within seven days from receipt of the QoI (NCP, Section VII,1; RoP 19.1), the relevant branch undertakes a preliminary examination to identify whether the questions are supported by sufficient information, are not *de minimis* or ill-founded and are based on the requirements of the Protocol (NCP, Section VII, 2). This examination should be completed within three weeks from the date of receipt of the questions by the branch (NCP, Section VII, 3). After the preliminary examination, the concerned party should be notified in writing of the decision to proceed by the secretariat (in the event of the review of eligibility requirements, of decision not to proceed) (NCP, Section VII(4,5)). Until after the decision to proceed with the question has been made, the party concerned can not intervene the process, yet, it can comment on all information relevant to the question, and when it is given, to the decision to proceed (NCP, Section VII, 7). In addition, any decision not to proceed is made available to other parties and to the public by the secretariat (NCP, Section VII(6)).

The Substantive Phase:

The Procedure before the FB (NCP, Section VIII; RoP, 24): The general procedures set up in Section VIII are applied from this stage on. To this section, the related party, which is not allowed to be present during the adoption of the decision, should designate one or more persons to represent it during the examination (NCP, Section VIII, 2). While deciding, for its deliberations to proceed, the relevant branch should be based on any relevant information provided by reports of numerous bodies (of the expert review teams (art.8, KP), the relevant party, the party submitting the question, reports of the MOP and the subsidiary bodies under the Convention and the Protocol and the other branch (NCP, Section VIII, 3). It can also utilize from relevant factual and technical information provided by qualified IGOs and NGOs (NCP, Section VIII, 4; RoP, 20) and expert advice (NCP, Section VIII, 5; RoP, 21).

The party concerned can comment on such information in writing and the information considered by the branch is made available to the public, unless the branch decides that it should not be made available to the public until its decision has become final (NCP, Section VIII(6)).

The final decision (for the content of a preliminary finding or a final decision, (see RoP 22.1) is notified to the related party and made available to other parties and to the public by the secretariat (NCP, Section VIII, 7). The Party concerned can also comment on this decision and any other decision of the branch (NCP, Section VIII, 8). Comments in writing on a final decision should be submitted within 45 days from the receipt of that decision by the party in question (RoP, 22.2).

The Procedure before the Enforcement Branch(EB) (NCP, Section IX-X): As for the procedures for the EB, Section IX and X establish specific elements.

Within ten weeks from the date of receipt of the notification, the party concerned may invoke to the EB to disprove information submitted to the branch (NCP, Section IX, 1). Within four weeks from the date of receipt of the application, the EB holds a hearing at which the party concerned can present its views, expert testimony or opinion (RoP, 25.1). Such a hearing is held in public, unless the EB decides otherwise, of its own accord or at the request of the party concerned (NCP, Section IX, 2). The EB can ask for further clarification from the party concerned either in such a hearing or at any time in writing, in that case, the party has to provide a response within six weeks thereafter (NCP, Section IX, 3).

If the party does not provide a written submission within four weeks from the date of receipt of the written submission of the party concerned, or from the date of any hearing, or from the notification made by the secretariat, the EB can adopt a preliminary finding that the party concerned is not in compliance with commitments under the related articles of the Protocol (NCP, Section V, 4), or can determine not to proceed further (NCP, Section IX, 4-5). Then, the party concerned is notified on preliminary finding or decision not to proceed. The secretariat makes the decision not to proceed available to the other parties and to the public (NCP, Section IX, 6).

If the party concerned does not provide a further written submission to the EB within ten weeks from the date of receipt of the notification of the preliminary finding, the EB adopts a final decision-which will be final unless overturned on appeal- confirming its preliminary finding(NCP, Section IX, 7).If it does so, the EB considers it and adopts a final decision within four weeks from the date it received the further submission (NCP, Section IX, 8).The final decision is made available to the other parties and to the public and notified to the party concerned by the secretariat (NCP, Section IX, 10).

The Appeal Phase (NCP, Section XI): As a general rule, it is not possible to appeal the decisions of the Committee. However, there is one exception to this rule which assures the right of appeal to the MOP. Here, then, it can be beneficial to reveal the MOP and its role on compliance issues very briefly.

The Conference of the Parties (COP), the supreme body of the Convention, also serves as the MOP to the Protocol (art.13.1, KP), so, the rules of procedure of the COP and financial procedures applied under the Convention are applied *mutatis mutandis* under the Protocol (art.13(5), KP). However, because membership is different and only parties to the Protocol have voting rights, this body is “independent”⁶³ from that of Convention (Oberthür and Ott, 1999:240). Indeed, if the MOP decides differently by consensus, this decision becomes valid for the parties, being party to the Convention is not adequate to have a role in the MOP. It is necessary to be a party to the Protocol to have voting rights and to make decisions. This is because, likewise in art.17.5 of the Convention, art.13.2 of the Protocol puts forward that, decisions under the Protocol should be taken only by those that are parties to it. So, if the parties to the Convention are not parties to the Protocol, they can merely participate as observers in the proceedings of any session of the MOP (art.13.2, Protocol). In addition, if any member of the Bureau of the COP representing a party to the Convention is not a party to the Protocol, it should be replaced by an additional member which is a party to the Protocol (art.13.3, KP).

⁶³ The same approach adopted for the relationship between COP and MOP is pursued for the subsidiary bodies as well. As in the case of the relationship between COP and MOP, the subsidiary bodies of the Protocol are independent from those of the Convention.

Sessions of the MOP should be held annually in conjunction with ordinary sessions of the COP, unless otherwise decided by the MOP (art.13.6, KP). Extraordinary sessions, on the other hand, should be held at such other times when the MOP deems it necessary or at the written request of any party, provided that, within six months of the request being communicated to the parties by the secretariat, it is supported by at least one third of the parties (art.13.7, KP).

Participation of observers to these sessions from the UN, its specialized agencies and the International Atomic Energy Agency (IAEA), any member not party to the Convention is admitted through art.13.8, KP. Furthermore, any body or agency qualified in matters covered by the protocol can also be admitted, provided that, at least one third of the parties does not object to its wish to be represented as an observer at a session of the MOP (art.13.8, KP).

Its functions on reviewing and promoting the implementation of the Protocol is counted in art.13.4, Protocol and in NCP, Section XII, like in the followings: evaluating the implementation by the parties and the overall effects of the measures taken(13.4a), periodically examining the obligations of the parties under the Protocol (13.4b), promoting the exchange of information on measures adopted by the parties (13.4c), facilitating the coordination of measures adopted by them (13.4d), providing guidance on the development and periodic refinement of comparable methodologies(13.4e), advising on any matters necessary related to the implementation (13.4f), mobilizing additional financial resources (13.4g), establish subsidiary bodies necessary for the implementation (13.4h), utilizing the services and cooperation of competent IOs, IGOs and NGOs (13.4i), considering the reports of the expert review teams and the reports of the plenary on the progress of its work, provide general policy guidance including on any issues regarding implementation, adopting decisions on proposals on administrative and budgetary matters and deciding on appeals (NCP, Section XII (a-e)).

Apart from these provisions of art.13.4, it is also possible to find additional functions given to the MOP in various articles of the Protocol like at art.2.3, art.2.4, art.3.4, art.3.5, art.3.6, art. 6.2, art.12, art.16..etc. Through art.13.4j, a “blanket clause” (Oberthür and Ott, 1999:239) is also provided which gives power

to the MOP to exercise such other functions which may be required for the implementation of the Protocol.

Specifically regarding compliance issue, it should be stressed that, the MOP does not have the power to decide on non-compliance and also to adopt responses about it. Only if it can have power to decide on it in case of an appeal against the Enforcement Branch's decision for denial of due process. That is, a party can appeal to the MOP against a final decision of the EB, if it believes it has been denied due process, so not about the substantive content of the matter (NCP, Section XI,1).

It has to appeal against it within 45 days after it has been informed of the decision of the EB (NCP, Section XI, 2). If there has been no appeal in 45 days after the decision, it becomes definitive (NCP, Section XI, 4).

As a result of its examination, the MOP can override the EB's decision and refer the matter back to the EB deciding by a three-fourths majority vote of the parties present and voting at the meeting (NCP, Section XII (e); NCP, Section XI,3). This implies, it only can refer the matter back to be re-examined by the EB, so can not make an examination on the substantive content of the matter, but only on the rules of due process, so on a very narrow scope.

Thus, with this exception, as a political body, the MOP, has been attained power to examine a decision of a quasi-judicial body, the EB, even though this examination is particularly about a legal question, whether the rules of the due process are applied to the party concerned.

Procedural Safeguards

The procedure applied by the ComplCom for the resolution of non-compliance by the parties set out in NCP, Sections VIII(general procedures), IX (procedures for the EB), X (expedited procedures for the EB) have to guarantee due process (Hovi, 2005; Ulfstein and Werksman,2005; Urbinati, 2009). Then, here, it should be asked what the safeguards to ensure due process can be, what should be done to guarantee 'due process' for the parties concerned.

The Rights of the Party Concerned: First of all, the party in question should have the right to be represented during the consideration of the QoI before the

relevant branch, except during the elaboration and adoption of a decision of the branch (NCP, Section VIII, 2; RoP, 9.2). It should also have the right to access to any information considered by the relevant branch (NCP, Section VIII, 6), and any information upon which decisions are made by the relevant branch and any decisions given by the relevant branch (NCP, Section VII, 4-5; NCP, Section VIII, 6; NCP, Section IX, 10), to comment on such information (NCP, Section VII, 7; Section VIII, 6) and on any decision of the relevant branch (NCP, Section VII, 7; NCP, Section VIII, 8; NCP, Section IX, 6; Section IX, 1), and the opportunity to present its views or expert testimony (NCP, Section IX, 2).

Predetermined Time Tables: The procedure applied by the ComplCom for the resolution of non-compliance involves precise time limitations. To illustrate, the allocation of QoI by the bureau should be in seven days from receipt of the QoI (NCP, Section VII, 1; RoP 19.1), the preliminary examination should be completed within three weeks from the date of receipt of the questions by the branch (NCP, Section VII, 3), comments in writing on a final decision should be submitted within 45 days from the receipt of that decision by the party in question (RoP, 22.2), the EB can ask for further clarification from the party concerned, the party has to provide a response within six weeks thereafter (NCP, Section IX, 3), if the party does not provide a written submission within four weeks from the date of receipt of the written submission of the party concerned, or from the date of any hearing, or from the notification made by the secretariat, the EB can adopt a preliminary finding (Section V, 4), or can determine not to proceed further (NCP, Section IX, 4-5), if the party concerned does not provide a further written submission to the EB within ten weeks from the date of receipt of the notification of the preliminary finding, the EB adopts a final decision (NCP, Section IX, 7). If it provides, the EB considers adopts a final decision within four weeks from the date it received the further submission (NCP, Section IX, 8), the appeal should be made within 45 days after the party concerned has been informed of the EB's decision (Section XI, 2)) and also through its expedited procedure (NCP, Section X) which is provided for questions of implementation relating to eligibility requirements under articles 6, 12 and 17 of the Protocol, both for proceedings to

suspend eligibility and proceedings to have eligibility reinstated, the NCP prevents time-consuming and assures a process operating faster.

The Impartiality and Independency: These are also the most important requirements amongst the others for providing due process. The ComplCom's both branches are composed of ten members and alternate members for each member. These members and their alternates should be qualified in climate change and in relevant fields (the scientific, technical, socio-economic or legal fields) (for the EB, members have also legal experience (NCP, Section V(3)) and also should serve in their personal capacities (NCP, Section II (6); RoP, 4).

To grant a very limited role to the political organ (the MOP) should also be thought as a very effective factor to ensure due process (Ulfstein and Werksman, 2005). As explained in details above, the MOP in the CM of the Kyoto Protocol does not have the power to decide on non-compliance and also to adopt responses about it, except in case of an appeal against the EB's decision for denial of due process (NCP, Section XII (e); NCP, Section XI).

Predetermined Consequences: NCP, Section XIV defines which consequences should be applied by the FB, and XV defines which ones should be applied by the EB as response to three circumstances of non-compliance with different commitments: non-compliance with reporting requirements, non-compliance with eligibility requirements and non-compliance with emission commitments. In fact, the response measures which should be applied to the non-compliant party are pre-designed certain consequences. They are imposed by the branches of the ComplCom when they are needed to induce compliance with parties as either positive or negative measures. In general, if the party have difficulties to comply with the provisions of the Protocol because of its lack of material, institutional or financial resources, positive measures are applied as appropriate means for inducing compliance. On the other hand, if there is a deliberate non-compliance determined by the EB, in this case, the negative measures involving far-reaching economic implications can be imposed to the non-compliant party to bring it back to compliance.

These "fixed consequences" (Ulfstein and Werksman, 2005:59) adopted in the NCPs of the Protocol which have been established clearly for attaching to certain

violations, are “well designed to give credibility and legitimacy” (Ulfstein and Werksman, 2005:59) and to enhance predictability of the consequences to be applied to the non-compliant parties.

Proportionality: Response measures should not be disproportionate to the nature of the obligation and the nature of the breach. As stated in art.18, the Protocol requires “the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance.” So, it stresses, through this statement, the necessity of the proportionality between the nature of the non-compliance and the type of measures given in the event of that non-compliance.

Transparency: The procedure should provide access as much as information to parties and also non-parties (IGOs-NGOs) with a high level of transparency in line with the “right to know” adopted by the 1998 Aarhus Convention. This is particularly because, transparency can enforce the parties to comply with their commitments, even before the initiation of the CM, through ensuring information to NGOs, starting the debate on the relevant issue in the domestic sphere and thus establishing “shaming infrastructures” (Hovi *et al.*, 2005:8).

There are also several opportunities for NGOs to participate to the processes of the CM (Andresen and Gulbrandsen, 2005). To illustrate, the NCP of the Protocol allows the competent intergovernmental (IGOs) and non-governmental organizations (NGOs) to submit relevant factual and technical information to the relevant branch, and also allows each branch to seek expert advice (NCP, Section VIII, paras.4-5). They are also allowed to participate to the EB deliberations and hearings with an ‘observer status’ in accordance with art.7(6), Convention. They can develop the capacity to monitor and evaluate certified CDM and sink projects, and can monitor these project activities and attend Executive Board CDM meetings. They can convince the parties(using the shame-effect) to refrain from buying GHG emission allowances from the countries within the hot air loophole, such as Russia and Central and Eastern European Countries (CEECs). They also have potential to influence not only Annex I parties, but also Non-Annex I parties by ensuring “the quality of technology transferred from Annex I to Non-Annex I parties as well as its appropriateness to local circumstances” (Andresen and

Gulbrandsen, 2005:180). Besides these internal instruments located in the CM, NGOs can also apply external strategies, like reputation of the parties in the international community, to influence the parties' compliance.

In sum, although the NCP of the Protocol has eventually become "somewhat less transparent and open than the NGOs had advocated" (Andresen and Gulbrandsen, 2005:176), it can be argued that they have been notably successful in "overall goal attainment on the CM" (Andresen and Gulbrandsen, 2005:182).

In order to ensure publicity, on the other hand, the information considered by the EB (NCP, Section VIII, 6), decisions not to proceed (NCP, Section VII, 6; NCP, Section IX, 6), final decisions (NCP, Section VIII, 7; NCP, Section IX, 10) including the consequences (RoP 22f), hearings of the EB (NCP, Section IX, 2), and also of all meetings of plenary and branches- except adoption of decisions (RoP, 9.1)- are made available to the public in the procedure.

Possibility for Appeal: As an exception, a party can appeal to the MOP against a final decision of the EB relating to emissions targets (art. 3(1), KP), if it believes it has been denied due process (Section XI,1).

Thus, even if it is allowed for a very narrow manner -only about whether the rules of the due process are applied to the party concerned, not about the substantive content of the matter-, and also result in giving power a political body, the MOP, to examine a decision of a quasi-judicial body, the EB, through this appeal procedure, the parties attain opportunity to send the EB's decision back to it for re-examination.

4.2.3 Non-compliance Response Measures

The parties to the Protocol have to regard their commitments given in the framework of the Protocol. If one of the parties disregards one of the provisions of the Protocol, its non-compliance results in the application of response measures.

When response measures are mentioned for ensuring compliance with the Kyoto Protocol, the consequences (art.18, KP) designated by the COP/MOP (NCP, Section XIV-XV) according to the circumstances of non-compliance with different commitments (will be detailed in the subsequent sections), should be taken into account.

To these consequences, in order to ensure and enforce compliance of the parties, it is possible to benefit from positive measures, such as cooperation, assistance through financial means and capacity building, monitoring and verification and assistance through procedural means (the consequences particularly applied by the FB) or negative measures, such as deduction of tonnes of a party's assigned amount at a penalty rate equal to 1.3 times the amount in tonnes of excess emissions, suspension of eligibility to participate in the flexible mechanisms(the consequences particularly applied by the EB)

Positive Response Measures

The positive measures employed by the FB after its examination based on the ERT's assessment and identification of 'any potential problems' in the fulfillment of the relevant party's commitments. If it finds that this party has difficulties meeting its Protocol targets and so it is in non-compliance with the provisions of the Protocol, it can apply one or more consequences which it has entitled to apply.

To those consequences counted within NCP, Section XIV (a-d), it can provide advice and facilitation of assistance to the non-compliant parties and can facilitate financial and technical assistance (art. 11, VC), including technology transfer⁶⁴ and capacity building, from sources other than those established under the Convention and the Protocol for the developing countries or having regard to arts. 4.3 4.4, 4.5, VC.⁶⁵ It can also provide recommendations taking into account

⁶⁴ Recalling its Decisions 11/COP 1, 13/COP 1, 7/COP 2, 9/COP 3, 4/COP 4, 9/COP 5 and the relevant provisions of its Decision 1/COP 4 on the Buenos Aires Plan of Action and its Decision 5/COP 6, containing the Bonn Agreements on the implementation of the Buenos Aires Plan of Action, in Decision 4/COP 7, the COP establishes an Expert Group on Technology Transfer (EGTT) to facilitate and advance technology transfer activities (Decision 4/COP 7, 2001:22, para.2). It also sets out a number of technology transfer activities involving five key themes for meaningful actions: technology needs and needs assessments, technology information, enabling environments, capacity building, and mechanisms for technology transfer (Annex, Decision 4/COP-7, 2001:24-30). Further, it requests the secretariat to develop an information clearing house including a network of technology information centres, to facilitate the flow of, and access to, information on developing and transferring safe technologies (Annex, Decision 4/COP-7, 2001:26, para.10(c,d)).

⁶⁵ Article 4.3 in the same line with art 11.2(a, b), Protocol-developed country parties have to provide financial resources and the transfer of technology to developing countries, art.4.4-developed country parties have to assist developing countries, and art.4.5-developed country parties have to promote, facilitate and finance the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly developing country parties.

art.4.7, Convention -the extent of the developing parties's implementation depends on implementation by developed country parties of their commitments related to financial resources and transfer of technology-.

As seen from those consequences applied by the FB, the FB strongly requires financial resources to help the developing countries that need technical and financial assistance in order to facilitate compliance. It can meet the costs of their compliance, including sometimes the operation of relevant projects, sometimes training of national officials, or enhancement of scientific-technological facilities-data systems..etc. So, the effectiveness of the FB, i.e. the facilitation of compliance, ultimately depends on the funds providing necessary resources to meet all these costs. As the funds are "likely to fall considerably short of the needs," strengthening the funds particularly become more significant in the activities of the FB (Hovi *et.al.*, 2005:9).

On the other hand, when the positive measures employed by the EB are analyzed, two circumstances of non-compliance with different commitments are recognized:

1. Non-compliance with reporting requirements (arts. 5.1, KP (national system), 5.2, KP(methodologies), arts.7., KP (inventories), 7.4, KP (guidelines for the preparation of the information-modalities for the accounting of assigned amounts)(Section XV, 1-3), and,
2. Non-compliance with emission commitments under art. 3.1, KP (not to exceed assigned amount) (Section XV, 5-8).

As a response to these circumstances of non-compliance, three different consequences can be applied by the EB:

1. Determination of non-compliance,
2. Adoption a compliance action plan, and,
3. Submission of progress reports.

Determination of Non-compliance: If a party fails to submit its national reports, annual inventories, or related information to the EB, or fails to comply with the requirements regarding them ("procedural non-compliance" (Goldberg *et al.*, 1998:3)), or with its reduction commitments, ("actual(substantive) non-

compliance” (Goldberg *et al.*, 1998:3)), the EB can declare that the party is in non-compliance.

To Adopt a Compliance Action Plan: After declaring that the party is in non-compliance, the EB can also request from the party to develop a “compliance action plan” (Treves, 2009:510; Ulfstein and Werksman, 2005:57) (NCP, Section XV, 1(a,b); NCP, Section XV, 5(b)). In such a case, the party has to submit its plan within three months after the determination of non-compliance or, in a longer period that the EB considers appropriate. Its plan has to include an analysis of the causes of the non-compliance, measures planned to be implemented to remedy the non-compliance and a timetable for implementing such measures -not exceeding twelve months for the assessment of progress in the implementation- (NCP, Section XV, 2(a-c)). In the case of non-compliance of emission commitments, the plan has to contain domestic policies and measures that the party plans to implement to meet its quantified emission limitation or reduction commitment in the subsequent commitment period and a timetable for implementing its plans that does not exceed three years or up to the end of the subsequent commitment period (NCP, Section XV, 6(a-c)).

To Submit Progress Reports: The non-compliant party is also enforced to submit its progress on the plan’s implementation reporting to the EB regularly (NCP, Section XV, 3;NCP, Section XV, 7).

Negative Response Measures

With regard to the negative measures employed by the EB, two circumstances of non-compliance with different commitments can be identified:

1. Non-compliance with eligibility requirements under arts. 6, 12 and 17, KP (flexibility mechanisms) (Section XV, 4), and,
2. Non-compliance with emission commitments under art. 3.1, KP (not to exceed assigned amount) (Section XV, 5-8).

As a response to these circumstances of non-compliance, three different consequences can be applied by the EB:

1. Suspension of eligibility to participate in the flexible mechanisms,
2. Deduction of tonnes of a party’s assigned amount at a penalty rate, and,

3. Suspension of the eligibility to make transfers.

Suspension of Eligibility to Participate in the Flexible Mechanisms: If the parties are found not to meet the criteria for participating in the flexibility mechanisms, in that case, the EB can withdraw the eligibility of the party concerned, i.e. can suspend its accession to the flexibility mechanisms, in line with relevant provisions under those articles.

Eligibility may only be restored in accordance with the procedure in Section X, 2 (NCP, Section XV, 4). Indeed, to reinstate the eligibility, the party can request to the EB either directly or through an expert review team. In response to the request submitted through an ERT, if the ERT confirms no longer existence of a QoI regarding the eligibility of the party concerned, the EB should restore the party's eligibility, unless it decides that such a QoI continues to exist. In response to the request submitted directly, if the EB decides on the non-existence of a QoI, it reinstates that party's eligibility. If it decides otherwise, then, it has to apply the procedure set out under Section X, 1 which is regulated specifically for QoIs relating to eligibility requirements under arts. 6, 12 and 17 of the Protocol.

This response measure is generally criticised, as suspending a party's ability to use the flexibility mechanisms can prevent it to bring itself into compliance through these mechanisms (Crossen, 2004).

Deduction of Tonnes of a Party's Assigned Amount: If the party concerned is found in breach of its emissions target, in that case, the EB can deduct tonnes of a party's assigned amount at a penalty rate (equal to 1.3 times the amount in tonnes of excess emissions) in a subsequent commitment period from the party's assigned amount for the second commitment period (NCP, Section XV, 5(a)). That is, parties not in compliance with their commitments in the first commitment period (2008-2012) have to deduct 1.3 tonnes from their second period assigned amount for every tonne of gas they emitted in excess of their assigned targets in the first period. For subsequent commitment periods, the rate can be determined by an amendment (NCP, Section XV, 8). The concern relating to the deduction penalty, is that the parties can inflate their assigned amount for the second commitment period to accommodate for the deduction (Crossen, 2004; Wang and

Wiser, 2002). In addition, it raises the problem of the acceptance of the debt as not repaid, allowing the parties borrowing from the subsequent period unlimitedly, and of leading to an agreement on the calculation of the deduction rate (Wang and Wiser, 2002).

Suspension of the Eligibility to Make Transfers: After declaring that the party is in non-compliance with its emission commitments under art. 3.1, KP, the EB can also suspend its eligibility to make transfers on their surplus-not emission credits for its own compliance-, under emissions trading (art 17, KP).

Until it is restored by the EB in accordance with the procedure developed particularly on eligibility requirements for the emissions trading under Section X, 3-4 (NCP, Section XV, 5c), the party's eligibility to make transfers under emissions trading is thus withdrawn.

It should be emphasized here that, the consequences applicable to Annex I parties in breach of their emissions targets can not be fully tested until after the end of the first commitment period. That is to say, after the completion of the expert review process, Annex I parties have 100 days to fulfill their commitments under art 3(1), Protocol regarding compliance with emission targets by acquiring –or by the transfers of other parties to such party- ERUs from JI projects, CERs from the CDM, AAUs from emissions trading and RUs from afforestation, reforestation and deforestation-related activities under arts. 6, 12 and 17, KP, provided the eligibility of any such party has not been suspended in accordance with Section XV, 4 (NCP, Section XIII).

In short, the parties are allowed an additional period (true-up period (Goldberg *et al.*, 1998; Mitchell, 2005) or grace period (Ulfstein and Werksman, 2005) to acquire and transfer emission units to meet their targets after the end of the commitment period running from 2008 to 2012. If the party's total emissions of regulated greenhouse gases exceed its assigned amount at the end of the commitment period, and following the additional period during which the parties can bring themselves within their assigned amounts, the EB can declare the non-compliance of the concerned party and can apply the consequence.

Binding Effect of Response Measures

It is also important to analyse the legal status of the consequences (response measures) decided by the branches. Pursuant to art.18, KP, any compliance procedures and mechanisms entailing binding consequences should be adopted by means of an amendment to the Protocol (see also MOP 1, Decision 2, 2005c, para. 5), either as “separate amendments” (Goldberg *et al.*1998:64, footnote 31) adopted for individual forms of consequences, or as “omnibus amendments” (Goldberg *et al.*1998: 64, footnote 31) adopted in a collective manner. This suggests that, response measures would not be binding, unless they become part of such an amendment, even if there is a decision of a branch of the Committee using “a prescriptive or mandatory language” (Eritja *et al.*, 2004:101).

However, any amendment to the Protocol, which can only bind the parties having accepted it, is likely very difficult to function effectively in practice (Eritja, Pons and Sancho, 2004; Oberthür and Ott, 1999; Wang and Wiser, 2002). This is particularly because, amendments enter into force only after ratification by at least three-fourths of the parties to the Protocol (art.20.4, KP). It therefore can require a long period for ratification, and in this period, some parties can prefer to stay out of it, and not bound by the consequences. It also makes blurred the status of those parties wishing to participate to the Protocol, but not to an amendment that reflects the binding nature of these consequences (Barrett, 2003; Werksman, 2005). That implies, when some parties to the Protocol are not also parties to the amendment, the unamended Protocol would govern the relationship between parties just to the Protocol and parties to both the Protocol and the amendment. The amended Protocol can be applied then to merely parties to both the Protocol and the amendment.

It was proposed to adopt “some form of supplementary legal instrument, which all parties would agree to ratify at the same time that they ratified or acceded to the Protocol” (Wang and Wiser, 2002:198). Yet, the dispute on the legal status of the consequences are left as unresolved till to the present. So, here, it is necessary to discuss on how the term ‘binding’ should be interpreted while applying those consequences.

Ulfstein and Werksman (2005) argue that, whether or not a consequence should be considered binding under art.18, Protocol may be determined depending on which consequences are applied on. This is due to the fact that, the implications of this question can be different for each of the consequences.

They argue that, soft consequences like determination of non-compliance, adoption of an action plan, and submission of progress reports, and also consequences preventing the concerned party to use a “privilege” (Ulfstein and Werksman, 2005:58) given by the organs of the Protocol, but, not a “right” (Ulfstein and Werksman, 2005:58) stemming from the agreement itself, like suspension of the eligibility to use the flexible mechanisms,⁶⁶ can be considered as part of the “implied powers” of the organs of the Protocol. Therefore, they can be admitted as within the competence of the EB. So, they should not be evaluated as requiring an amendment of the Protocol under its art.18 to become a binding measure.

On the other hand, for the consequence of non-compliance with the emission commitments under art.3.1, obliging the concerned party for deduction of tonnes of its assigned amount at a penalty rate, they assert that this one requires amendment. Since, in this case, it can be claimed that, the parties having withheld their consent to consequences adopted by decisions of COP/MOP (Decision 24/COP 7; Decison 27/MOP1), have a legal basis for arguing that they are not bound by these deductions.

Thus, to this analysis, except the measure requiring deductions of assigned amounts at a penalty rate, other measures can be considered to be within the implied powers of the EB, and do not require to be in a binding form. However, it should not be forgotten that, insistence on adoption of the measure requiring deductions in legally binding form by an amendment to the Protocol can result in the unwillingness of some parties to ratify it, and thus directly affect the compliance attitudes of the parties, and so the attitude of the whole regime.

⁶⁶ See also Goldberg *et al.*(1998) for the same view on the binding status of the measure requiring the suspension of eligibility.

4.2.4 Kyoto Protocol's CM in Practice

How effective the CM of the Protocol operates in practice depends largely on the ability of its provisions to induce compliance. In order to clarify to what extent its provisions achieve to be influential in practice, in this part, it is aimed to focus on the reflections of those provisions to the functioning of the mechanism in practice, likewise in the part on the MP's CM in practice.

When the implementation of the CM in practice is examined, it is observed that, till to date, there have been one question of implementation (QoI) by South Africa, as Chairman of the Group of 77 and China, on behalf of the Group of 77 and China, to the FB and eight QoIs by ERTs to the EB.

4.2.4.1 The Facilitative Branch(FB)

QoI by South Africa to the FB was raised against the 15 Annex I parties which did not provided their reports demonstrating progress, despite the deadline (1 January 2006) has passed for the submission of reports (MOP 1, Decision 22, 2005a; COP 7; art.3.2, KP).

This submission was made on the ground that failure to submit any section of national communication and non-compliance with providing timely information can constitute an “early warning of potential non-compliance” (Ulfstein and Werksman, 2005:45) by the parties with commitments under art.3.1, Protocol. Through that, it was expected from the FB to ascertain the provided information by the parties, to provide advice and facilitation for timely submission and also early warning of potential non-compliance.

The FB began a preliminary examination about this QoI on 31 May 2006. Yet, it could achieve to adopt only two decisions on Latvia and Slovenia. The Branch decided not to proceed against both of these parties after its consideration. This because, Latvia's fourth national communication and its progress report had been received by the secretariat on 25 May 2006, before its consideration started (CC-2006-8-3/Latvia/FB; CC-2006-8-4/FB), and those of Slovenia's on 12 June 2006, just after its consideration proceeded (CC-2006-14-2/Slovenia/FB; CC-2006-14-3/FB).

The other thirteen parties's situation was not considered despite a number of attempts to arrive at a consensus made by the branch. Thus, due to the lack of consensus and also lack of majority of $\frac{3}{4}$ of the members present and voting for adopting either a decision to proceed or a decision not to proceed (NCP, Section II, para.9; NCP, Section VII, paras.4, 6), no decision could be taken about them (CC-2006-1-2/FB; CC-2006-2-3/FB; CC-2006-3-3/FB; CC-2006-4-3/FB; CC-2006-5-2/FB; CC-2006-6-2/FB; CC-2006-7-2/FB; CC-2006-9-2/FB; CC-2006-10-2/FB; CC-2006-11-3/FB; CC-2006-12-3/FB; CC-2006-13-2/FB ; CC-2006-15-2/FB).

Table 13: Kyoto Protocol CM in Practice/ Facilitative Branch (FB)*		
Question of Implementation by South Africa, as Chairman of the Group of 77 and China(2006)		
Parties concerned	Subject of the Question	Results
Austria, Bulgaria, Canada, France, Ireland, Germany, Italy, Liechtenstein, Luxembourg, Poland, Portugal, Russian Federation, Ukraine	Non-compliance with the emission commitments under art. 3.1, Protocol (failure in the submission of national communications and reports)	No decision due to the lack of consensus and majority of $\frac{3}{4}$ (21 June 2006)
Latvia, Slovenia	Non-compliance with the emission commitments under art. 3.1, Protocol (failure in the submission of national communications and reports)	Decision not to proceed against both parties

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at: <http://unfccc.int/playground/items/5516.php>.

4.2.4.2 The Enforcement Branch(EB)

QoIs by ERTs to the EB, on the other hand, were sent to the Committee for consideration about eight parties. Here, the cases on these parties will be analysed in the order arranged according to their QoI date. So, Greece, Canada Croatia, Bulgaria, Romania, Ukraine, Lithuania and Slovakia, will be focused on respectively in the subsequent parts.

Greece Case:

After submission of Greece's initial report on 29 December 2006, the ERTs' report for Greece was published on 28 December 2007 (CC-2007-1-1/Greece/EB; FCCC/IRR/2007/GRC). This report involved a QoI related to Greece's non-compliance with the guidelines for national systems under art. 5, para. 1, KP, the guidelines for the preparation of the information required under art. 7, KP, and the eligibility requirement under arts. 6, 12 and 17, KP

During its third meeting (CC/EB/3/2008/2), the EB held a hearing regarding this QoI. As a result, it found out that, due to the fact that Greece is not in compliance with the guidelines for national systems under art.5, para.1, KP (MOP 1, Decision 19, 2005a) and the guidelines for the preparation of the information required under art.7 KP (MOP 1, Decision 15, 2005b), it can not be evaluated as a party meeting the eligibility requirement under arts 6, 12 and 17, KP to have a national system proper to the conditions of art.5, para.1, KP and the requirements in the related guidelines. So, it adopted a preliminary finding of non-compliance (CC-2007-1-6/Greece/EB) with national system requirements for countries with 2012 targets (Annex B Parties).

In its fourth meeting (CC/EB/4/2008/2), it then adopted a final decision confirming its preliminary finding. Thus, for the first time, a country has been officially found in non-compliance with a KP requirement.

Table 14: Greece Case /Actions in Chronological Order	
Date	Action
29 December 2006	Greece submitted its initial report to the secretariat
28 December 2007	The Initial Review Report(IRR) for Greece was published (CC-2007-1-1/Greece/EB; FCCC/IRR/2007/GRC)
28 December 2007	The Secretariat received a QoI indicated in the report of the ERT
31 December 2007	The question of implementation was deemed received by the ComplCom
7 January 2008	The Bureau of the ComplCom allocated the QoI to the EB
8 January 2008	The Secretariat notified the members of the EB of the QoI
22 January 2008	The EB decided to proceed with the QoI(CC-2007-1-2/Greece/EB)
8 February 2008	The EB agreed to invite four experts on national systems drawn from the UNFCCC experts (CC-2007-1-3/Greece/EB)
11 February 2008	The EB received a request for a hearing from Greece (CC-2007-1-4/Greece/EB)
26 February 2008	The EB received a written submission from Greece (CC-2007-1-5/Greece/EB)
4-5 March 2008	As requested by Greece, a hearing was held
4-6 March 2008	The hearing formed part of the EB 3 meeting (CC/EB/3/2008/2)
6 March 2008	Preliminary Finding (CC-2007-1-6/Greece/EB)
9 April 2008	The EB received a further written submission from Greece (CC-2007-1-7/Greece/EB)
14 April 2008	Greece was given an official notification of the QoI
16-17 April 2008	The EB 4(CC/EB/4/2008/2) evaluated further written submission
17 April 2008	Final Decision (CC-2007-1-8/Greece/EB)
16 July 2008	Greece submitted its plan (CC-2007-1-9/Greece/EB)
September 2008	In-country review of the greenhouse gas inventories of Greece submitted in 2007 and 2008 was completed in September
6-7 October 2008	The EB 6 (CC/EB/6/2008/3) reviewed and assessed the document submitted by Greece
7 October 2008	The EB requests Greece to submit a revised plan (CC-2007-1-10/Greece/EB)
17 October 2008	The annual review report (ARR) of Greece submitted in 2007 and 2008 was published (FCCC/ARR/2008/GRC; CC-2007-1-12/Greece/EB)

Table 14 (cont'd)	
20 October 2008	The Secretariat forwarded the review report to the ComplCom
27 October 2008	Greece submitted a revised plan in response to the request of the EB (CC-2007-1-11/Greece/EB)
7 October 2008	Greece also submitted a request to reinstate its eligibility to participate in the Kyoto mechanisms
28 October 2008	The request was deemed received by EB
13 November 2008	The EB decides that there no longer continues to be a QoI with respect to Greece, and that Greece is now fully eligible to participate in the Kyoto mechanisms (CC-2007-1-13/Greece/EB)

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

In accordance with NCP, Section XV, it decided to apply the following consequences to Greece for its non-compliance:

a. Declaration of non-compliance,

b. To be required to submit a plan, including measures to ensure the maintenance of the national system through transitions and appropriate administrative arrangements to support an in-country review by the ERT of the new national system of Greece, within three months after the determination of non-compliance,

c. To be declared as ineligible to participate in the flexibility mechanisms (implying that Greece is suspended from trading in the Kyoto carbon market-selling and transferring credits, and gaining credits- set up by these mechanisms until the decision stating the unexistence of a QoI with respect to Greece's eligibility and reinstatement by the EB).

After the final decision, Greece submitted a compliance action plan (CC-2007-1-9/Greece/EB), but, the EB found it insufficient to enable the branch to complete the required assessment, as it does not meet the requirements set out in para. 2, Section XV, -causes of non-compliance, measures to remedy the non-compliance and a timetable for implementing such measures-, as well as on the

issues set out in para. 18b of the Annex to the final decision clarifying the requirements set out in para. 2, Section XV, to enable the branch to complete the required assessment (CC-2007-1-10/Greece/EB).

So, after nearly three months, Greece submitted a revised plan to address the elements stipulated in para. 2, Section XV and issues set out explicitly in para. 18(b) of the Annex to the final decision of the EB (CC-2007-1-8/Greece/EB), pursuant to the request of EB 6 (CC-2007-1-10/Greece/EB).

After considering the most recent ERT report (FCCC/ARR/2008/GRC; CC-2007-1-12/Greece/EB) with respect to Greece and Greece's revised plan, on 13 November 2008, the EB decided that, Greece is fully eligible to participate in the Kyoto market mechanisms (CC-2007-1-13/Greece/EB).

Canada Case:

Canada submitted its initial report to the secretariat on 15 March 2007. The ERTs' report for Canada published on 11 April 2008 submitted a QoI in relation to the compliance with the guidelines for the preparation of the information required under art.7, KP (Decision 15/MOP1) and the modalities for the accounting of assigned amounts under art.7, para. 4, KP (Decision 13/MOP1). In particular, the ERT asserted that, Canada's national registry was not in accordance with the guidelines and modalities, and so it was not eligible to use market mechanisms.

After a preliminary examination, the EB decided to proceed with the submission made against Canada (CC-2008-1-2/Canada/EB), and then, to apply the same consequences applied to Greece, to Canada as well.

On 15 June 2008, it decided not to proceed further (CC-2008-1-6/Canada/EB), after considering views and advice given by independent experts at the hearing held on 14-15 June 2008.

Very recently, Canada's declaration of its intention not to meet its emissions target for the first commitment period, has also raised the possibility of applying the FB process for Annex I parties which can be at risk of missing their emission reduction targets based on the demonstrable progress reports. Because the FB was never applied by the parties or the ERT before, for the purpose of facilitation on

compliance with emission reduction targets of Annex I parties; Canada's this situation has also displayed the need for reforming the FB on the way towards a system in which the FB's early warning function can be used for Annex 1 parties in need of facilitation to meet their targets (Doelle, 2010; Oberthür and Lefebber, 2010).

Table 15: Canada Case /Actions in Chronological Order	
Date	Action
15 March 2007	Canada submitted its initial report to the Secretariat
5-10 November 2007	In-country review by ERT took place
11 April 2008	The IRR for Canada was published (CC-2008-1-1/Canada/EB;FCCC/IRR/2007/CAN)
11 April 2008	The Secretariat received a QoI indicated in the report of the ERT
14 April 2008	The QoI was deemed received by the ComplCom
14 April 2008	Canada was given an official notification of the question of implementation
16 April 2008	The Bureau of the ComplCom allocated the QoI to the EB
17 April 2008	The Secretariat notified the members of the EB of the QoI
2 May 2008	The EB decided, after a preliminary examination, to proceed with the QoI (CC-2008-1-2/Canada/EB)
5 May 2008	Canada was given an official notification of the decision
20 May 2008	Canada requests a hearing (CC-2008-1-4/Canada/EB)
21 May 2008	The EB agreed to seek expert advice (four experts on national registries)(CC-2008-1-3/Canada/EB)
5 June 2008	Canada's written submission (CC-2008-1-5/Canada/EB)
14-15 June 2008	The hearing was held
14-16 June 2008	The hearing formed part of the EB 5 meeting (CC/EB/5/2008/2)
15 June 2008	The EB decided not to proceed further with the (CC-2008-1-6/Canada/EB)
16 June 2008	Canada was given official notification of the decision.
14 July 2008	Further written submission of Canada (CC-2008-1-7/Canada/EB)

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Croatia Case:

Croatia case has a crucial part among the others brought before the EB, as it has been the first in which the party found non-compliant by the EB applied to the MOP for appeal.

The process began with the ERT's report (CC-2009-1-1/Croatia/EB; FCCC/IRR/2008/HRV) including two QoIs, which was finalized on 26 August 2009, nearly one year after the submission of Croatia's initial report.

The QoIs were related to non-compliance with Croatia's assigned amount and its commitment period reserve. They were questioning whether a decision taken under the Convention would allow Croatia to issue more credits under the Protocol and so to increase its commitment period reserve.

The EB adopted its final decision confirming the preliminary finding of non-compliance (CC-2009-1-6/Croatia/EB), thus, confirming the consequences contained in para.23 of the preliminary finding on 26 November 2009 (CC-2009-1-8/Croatia/EB). As a result of this final decision, the same consequences involving declaration of non-compliance, preparing a compliance action plan and to be suspended to participate to market mechanisms, which were applied previously to both Greece and Canada, were decided for Croatia as well.

As it was decided as non-compliant with its assigned amount and commitment period reserve, its plan should address the calculation of the assigned amount and the commitment period reserve of Croatia in line with art. 3, paras. 7 and 8, KP and the modalities for the accounting of assigned amounts contained in Decision 13 (MOP 1, 2005b).

Croatia did not submit its plan which should be submitted to address its non-compliance within three months, expressing its appeal as a basis for its non-submission. In fact, on 14 January 2010, Croatia lodged an appeal against the final decision of the EB. Through this application to the MOP for appeal, it has also initiated the debate on the conditions of appeal. This is because, although appeal is only possible for issues relating to the parties' 2012 targets and only in the case of denial of due process under the CM of the KP, it relied some other reasons related to the issues other than denial of due process in its application for appeal.

In its appeal, Croatia referred to the following eight reasons:

1. The final decision of the EB was not in line with art. 31, paras. 1 and 2, VCLoT, requiring that a treaty should be interpreted in good faith and in light of its object and purpose, and both the Annex and the Preamble of the treaty should be taken into consideration in the case of interpretation.

Croatia, on the basis of this reason, argued that it should be granted flexibility on the same grounds in the process of the implementation of its commitments under the KP, like being done in five other countries undergoing similar process of transition to a market economy, namely Bulgaria, Romania, Poland, Hungary and Slovenia.

In order to support its argument, it referred to art.4, para.6, UNFCCC, Decision 7/COP12 and COP Decision 9/COP 2, and wanted to be allowed to add 3.5 Mt CO₂ equivalent to its 1990 level of greenhouse gas emissions (amounting to 31.7 Mt CO₂) not controlled by the MP, for the purpose of establishing the level of emissions for the base year for implementation of its commitments under art.4, para.2, UNFCCC.

2. Secondly, Croatia claimed the violation of art.31, para. 3(b), VCLoT, stating that regarding the treaty's interpretation, any subsequent practice in the application of the treaty should be taken into consideration. It put forward that, contrary to this provision, the EB did not take into account flexibility for application of the KP target as allowed under the Convention, as differently from identical cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland.

3. Thirdly, Croatia asserted that, the EB's final decision of non-compliance was manifestly absurd and unreasonable from several different aspects, particularly on the grounds of Croatia's historical circumstances. And, this formed the violation of art.32, VCLoT stipulating that, when the treaty's interpretation may not be sufficient, and result in ambiguous, obscure, or manifestly absurd or unreasonable meanings, supplementary means of interpretation, such as the preparatory work of the treaty and the circumstances of its conclusion, should also be taken into account.

4. Moreover, Croatia alleged that, the EB interpreted art. 3, para. 5, KP in a very strict, inflexible and purely grammatical way, and this interpretation concluded in the application of flexibility only in the use of a base year or period other than 1990, so only to four EIT Parties explicitly indentified in Decision 9/COP 2. So, it decided that Croatia could not invoke art.3, para. 5, KP.

5. Another reasoning of Croatia, leaning on para.3c of the EB's final decision, was about the violation of COP and MOP decisions and provisions of KP.

In that paragraph, the EB stated that, because the COP and the MOP are two different decision-making bodies, the fact that all parties to the Protocol are also parties to the UNFCCC does not provide a basis for establishing the application of COP decisions, like Decision 7/COP 12, under the KP.

Croatia, relying on art.7, 8, KP, Decision 27/MOP 1(2005a), Annex, Section II, Decision 13/MOP 1 (2005b), claimed that, the EB's final decision directly contradicted all these provisions/decisions, and also instead of applying both Decision 9/COP 2 and Decision 7/COP 12, disregarded them.

6. By comparing the Slovenian and Iceland cases to its case, Croatia also argued the unequal treatment towards itself. As these countries have gained flexibility under the Convention and have been allowed to apply it for the purpose of implementation of their KP commitments, it pretended that, the Decision 7/COP 12 should be accepted as directly applicable under the KP.

7. Croatia, furthermore, indicated the EB's reference to the EU delegation's remark expressed at COP 12, and underlined that the EB, both in its preliminary finding and final decision, did not provide an explanation of the EU delegation's remark and its implications for Croatia's case, and also did not grant an opportunity to Croatia for response to the EB on the matter in writing. Based on these reasons, it claimed the violation of providing information relevant for decision and of right to respond.

8. Croatia's final argument was about the violation of independence, impartiality and conflict of interest principles (Rule 4, RoP). Here, it stressed that one of the alternate member of the EB who participated in the consideration and elaboration of the preliminary finding with respect to Croatia, was also a member of the EU delegation at COP 12 and there advocated flexibility for Croatia could not be applied for the purpose of implementation of the KP, and this clearly forms an apparent conflict of interest and also a violation of the principles of independence and impartiality.

On the basis of the above reasonings, at the end of its appeal, Croatia requested a MOP decision confirming the application of Decision 7/COP 12 and any subsequent commitment period; or referring the matter back to the EB to decide not to proceed with QoIs questions, thus, following Decision 7/COP 12, to allow Croatia to add 3.5 Mt CO₂ equal to its 1990 GHG emissions not controlled by the MP for the purpose of establishing the level of emissions for the base year for implementation of its commitments under the KP.

This appeal was considered by the MOP 6 held in Cancun, Mexico, from 29 November to 10 December 2010. Yet, the MOP 6 (2010:16, paras.62-68) was not able to complete its consideration, and it was so put into the agenda of MOP 7 (2011). Because, Croatia withdrew its appeal on 4 August 2011 (FCCC/KP/CMP/2011/2), MOP 7 noted solely Croatia's withdrawal of its appeal and terminated its consideration (COP 12, Decision 7; MOP 7, Decision 14).

Croatia then submitted its plans (its plan and revised one) and request for the reinstatement of its eligibility to participate in the Kyoto mechanisms (CC-2009-1-10/Croatia/EB; CC-2009-1-12/Croatia/EB). After the EB's consideration (CC/EB/18/2012/3) on its plans and request to reinstate its eligibility, on 8 February 2012, it was decided that, Croatia is fully eligible to participate in the market mechanisms (CC-2009-1-14/Croatia/EB).

Table 16: Croatia Case /Actions in Chronological Order	
Date	Action
27 August 2008	Croatia submitted its initial report to the Secretariat
26 August 2009	ERT finalized IRR of Croatia including QoIs (CC-2009-1-1/Croatia/EB ;FCCC/IRR/2008/HRV)
27 August 2009	Croatia was given an official notification of the QoIs
28 August 2009	The questions were allocated to the EB
7 September 2009	The EB decided to proceed with the questions (CC-2009-1-2/Croatia/EB)
24 September 2009	The EB agreed to seek expert advice (CC-2009-1-3/Croatia/EB)
25 September 2009	Request for hearing was submitted from Croatia (CC-2009-1-4/Croatia/EB)
9 October 2009	A written submission was made by Croatia (CC-2009-1-5-Croatia/EB)
11-13 October 2009	The EB 7 (CC/EB/7/2009/2) held a hearing
13 October 2009	Preliminary Finding (CC-2009-1-6/Croatia/EB)
12 November 2009	Further written submission from Croatia, opposing the arguments and the conclusion of the preliminary finding (CC-2009-1-7/Croatia/EB)
23-24 November 2009	The EB 8 (CC/EB/8/2009/2) meeting
26 November 2009	Final decision (CC-2009-1-8/Croatia/EB)
28 December 2009	Comments from Croatia opposing the final decision (CC-2009-1-9/Croatia/EB)
14 January 2010	Croatia lodged an appeal against the final decision to the MOP (FCCC/KP/CMP/2010/2)
2 March 2010	The plan to address Croatia's non-compliance was due on
8 March 2010	Croatia indicated that it did not intend to submit such a plan in view of its submission of an appeal against the final decision
16 September 2010	The EB 11 (CC/EB/11/2010/2) noted that its decisions stand pending when appealed and agreed to bring the matter of Croatia's non-submission of a plan to the attention of the MOP.
29 Nov.-10 Dec. 2010	The MOP 6 could not complete its consideration of the appeal and decided to include it on the provisional agenda for MOP 7 (FCCC/KP/CMP/2010/12, para. 67).
4 August 2011	Croatia withdrew its appeal (FCCC/KP/CMP/2011/2)

Table 16 (cont'd)	
11 November 2011	Croatia submitted its plan (CC-2009-1-10/Croatia/EB)
14 November 2011	Croatia's plan was deemed received by the EB
14-18 November 2011	The EB 16(CC/EB/16/2011/2) reviewed and assessed Croatia's plan
18 November 2011	The EB 16 reviewed and assessed the plan and concluded that the measure reflected in the plan, if was expected to remedy Croatia's non-compliance (CC-2009-1-11/Croatia/EB)
28 Nov.- 9 Dec.2011	MOP 7 noted Croatia's withdrawal of its appeal and terminated its consideration (COP 12, Decision 7; MOP 7, Decision 14)
21 December 2011	Croatia submitted its revised plan (CC-2009-1-12/Croatia/EB)
30 December 2011	The Secretariat sent a letter to Croatia confirming that the compilation and accounting database had been updated accordingly (CC-2009-1-13/Croatia)
7-8-10 February 2012	The EB 18 (CC/EB/18/2012/3) considered the request to reinstate Croatia's eligibility
8 February 2012	The EB decides that there no longer continues to be a QoI with respect to Croatia's eligibility, and that Croatia is fully eligible to participate in the Kyoto mechanisms (CC-2009-1-14/Croatia/EB)

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Bulgaria Case:

Bulgaria, which firstly became eligible to participate in the mechanisms on 25 November 2008, submitted its 2009 annual inventory submission on 13 April 2009, to provide information to maintain its eligibility to participate in the flexibility mechanisms.

The ERT finalized its ARR 2009 on 9 March 2010, containing a QoI relating to the national system of Bulgaria (CC-2010-1-1/Bulgaria/EB; FCCC/ARR/2009/BGR). Particularly, the QoI related to compliance with the guidelines for national systems, as functions of the national system of Bulgaria did not ensure that, Bulgaria's 2009 annual submission was sufficiently complete

and accurate, as required by the guidelines for national systems. In addition, the ERT found Bulgaria's institutional arrangements and arrangements for technical competence of staff within the national system insufficient to enable the adequate planning, preparation and management of the party's annual submission in accordance with the guidelines for national systems and other related guidelines such as guidelines for the UNFCCC reporting, for the IPCC good practice, IPCC good practice for LULUCF. So, it found Bulgaria ineligible to participate in the flexibility mechanisms.

After its consideration on the matter, the EB resulted in a preliminary finding of non-compliance with respect to Bulgaria (CC-2010-1-6/Bulgaria/EB) and confirmed this finding with its final decision on 28 June 2010 (CC-2010-1-8/Bulgaria/EB).

The consequences applied by the branch to Bulgaria were again the same with those applied in the previous QoIs considered by the EB. In accordance with these consequences, on 12 August 2010, Bulgaria submitted an updated improvement plan to address its non-compliance (CC-2010-1-11/Bulgaria/EB).

As the EB 11 decided that this plan does not fully meet the necessary requirements and not include an analysis of the causes of non-compliance (CC/EB/11/2010/2), Bulgaria submitted a revised compliance action plan (CC-2010-1-12/Bulgaria/EB) on 1 October 2010, and submitted a progress report on the implementation of its revised plan on 27 January 2011 (CC-2010-1-15/Bulgaria/EB).

In order to benefit from the ERTs' report of the review of the 2010 annual submission of Bulgaria, the EB postponed its review and assessment on Bulgaria's revised plan until after the publication of the ERTs' report on 29 November 2010. Then, in its twelfth meeting held from 3 to 4 February 2011, taking into account the ERTs' report and Bulgaria's revised plan, the EB 12 decided that, there is no longer need for a QoI with respect to Bulgaria's eligibility, as it has eligibility to participate in the flexibility mechanisms.

Table 17: Bulgaria Case /Actions in Chronological Order	
Date	Action
13 April 2009	Bulgaria submitted its 2009 annual inventory submission to the Secretariat
28 Sept.-3 Oct. 2009	The ERT conducted an in-country review
9 March 2010	ERT finalized its ARR 2009 containing a QoI(CC-2010-1-1/Bulgaria/EB; FCCC/ARR/2009/BGR)
9 March 2010	Bulgaria was given an official notification of the question of implementation
16 March 2010	The question was allocated to the EB
17 March 2010	The Secretariat notified the members of the EB of the QoI
31 March 2010	The EB decided to proceed with the question (CC-2010-1-2/Bulgaria/EB)
8 April 2010	The EB received a request for a hearing from Bulgaria (CC-2010-1-3/Bulgaria/EB)
15 April 2010	The EB agreed to invite three experts drawn from the UNFCCC experts to (CC-2010-1-4/Bulgaria/EB)
5 May 2010	A written submission was made by Bulgaria (CC-2010-1-5/Bulgaria/EB)
10-12 May 2010	The EB 9 meeting (CC/EB/9/2010/2)
10 May 2010	The EB 9 held a hearing
12 May 2010	The EB 9 resulted in a preliminary finding of non-compliance (CC-2010-1-6/Bulgaria/EB)
15 June 2010	Bulgaria made a further written submission(CC-2010-1-7/Bulgaria/EB)
28 June 2010	The EB 10 (CC/EB/10/2010/2) considered further written submission made by Bulgaria and gave its Final Decision (CC-2010-1-8/Bulgaria/EB)
21 July 2010	Comments were submitted by Bulgaria on the Final Decision (CC-2010-1-9/Bulgaria/EB)
3 August 2010	Resubmitted comments from Bulgaria on the Final Decision(CC-2010-1-10/Bulgaria/EB)
12 August 2010	Bulgaria submitted an updated improvement plan to address its non-compliance (CC-2010-1-11/Bulgaria/EB)
16 September 2010	The EB 11 (CC/EB/11/2010/2)noted that the plan does not fully meet the necessary requirements, and encouraged Bulgaria to submit a complete plan no later than 1 October 2010
1 October 2010	Bulgaria submitted a revised compliance action plan (CC-2010-1-12/Bulgaria/EB)
4-9 Oct.2010	In-country review was conducted

Table 17 (cont'd)	
25 October 2010	The EB decided to defer the completion of the review and assessment of the revised plan until after the publication of the ERT's ARR 2010 (CC-2010-1-13/Bulgaria/EB)
29 November 2010	The ERT's ARR 2010 was published (CC/ERT/ARR/2010/18)
2 December 2010	Bulgaria submitted a request for the reinstatement of its eligibility (CC-2010-1-14/Bulgaria/EB)
27 January 2011	Bulgaria submitted a progress report on the implementation of its revised plan (CC-2010-1-15/Bulgaria/EB)
3-4 February 2011	The EB 12 meeting was held (CC/EB/12/2011/2)
4 February 2011	The EB 12 decided that there no longer continues to be a QoI, and that Bulgaria is fully eligible to participate in the Kyoto mechanisms

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Romania Case:

The QoI relating to Romania was raised within the ERT ARR 2010 (CC-2011-1-1/Romania/EB; CC/ERT/ARR/2011/21; FCCC/ARR/2010/ROU), due to the fact that, within its review, the ERT found that, Romania's national system fails to perform some specific functions on inventory preparation required by the guidelines for national systems, and it does not comply with the requirements for the preparation of information under art.7, para.1, KP specifically for the land use, land-use change and forestry (LULUCF) activities.

After its preliminary examination, the EB decided to proceed with the question (CC-2011-1- 2/Romania/EB). Then, Romania requested a hearing which was held on as a part of the EB 13 meeting, on 7 July 2011. At the end of the EB 13 meeting and the hearing CC-2011-1-6/Romania/EB), the EB decided on the consequences applied to Romania, contained in para. 24 of the preliminary finding of the EB, also confirmed by and annexed to the final decision (CC2011-1-8/Romania/EB; CC-2011-1-9/Romania/EB; CC-2011-19/Romania/EB/Add.1).

These consequences applied by the branch are below:

- a. To be declared to be in non-compliance,
- b. To be required to submit a plan to address its non-compliance within 3 months
- c. To be declared as not eligible to participate in the market-based mechanisms (ET, art.17, CDM, art.12, JI, art.6). Exception was that, if there are emission reduction units generated from JI projects hosted by Romania and verified under a special track II JI procedure, Romania then can trade can credits, and if forwarded by a host developing country, it can acquire credits.

So, the consequences applied have been the same with those applied in the four previous cases brought before to the EB.

Nearly three months after the final decision, Romania submitted its plan and first progress report on 2 November 2011(CC-2011-1-9/Romania/EB), (CC-2011-1-9/Romania/EB/Add.1). It also submitted its second progress report on the implementation of the plan (CC-2011-1-12/Romania/EB), on 2 February 2012, and its third progress report and a request to reinstate its eligibility to participate in the mechanisms (CC-2011-1-13/Romania/EB), on 26 March 2012.

The EB 20 (CC/EB/20/2012/2-9 August 2012) considered the request on reinstatement together with the 2011 ARR (FCCC/ARR/2011/ROU) which was published (CC/ERT/ARR/2012/4) on 27 February 2012. As a consequence of its analysis, on 13 July 2012, it decided that the QoI has been resolved, and Romania is eligible to participate in the mechanisms.

Table 18: Romania Case /Actions in Chronological Order	
Date	Action
15 April 2010	Romania submitted its annual inventory submission to the Secretariat.
20-25 September 2010	The ERT conducted a centralized review of Romania's submission.
11 May 2011	The ERT finalized its 2010 ARR (FCCC/ARR/2010/ROU) containing a QoI (CC-2011-1-1/Romania/EB; CC/ERT/ARR/2011/21).
12 May 2011	The QoI was received by the ComplCom-Romania was given an official notification.
16 May 2011	The question was allocated to the EB by the Bureau of the ComplCom.
17 May 2011	The Secretariat notified the members and alternate members of the EB of the QoI.
27 May 2011	Preliminary Examination, the EB decided to proceed (CC-2011-1- 2/Romania/EB).
3 June 2011	The EB agreed to invite four experts drawn from the UNFCCC experts (CC- 2011-1-3/Romania/EB).
14 June 2011	The EB received a request for a hearing from Romania (CC-2011-1-4/Romania/EB).
29 June 2011	A written submission was made by Romania(CC-2011-1-5/Romania/EB).
6-8 July 2011	EB 13 meeting (CC/EB/13/2011/2-18 July 2011)
7 July 2011	At the request of Romania, hearing was held on as a part of the EB 13 meeting.
8 July 2011	Preliminary finding of the EB (CC-2011-1-6/Romania/EB).
11 August 2011	Romania made a further written submission (CC-2011-1-7/Romania/EB).
27 August 2011	Final decision of the EB (CC-2011-1-8/Romania/EB)
26 September-1 October 2011	In-country review
2 November 2011	Romania submitted its plan and first progress report(CC-2011-1-9/Romania/EB), (CC-2011-1-9/Romania/EB/Add.1)
14 November 2011	Expert Advice on Plan (CC-2011-1-10/Romania/EB).
14-18 November 2011	The EB 16 meeting (CC/EB/16/2011/2-26 November 2011) provided inputs to Romania.
15 November 2011	The EB adopted a decision on the review and assessment of its plan (CC-2011-1- 11/Romania/EB).

Table 18 (cont'd)	
2 February 2012	Romania submitted its second progress report on the implementation of the plan (CC-2011-1-12/Romania/EB).
7-8-10 February 2012	The EB 18 (CC/EB/18/2012/3- 24 February 2012) made a number of recommendations (CC/EB/18/2012/3).
27 February 2012	The 2011 ARR(FCCC/ARR/2011/ROU) was published (CC/ERT/ARR/2012/4)
1 March 2012	The Secretariat forwarded the 2011 ARR to the ComplCom.
26 March 2012	Romania submitted its third progress report and a request to reinstate its eligibility to participate in the mechanisms (CC-2011-1-13/Romania/EB).
27 June 2012	Decision on Expert Advice (CC-2011-1-14/Romania/EB).
9-14 July 2012	The EB 20 (CC/EB/20/2012/2-9 August 2012) considered the request on reinstatement.
13 July 2012	The QoI has been resolved, the EB decided that Romania is eligible to participate in the Kyoto mechanisms (CC-2011-1-15/Romania/EB).

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Ukraine Case:

In similar to the processes of the previous cases, in this case either, after Ukraine's annual inventory submission to the Secretariat and the ERT's review of this submission, on 3 June 2011, the ERT prepared its 2010 ARR (FCCC/ARR/2010/UKR) containing a QoI (CC-2011-2-1/Ukraine/EB; CC/ERT/ARR/2011/28).

The QoI was here again not related to whether Ukraine is in compliance with its 2012 emissions target, but, it related to compliance with the guidelines for national systems and so to the eligibility requirements. In fact, the ERT found that, the national system of Ukraine failed;

- to perform functions required by the guidelines for national systems,
- to ensure that its 2010 annual submission is under the conditions required by the related guidelines, such as guidelines for national systems, for the

- preparation of the information required under art.7, KP, for the UNFCCC reporting, for the IPCC good practice, IPCC good practice for LULUCF,
- to ensure that areas of land subject to KP LULUCF activities under art.3, paras. 3 and 4, KP are identifiable in accordance with para. 20 of the guidelines relating to land use (Annex, Decision 16/MOP 1(2005a)).

The EB's examination on the issue resulted in the decision determining that Ukraine was not in compliance with the national systems requirements, hence, it did not meet the eligibility requirements under arts. 6, 12 and 17, KP (CC-2011-2-6/Ukraine/EB). In accordance with Section XV, NCP, KP, the EB also decided to apply three consequences-declaration of non-compliance-submission of a plan and suspension of trading in market mechanisms-likewise in the former cases.

Ukraine submitted a request to postpone the EB 15 and the consideration of the further written submission and the adoption of a final decision (CC-2011-2-7/Ukraine/EB) on 2 September 2011. In that request, it noted that it would make a further submission no later than 26 September 2011. It also requested to re-schedule the meeting for the date of 15 October 2011, since, the persons who were to attend to the EB 15 meeting (11-12 October 2011) on behalf of Ukraine, should also attend to in-country review 10-15 October 2011.

Despite this request, it sent its further written submission, including a list of participants on behalf of Ukraine, to the EB on 27 September 2011 (CC-2011-2-8/Ukraine/EB). At the end of its written submission, it requested the EB to postpone the final decision and reassess it on the basis of its 2011 ARR (FCCC/ARR/2011/UKR), or to confirm the preliminary finding but defer its coming into effect until the outcome of the in-country review of the annual inventory of Ukraine.

Table 19: Ukraine Case /Actions in Chronological Order

Date	Action
12 April 2010	Ukraine submitted its annual inventory submission to the Secretariat.
30 August- 4 September 2010	The ERT conducted a centralized review of Ukraine's submission.
3 June 2011	The ERT finalized its 2010 ARR (FCCC/ARR/2010/UKR) containing a QoI (CC-2011-2-1/Ukraine/EB; CC/ERT/ARR/2011/28).
6 June 2011	The QoI was received by the Secretariat from the ERT, and ComplCom-Ukraine was given an official notification.
13 June 2011	The question was allocated to the EB by the Bureau of the ComplCom.
14 June 2011	The Secretariat notified the members and alternate members of the EB of the QoI.
29 June 2011	Preliminary Examination, the EB decided to proceed (CC-2011-2-2/Ukraine/EB).
6 July 2011	The EB agreed to invite four experts drawn from the UNFCCC experts (CC-2011-2-3/Ukraine/EB).
19 July 2011	The EB received a request for a hearing from Ukraine(CC-2011-2-4/Ukraine/EB).
2 August 2011	A written submission was made by Ukraine (CC-2011-2-5/Ukraine/EB).
24 August 2011	At the request of Ukraine, the EB held a hearing.
22-27 August 2011	Hearing was held on forming the part of the EB 14 meeting (CC/EB/14/2011/2).
25 August 2011	Preliminary finding of the EB (CC-2011-2-6/Ukraine/EB).
2 September 2011	Ukraine submitted a request to postpone the EB 15 (CC-2011-2-7/Ukraine/EB)
28 September 2011	The EB received further written submission from Ukraine (CC-2011-2-8/Ukraine/EB)
11-12 October 2011	The EB 15 considered this further written submission in elaborating a final decision.
12 October 2011	Final decision of the EB (CC-2011-2-9/Ukraine/EB).
10-15 October 2011	In-country review
7 December 2011	Ukraine submitted its plan (CC-2011-2-10/Ukraine/EB).

Table 19 (cont'd)	
20-21 December 2011	The EB 17 (CC/EB/17/2011/2) reviewed and assessed Ukraine's plan
21 December 2011	The EB concluded that the plan met the relevant requirements(CC-2011-2-11/Ukraine/EB).
13 January 2012	The 2011 ARR (FCCC/ARR/2011/UKR) was published
18 January 2012	The Secretariat forwarded the 2011 ARR to the ComplCom (CC/ERT/ARR/2012/2).
23 January 2012	Ukraine submitted a request for reinstatement of its eligibility to participate in the mechanisms (CC-2011-2-12/Ukraine/EB).
7 February 2012	Ukraine submitted its first progress report on the implementation of its plan (CC-2011-2-13/Ukraine/EB).
7-8-10 February 2012	The EB 18 (CC/EB/18/2012/3)decided to defer the adoption of a decision on the request, pending the receipt of expert advice (CC-2011-2-14/Ukraine/EB).
21 February 2012	A corrigendum to the ARR 2011 on paras. 163c and 189c (FCCC/ARR/2011/UKR/Corr.1) was submitted (CC/ERT/ARR/2012/2/Corr.1).
6 March 2012	The EB decided to invite two experts to provide advice to the branch (CC-2011-2-15/Ukraine/EB).
8-9 March 2012	The EB 19 (CC/EB/19/2012/2) considered the request to reinstate Ukraine's eligibility
9 March 2012	The QoI has been resolved, the EB decided that Ukraine is eligible to participate in the mechanisms (CC-2011-2-16/Ukraine/EB).

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

In line with the EB's decision, Ukraine submitted firstly its plan (CC-2011-2-10/Ukraine/EB), and then a request for reinstatement of its eligibility to participate in the mechanisms (CC-2011-2-12/Ukraine/EB).

After its first progress report on the implementation of its plan (CC-2011-2-13/Ukraine/EB), the EB 18 (CC/EB/18/2012/3) considered its request, yet,

decided to wait for expert advice for the adoption of a decision on the request (CC-2011-2-14/Ukraine/EB).

The EB 19 (CC/EB/19/2012/2) reconsidered the request to reinstate Ukraine's eligibility on the basis of expert advice, the 2011 ARR, the first progress report on the plan and also the additional information presented by Ukraine at the EB 18 and 19.

Based on its findings, on 9 March 2012, it concluded that, all the measures described in Ukraine's plan have been implemented, or expected to be fully implemented in the 2013 annual submission, and all information submitted is adequate to decide that the QoI has been resolved, and so Ukraine is eligible to participate in the mechanisms (CC-2011-2-16/Ukraine/EB).

Lithuania Case:

QoI on Lithuania was brought before the EB by the ERT relating to the guidelines for national systems as well art.7, KP guidelines on reporting commitments (CC-2011-3-1/Lithuania/EB; CC/ERT/ARR/2011/33), and so, related to the eligibility requirement, similar to the former cases dealt with the EB.

After considering the further written submission by Lithuania, on 21 December 2011, the branch adopted a final decision to confirm its preliminary finding (CC-2011-3-6/Lithuania/EB). As a result of the final decision (CC-2011-3-8/Lithuania/EB), the same consequences were applied by the EB with the previous cases.

Compliance action plan prepared by Lithuania in response to the EB's decision and its first progress report on its implementation (CC-2011-3-9/Lithuania/EB) was reviewed by the EB, and the EB decided that the plan adequately addresses each of the elements specified in para. 2, Section XV, and it is expected to remedy the non-compliance, if implemented in accordance with this decision (CC-2011-3-11/Lithuania/EB).

However, the EB 20, held in between 9-14 July 2012, decided that, on the basis of expert advice, it is not possible to reinstate Lithuania's eligibility to participate in the Kyoto mechanisms, and another in-country review is required (CC-2011-3-14/Lithuania/EB).

After this meeting of the EB, there have been two reviews concerning Lithuania: while the expedited in-country review for Lithuania conducted from 28 to 29 September 2012 (expedited review report) assessed whether the QoI had been resolved; the in-country review of the annual report submitted by Lithuania's 2012 annual submission conducted from 1 to 6 October 2012 had involved an assessment of Lithuania's 2012 annual submission.

The expedited in-country review for Lithuania (expedited review report) (CC/ERT/EXP/2012/1). Report on the expedited review for Lithuania (2012) states that, Lithuania's archiving system is fully in line with the guidelines for national systems (para.24a), it also compiles all necessary data to identify the lands subject to activities under art.3, paras.3-4, KP, and to enable accurate estimates of greenhouse gas emissions and removals (para.24b), and it has fully addressed the relevant issues for improvement raised in the in the review reports of Lithuania's 2010 and 2011 annual submissions (para.25).

The in-country review of the annual report submitted by Lithuania's 2012 annual submission had involved a review of the land use, land-use change and forestry data in the 2012 annual submission. It concluded that, Lithuania is capable of providing the information on activities under art.3, para.3-4, KP necessary for it to meet the reporting requirements defined in the article 7 guidelines.

Reyling on the information provided by the expedited review report, the expert advice received, and also on the information submitted by Lithuania indicating that most measures in its plan have been implemented, the EB concluded that the QoI regarding Lithuania has been resolved.

In addition, although it underlined that, some measures described in Lithuania's plan are yet to be fully implemented and so encouraged Lithuania to further strengthen its national system by implementing these measures, it found Lithuania fully eligible to participate in the flexibility mechanisms (CC-2011-3-18/Lithuania/EB), at the end of the EB 21 (22-24 October 2012).

Table 20: Lithuania Case /Actions in Chronological Order	
Date	Action
14 April 2010	Lithuania submitted its annual inventory submission to the Secretariat.
20-25 Sept. 2010	The ERT conducted a centralized review of Lithuania's submission.
7 September 2011	The ERT finalized its 2010 ARR (FCCC/ARR/2010/LTU) containing a QoI relating to its national system as well its reporting commitments (CC-2011-3-1/Lithuania/EB; CC/ERT/ARR/2011/33).
8 September 2011	The QoI was received by the ComplCom-Lithuania was given an official notification.
15 September 2011	The question was allocated to the EB by the Bureau of the ComplCom.
16 September 2011	The Secretariat notified the members and alternate members of the EB of the QoI.
4 October 2011	Preliminary Examination, the EB decided to proceed (CC-2011-3-2/Lithuania/EB).
11 October 2011	The EB agreed to invite three experts drawn from the UNFCCC experts (CC-2011-3-3/Lithuania/EB).
19 October 2011	The EB received a request for a hearing from Lithuania (CC-2011-3-4/Lithuania/EB).
9 November 2011	A written submission made by Lithuania (CC-2011-3-5/Lithuania/EB).
14-18 Nov. 2011	Hearing was held on forming the part of the EB 16 meeting (CC/EB/16/2011/2).
15-16 Nov. 2011	At the request of Lithuania, the EB held a hearing.
16 November 2011	Further questions from the ERT on 2011 review of the GHG inventories of Lithuania (CC-2011-3-5/Lithuania/EB/Add.1).
17 November 2011	Preliminary finding of the EB (CC-2011-3-6/Lithuania/EB).
19 December 2011	Lithuania made a further written submission (CC-2011-3-7/Lithuania/EB)
21 December 2011	Final Decision (CC-2011-3-8/Lithuania/EB)
26 March 2012	Lithuania submitted a plan to address its non-compliance, which also included a first progress report on its implementation (CC-2011-3-9/Lithuania/EB)
13 April 2012	Lithuania requested for review and assessment of its plan (CC-2011-3-10/Lithuania/EB)
2 May 2012	The EB reviews and assesses the plan (CC-2011-3-11/Lithuania/EB)

Table 20 (cont'd)	
14 June 2012	Lithuania submitted the second progress report on the implementation of the plan and a request to reinstate its eligibility to participate in the mechanisms (CC-2011-3-12/Lithuania/EB)
27 June 2012	The EB decides to seek expert advice on the 2011 ARR (CC/ERT/ARR/2011/33), and the implementation of the plan by Lithuania (CC-2011-3-13/Lithuania/EB)
9-14 July 2012	The EB 20 considered the request for reinstatement (CC/EB/20/2012/2)
14 July 2012	The EB decides that there continues to be a QoI with respect to Lithuania's eligibility (CC-2011-3-14/Lithuania/EB)
18 July 2012	The Secretariat received a request from Lithuania for the EB not to initiate the expedited procedure before the review report of the National Greenhouse Gas Inventory (CC-2011-3-15/Lithuania/EB)
31 July 2012	The EB decided not to initiate the expedited procedure (CC-2011-3-16/Lithuania/EB)
28-29 Sept. 2012	The expedited review for Lithuania was conducted
11 October 2012	The report on the expedited review for Lithuania, concluded that the QoI for Lithuania had been fully resolved, was published.
12 October 2012	The Secretariat forwarded the expedited review report to the ComplCom
22-24 October 2012	The EB 21(CC/EB/21/2012/2) concluded, after receipt of expert advice, that there no longer continues to be a QoI
23 October 2012	The EB decided to seek expert advice (CC-2011-3-17/Lithuania/EB)
24 October 2012	Lithuania became fully eligible to participate in the mechanisms (CC-2011-3-18/Lithuania/EB)

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Slovakia Case:

Question of implementation on Slovakia was involved in the ERT's 2011 ARR (CC/ERT/ARR/2012/17; FCCC/ARR/2011/SVK). The questions was about the national system of Slovakia and its calculation of several estimates of greenhouse gas emissions.

The EB 20 meeting, also holding a hearing, discussed the issue and led to a preliminary finding (CC-2012-1-7/Slovakia/EB) which was confirmed by the final decision of the EB (CC-2012-1-9/Slovakia/EB) on 17 August 2012.

To the decision, firstly, during the review of Slovakia's 2011 annual submission, there was a partial operational impairment of the performance of some of the specific functions of Slovakia's national system, causing non-compliance with art.5, para.1, KP and the related guidelines, but not resulting in non-compliance with the eligibility requirements under arts. 6, 12 and 17, KP. Secondly, the QoI relating to the disagreement whether to apply adjustments was resolved by the decision. It was decided not to apply the adjustment with respect to the estimates of emissions from road transportation, and to apply the adjustments with respect to the estimates of emissions from the consumption of halocarbons and SF₆ (CC-2012-1-6/Slovakia/EB). Finally, the EB emphasized the need for an in-country review of Slovakia's national system to assess whether the measures developed and implemented by Slovakia would prevent the operational impairment.

This decision was taken on the basis of the 2011 ARR, advice from the experts invited by the branch, Slovakia's written submission and its updated information on its national system- in relation to its institutional structure and the roles of the institutions involved in the preparation of the inventory-.

To the 2011 ARR (CC/ERT/ARR/2012/17;FCCC/ARR/2011/SVK), the national system of Slovakia did not fully perform the functions required for national systems, as it basicly relied on individual external expertise, rather than on institutional expertise, including those managing the data sources. Furthermore, its estimates of emissions from road transportation and from the consumption of halocarbons and SF₆ were incomplete or had been prepared

inconsistently with the methodological and reporting requirements of the Revised 1996 IPCC Guidelines and the IPCC Good Practice Guidance.

Expert advice also stressed the adjustments calculated and recommended by the ERT, and the national system's problem to perform its some functions, particularly, those relating to the collection of sufficient activity data, process information and emission factors (CC-2012-1-7/Slovakia/EB).

On the other hand, in its written submission (CC-2012-1-5/Slovakia/EB), while admitting that there were some problems in its national system's functioning, Slovakia defended that those were either addressed during the review of its 2011 annual submission, or were not serious disabilities which could result in significant distortations from the requirements for national systems. It also expressed its disagreement with expert advice indicating the adjustments as an indicator of a structural problem of the national system. But, at the hearing, it accepted the adjustments with respect to estimates of emissions from the consumption of halocarbons and SF₆, and provided additional information on the estimates of emissions from road transportation (CC-2012-1-6/Slovakia/EB, paras. 13-14). Then, based on this additional information, expert advice considered that, the recommended adjustments with respect to estimates of emissions from road transportation were no longer necessary. In return to its acceptance of the recommended adjustments with respect to estimates of emissions from the consumption of halocarbons and SF₆, the experts stated that the QoI relating to the disagreement whether to apply adjustments had been resolved.

In accordance with the findings above mentioned, the EB applied the following consequences:

- a.** Declared to be in non-compliance;
- b.** Required to develop a compliance action plan, to submit it within 3 months to the EB -before the in-country review of its 2012 annual submission-, as part of its plan to inform the EB of its preparations for this in-country review, and to report on its implementation progress.

Table 21: Slovakia Case /Actions in Chronological Order	
Date	Action
15 April 2011	Slovakia submitted its 2011 annual inventory submission to the Secretariat
22-27 August 2011	In-country review of Slovakia's 2011 annual submission
8 May 2012	The ERT finalized its 2011 ARR (FCCC/ARR/2011/SVK) containing QoIs (CC/ERT/ARR/2012/17).
9 May 2012	Slovakia was given an official notification of the QoIs
16 May 2012	The questions were allocated to the EB by the Bureau of the ComplCom.
17 May 2012	The Secretariat notified the members and alternate members of the EB of the QoIs (CC-2012-1-1/Slovakia/EB).
1 June 2012	Preliminary Examination, the EB decided to proceed (CC-2012-1-2/Slovakia/EB).
27 June 2012	The EB agreed to invite two experts drawn from the UNFCCC experts (CC-2012-1-4/Slovakia/EB).
8 June 2012	The EB received a request for a hearing from Slovakia (CC-2012-1-3/Slovakia/EB).
4 July 2012	A written submission made by Slovakia (CC-2012-1-5/Slovakia/EB).
9-14 July 2012	Hearing was held on forming the part of the EB 20 meeting (CC/EB/20/2012/2)
10-11 July 2012	At the request of Slovakia, the EB held a hearing.
14 July 2012	Decision on, with respect to the estimates of emissions from road transportation, not to apply the adjustment; with respect to the estimates of emissions from the consumption of halocarbons and SF ₆ , to apply the adjustments (CC-2012-1-6/Slovakia/EB)
14 July 2012	Preliminary finding of the EB (CC-2012-1-7/Slovakia/EB).
18 July 2012	The EB received a written notification from Slovakia (CC-2012-1-8) which indicated that it did not intend to make a further written submission under NCP, Section X, para.1e.
16 August 2012	The Secretariat confirmed that no further written submission had been received from Slovakia by 15 August 2012, the due date for any further written submission.
17 Aug. 2012	Final Decision of the EB (CC-2012-1-9/Slovakia/EB).
21 September 2012	Slovakia submitted its plan and first progress report (CC-2012-1-10/Slovakia/EB).
1-6 Oct. 2012	In-country review of its 2012 annual submission
15 October 2012	The EB agreed to invite an expert drawn from the UNFCCC experts to provide advice (CC-2012-1-11/Slovakia/EB).

Table 21 (cont'd)	
22-24 October 2012	The EB 21(CC/EB/21/2012/2) reviewed and assessed the plan submitted by Slovakia.
23 October 2012	The EB decides that, if implemented, the plan is expected to remedy the non-compliance, but, it is also necessary to examine 2012 ARR to find out whether all the QoIs have been resolved (CC-2012-1-12/Slovakia/EB).

* Prepared on the basis of information/documentation given on the official web site of theUNFCCC. See at:http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

In line with the decision and its consequences, Slovakia submitted its plan and first progress report (CC-2012-1-10/Slovakia/EB) on 21 September 2012, before the in-country review of its 2012 annual submission conducted in between 1-6 October 2012. In its plan and progress report (CC-2012-1-10/Slovakia/EB), Slovakia rendered an overview of the measures undertaken to improve its national system, it explained in details the measures it had taken prior to the in-country review of its 2012 annual submission, and how they had contributed to the preparation of the in-country review. It also argued, during the in-country review of its 2012 annual submission, there had been no partial operational impairment of the specific functions of the national system. Expert advice, on the basis of its plan and progress report as well as 2012 national inventory report (NIR), also acknowledged that, the national system's functions performance has been strengthened particularly through the implementation of the measures addressed in the recommendations of previous expert review teams (CC-2012-1-12/Slovakia/EB).

Based on these facts above mentioned, the review and assessment of the plan by the EB in its 21 meeting concluded with the following decisions (CC-2012-1-12/Slovakia/EB):

- a. The plan adequately addresses each of the elements specified in Section XV, para. 2,
- b. If implemented properly, it is expected to remedy the non-compliance.
- c. ARR 2012 is also required to decide on whether all the QoIs have been resolved.

Hence, the process on the QoI regarding Slovakia appears to be continued for a while till to have a resolution on the matter.

Table 22: QoIs brought before the Enforcement Branch (EB) in Brief				
Parties concerned	Preliminary Finding	Final Decision	Decision under Section X, para. 2	Appeal
Greece (CC-2007-1/Greece/EB)	Non-compliance with the guidelines of national systems and art.7 guidelines, hence, Greece does not yet meet the eligibility requirement (6 March 2008)	Confirmation of the preliminary decision (17 April 2008)	Found eligible to participate in the Kyoto mechanisms (13 November 2008)	No Appeal
Canada (CC-2008-1/Canada/EB)	No preliminary finding-but, at the end of preliminary examination, the EB decided to proceed with the question, the QoI is not <i>de minimis</i> or ill-founded(2 May 2008)	No final decision-but the EB decided to not to proceed further (15 June 2008)	No decision required under Section X, para.2	No Appeal
Croatia (CC-2009-1/Croatia/EB)	Because Croatia does not have its assigned amount pursuant to art.3, paras.7-8, calculated and recorded in accordance with Decision 13/MOP1 and therefore does not yet meet the eligibility requirements (13 October 2009)	Confirmation of the preliminary finding (26 November 2009)	the EB decided that Croatia is fully eligible to participate in the mechanisms (8 February 2012)	Croatia lodged an appeal against the final decision of the EB (14 January 2010) and then withdrew its appeal (4 August 2011)

Table 22 (cont'd)				
Bulgaria (CC-2010-1/Bulgaria/EB)	Non-compliance with national system requirements, hence not yet meeting the eligibility requirement (12 May 2010)	Confirmation of the preliminary finding (28 June 2010)	Bulgaria is fully eligible to participate in the mechanisms (4 February 2011)	No Appeal
Romania (CC-2011-1/Romania/EB)	Non-compliance with national system requirements, hence not yet meeting the eligibility requirement (8 July 2011)	Confirmation of the preliminary finding (27 August 2011)	There no longer continues to be a QoI with respect to Romania's eligibility (13 July 2012)	No Appeal
Ukraine (CC-2011-2/Ukraine/EB)	Non-compliance with national system requirements, hence not yet meeting the eligibility requirement (25 August 2011)	Confirmation of the preliminary finding (12 October 2011)	No longer continues to be a QoI with respect to Romania's eligibility (9 March 2012)	No Appeal
Lithuania (CC-2011-3/Lithuania/EB)	Non-compliance with national system requirements, hence not yet meeting the eligibility requirement (17 November 2011)	Confirmation of the preliminary finding (21 December 2011)	QoI continues to be with respect to Lithuania's eligibility (14 July 2012) Lithuania became fully eligible to participate in the mechanisms (24 October 2012)	No Appeal
Slovakia (CC-2012-1/Slovakia/EB)	Non-compliance with national system requirements (14 July 2012)	Confirmation of the preliminary finding (17 August 2012)	No decision yet under Section X, para.2	No Appeal

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at: http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Table 23: Subjects of the QoIs under the EB	
Greece	Non-compliance with the guidelines for national systems (Decision 19/MOP 1(2005a) and the guidelines for the preparation of the information (Decision 15/MOP 1(2005b), hence, found as insufficient to meet the eligibility requirement
Canada	Non-compliance with national registry**requirements, with the art. 7 guidelines for the preparation of the information (MOP 1, Decision 15, 2005b) and the modalities for the accounting of assigned amounts under art.7, para.4, KP(MOP 1, Decision 13, 2005b).
Croatia	Non-compliance with the assigned amount*** (it does not have its assigned amount pursuant to art.3, paras.7-8,KP, calculated and recorded in accordance with (MOP1, Decision 13, 2005b), and commitment period reserve.****
Bulgaria	Non-compliance with the guidelines for national systems(MOP 1, Decision 19, 2005a), the UNFCCC reporting guidelines, the IPCC Good Practice Guidance and the IPCC Good Practice Guidance for LULUCF.
Romania	Non-compliance with the guidelines for national systems*(MOP 1, Decision 19, 2005a), with the art. 7 guidelines for the preparation of the information (Annex to Decision 15/MOP 1(2005b) and the definitions, modalities, rules and guidelines relating to LULUCF activities (Decisions 15/MOP 1(2005b) and 16/MOP 1(2005a).
Ukraine	Non-compliance with the guidelines for national systems(MOP 1, Decision 19, 2005a), art. 7 guidelines for the preparation of the information (Decision 15/MOP 1), the UNFCCC reporting guidelines, the IPCC Good Practice Guidance and the IPCC Good Practice Guidance for LULUCF, and definitions, modalities, rules and guidelines relating to LULUCF activities (MOP 1, Decision 16, 2005a).
Lithuania	Non-compliance with the guidelines for national systems (MOP1, Decision 19, 2005a)and the art.7 guidelines (MOP1, Decision 15, 2005b),and the definitions, modalities, rules and guidelines relating to KP-LULUCF activities (MOP 1, Decision 16, 2005a), the UNFCCC reporting guidelines, the IPCC Guidance-the IPCC Good Practice Guidance for LULUCF.
Slovakia	Non-compliance with the guidelines for national systems (MOP1, Decision 19, 2005a), with the methodological and reporting requirements of the Revised 1996 IPCC Guidelines, and the IPCC Good Practice Guidance.
<ul style="list-style-type: none"> • None of the QoIs have been related directly to whether the concerned party is in compliance with its 2012 emissions target. • Only in Slovakia case, the EB decided on the disagreement between the ERT and Slovakia about whether to apply adjustments to emission inventories (see CC-2012-1-6/Slovakia/EB) • All are related to the eligibility requirement -referred to in para. 31c, Annex to Decision 3/MOP1, para. 21c, Annex to Decision 9/MOP 1(2005b), and para. 2c, Annex to Decision 11/MOP 1(2005b)-. • In all, the expedited procedures as contained in NCP, Section X were applied. 	

Table 23 (cont'd)

* A national system includes the institutional, legal and procedural arrangements for estimating emissions and removals, sinks of GHGs covered by the Protocol, and for reporting and archiving this information. It is required for a country to produce a reliable accounting of its emissions and demonstrate compliance with its 2012 emissions target.

** A national registry is a computerized system with certain technical standards used to track holdings of GHG credits providing the countries to account for their emissions credits.

***The assigned amount sets a party's base emission limit for its first commitment period (2008 to 2012).

**** The commitment period reserve is for limiting the amount of credits that a party can sell.

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

Table 24: Consequences Applied to the Non-Compliant Parties Under the EB

Greece	<p>a. Declared to be in non-compliance</p> <p>b. Required to submit a compliance action plan to address its non-compliance in 3 months</p> <p>c. Declared to be not eligible to participate in the market mechanisms</p>
Canada	
Croatia	
Bulgaria	
Romania	
Ukraine	
Lithuania	
Slovakia	<p>a. Declared to be in non-compliance</p> <p>b. Required to submit a compliance action plan to address its non-compliance in 3 months</p>

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at:
http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5451.php.

5. SEARCHING WAYS TO IMPROVE COMPLIANCE

In this section, the ways for possible improvements of weaknesses of the current compliance mechanisms for better compliance will be focused on. Therefore, on the basis of four dimensions relied on for the comparative analysis between two case studies, firstly, the ways of improving their operation in practice will be analyzed. Then, three main components, namely, -gathering information, procedures/institutional structure and responses-, will be evaluated with their potential weaknesses undermining the efforts to ensure compliance. Finally, the need for providing stronger coordination between CMs for better compliance will be discussed stressing the suggestions submitted for improving the conditions for more coordinated mechanisms.

5.1 Improving the Operation of the Compliance Mechanisms in Practice: Outcomes of Two Cases

In this part, the key points will be drawn from the analysis on, firstly, CM under the Montreal Protocol, then, CM under the Kyoto Protocol in practice.

Starting with the CM under the Montreal Protocol, based on the findings of the previous part on the functioning of the mechanism, it can be concluded that:

1. The first type of triggering has not arisen to date, while the second type arose by CEITs in 1990s. But, the most used one is the third type, triggering by the Secretariat.

2. Identifying the parties' situation as actual or potential non-compliance, MOPs have usually recommended to them to provide a detailed plan of action for phasing out ozone-depleting substances; to prepare a national programme for the phase-out of ODS; to expedite the process of ratification of the necessary amendments to the Protocol (like London Amendment); to benefit from the GEF for the projects to be submitted; and to continue to provide the Committee with reports on progress made in phasing out ODS in line with the schedule in their national programmes.

3. With respect to reporting issue, data on the parties' reporting explicitly display the presence of general tendency towards compliance on reporting under art. 7 by nearly all the parties of the Protocol from its initial years.

In fact, according to the report of 1999, of the 175 parties required to report, 152 parties (111 parties under article 5, 41 under non-article 5), in total, have reported data (MOP 13, 2001), while in 1992, of the 88 parties required to report, 59 parties (26 under article 5, 33 under non-article 5), in 1991, 68 parties (33 under article 5, 35 under non-article 5) have reported their data (MOP 6, 1994).

On the other hand, to the report of the Secretariat on the reporting of data by the parties presented for MOP 22 (2010), for the period 1986-2008, all parties are in full compliance with their data-reporting obligations under art.7(3) (ImplCom 45, 2010;MOP 22, Decision XXII/14, 2010). The total number of parties to have reported their 2009 data under art.7(3) is 167 (123 parties operating under art.5(1) and 44 not so operating) (MOP 22, Addendum, 2010). This means that, of the 196 parties required to report data, 167 of them had reported their data(at the time of the preparation of the Implcom 45 report, 178 parties-to the MOP 22, Decision XXII/14, 196 parties of the 196 had reported).

In addition, all parties (including San Marino which had not submitted its base-year on 3 September 2010, when the Secretariat's report was presented) had submitted their base-year data as required fulfilling their data-reporting obligations under art.7(1,2) (MOP 22, Addendum, 2010). Very recently, it became clear that 194 parties of the 196 that should have reported data for 2011 have reported their data, merely Mali, and Sao Tome and Principe have not reported 2011 data (MOP 23, Decision XXIV/13, 2012).

With respect to reporting, it should be also underlined that, although there has been an increase in the number of parties complying the requirements of the reporting process, the situation is completely different for reporting under art. 9.

On reporting under art. 9, the Ozone Secretariat's web site presents a list of the publications which parties have provided under art.9 to the Ozone Secretariat.⁶⁷ From this list, it is seen that the reporting under art. 9 has not been carried on in a regular manner, "probably due to the repetitive nature of the reports and because the activities of the Multilateral Fund have fulfilled the needs of the Article 5

⁶⁷ See Table on article 9 reports submitted, at: http://ozone.unep.org/data_reporting/research_development_public_awareness_and%20information_exchange.shtml.

Parties for information” (Madhava, 2005:306). This situation is also confirmed by the reports of COP/MOP. According to the reports of the COP/MOP, (COP 7, 2005; MOP 17, 2005: 24, para.181, MOP 22, Decision XVII/24, 2010:56) the number of reports submitted by parties under art.9 had fallen over recent years. To another report of the COP/MOP (COP 8, 2008; MOP 20, 2008:17-18, para.122; MOP 20, Decision XX/13, 2008:43), although it is a legal obligation to submit such a report every two years, the number of parties submitting them had been relatively small, only 18 parties, most of which were art.5 parties, had submitted such data in 2007 and 2008. This is particularly because of the informal understanding adopted by the ImplCom involving that this kind of reporting has become less crucial over time as its requirements have been “fulfilled by the regular reports from the Assessment Panels and WMO” (ImplCom 29, 2002: para.39).

4. The findings stemming from the analysis on the different non-compliance cases brought before MOP and specific decisions/recommendations given on the parties on non-compliance related issues express that many parties, both developed and developing, have met their phase out targets in line with their schedules. Thus, a high level of compliance rate on the commitments of the parties, contributing to a decline in the production and consumption of ODSs, has been achieved.

5. Determining the country-specific reasons for any party’s inability to achieve compliance (ImplCom 26, 2001), MOPs have usually decided for the parties;

- to submit their plan of action involving time-specific commitments to return to compliance.
- to work with the relevant implementing agencies to implement their plan of action and phase out consumption of related substances.
- to be monitored closely and to be treated in the same manner as a party in good standing and to receive international assistance, as soon as they work for meeting Protocol control measures.

- to be faced with the measures consistent with item C of the indicative list of measures, in the event that they fail to return to compliance in a timely manner.

Remarkably, up to now, no one of them has been deprived of international assistance or encountered with the measures consistent with item C of the indicative list of measures.

6. Of those measures, except the application of trade restrictions and conditional assistance (even it was usually considered favourably in order to provide funding for projects to implement its national programme) on some parties (like Russia, Belarus and Ukraine), negative measures have not been applied so often against non-compliant parties.

7. Even though there seems a combination of two approaches (enforcement approach with punitive measures like restricting trade with non-parties to the MP, and management approach with facilitative-positive measures, like granting developing parties financial assistance or a ten year grace period, and strengthening their capacity building), management approach appears as more dominant approach in the CM of the MP.

On the other hand, the experience of the CM under Kyoto Protocol in practice displays that,

1. FB has been applied only in the case of QoI raised against the 15 Annex I parties by South Africa, due to the fact that they did not submit their progress reports on time. However, no decision could be taken about these submissions; only in Latvia and Slovenia cases, the FB decided not to proceed, but, could not give decision on their substance (see Table 13).

This failure of the FB to come to an agreement on this submission has been linked to the “limitations of the Committee’s voting rules and the danger of politicization of its proceedings,” and seen as “a serious threat to the credibility of the Committee” (Oberthür and Lefeber, 2010).

As it has not been used for providing early warning of non-compliance by the parties with commitments under art.3.1, KP, it is usually argued that the FB has not got a crucial place in the practical application of the process, and requires to

be further developed to address the potential non-compliance through its “early warning function” (Oberthür and Lefeber, 2010:137,155).

In order to overcome its that failure, it is also proposed to engage the FB to the system earlier than the present system, giving the FB opportunity to review ERT reports and to initiate the process on its own (Doelle, 2010). Thus, the FB can see the non-compliance problems of the parties from the ERT reports, and then intervene the process to solve the problems.

2. Despite the existence of opportunity of the parties to trigger the mechanism, there has been no submission to the EB by the parties. The submissions made, up to now, have been triggered by the ERTs. In fact, all cases have come to the Committee from ERT (see Table 22).

This is most probably due to the fact that the parties have not desired to encounter with “the political costs of accusing other states and of undermining a sense of common purpose in the regime” (Mitchell, 2005:75-76).

So, as a result, except South African submission made to the FB, all submissions have been proceeded by the ERTs.

3. To date, the subjects of the QoIs that come before the EB have been generally about national system requirements, but not have been directly related to whether the concerned parties are in compliance with their 2012 emissions target (see Table 23). This is particularly because, non-compliance with emissions targets is a subject that can not be brought before the EB until after the end of the first commitment period in 2012. In fact, the EB can decide on emission targets of the parties only after the end of the first period. Additionally, the non-compliant party has also 100 days to comply with its commitment after the expert review of its final emissions inventory (submission of inventories for emissions in year 2012 should finish until 15 April 2014, and ERT has one year to review them (Decision 15-22/MOP1), so, consideration of compliance for the first period can begin at July 2015 or later (Oberthür and Lefeber, 2010). If such a party still does not meet its target, then, it has to encounter with the consequences (NCP, Section XV, 5-8) of non-compliance with emission commitments under art. 3.1, Protocol. It is then expected to make up its shortfall in the second commitment period.

Only in Slovakia case, by the end of 2012, the EB has had opportunity to decide on the disagreement between the ERT and Slovakia on whether to apply adjustments to emission inventories, by determining the correct amount for the party and applying adjustments (see CC-2012-1-6/Slovakia/EB). In the previous ones, the parties have achieved to resolve such disagreements cooperating with the ERTs before the formal proceeding has been initiated by the ComplCom.

4. The EB in all cases has sought expert advice, in particular, it asked members of the expert review team to present their report and advice, and also asked other independent experts for their advice.

The concerned parties have made written submissions and presented their during a hearing held as a part of the EB meetings.

5. Although the NCP of the Protocol involves various response measures (positive-negative, except financial measures or loss of credits), most of them have been very rarely applied in practice, if applied at all, have been very limited in scope.

In all eight cases of non-compliance, the EB has applied the same three consequences (except Slovakia, only two of them were applied for it, suspension of participation to the flexibility mechanisms were not applied):

- a. Making a public declaration of non-compliance,
- b. Submission of a compliance action plan addressing their non-compliance within three months, which will be subject to review and assessment by the EB,
- c. Suspension of trading in the Kyoto carbon market set up by the ET, CDM and JI mechanisms (implying that they are suspended from trading in the Kyoto carbon market set up by these mechanisms until the reinstatement by the EB).

Accordingly, regarding the response measures applied by the branches of the ComplCom, it can be argued that they are adopted in line with “a *pro futuro* approach,” thus, following a forward looking perspective as they do not aim to punish the non-compliant party, but to encourage it to comply with its obligations (Eritja, Pons and Sancho, 2004:53). Yet, it may be criticized as it has not developed mechanisms to reward “overcompliance and innovation” such as “public awards, white lists, accession to financial mechanisms or reduced project verification requirements” (Mitchell, 2005:74). Because of this fact, the parties

are not expected to make effort for exceeding their emission targets and for undertaking projects providing uncertain (but high level) reductions.

6. Till to date, only Croatia applied for appeal to the MOP against the EB decision, but, it withdrew its appeal.

7. When the question, which one of two different logics of behaviour, namely, the logic of consequences and the logic of appropriateness, should be taken as basis within the CM of the Kyoto Protocol, is raised, it should be underlined that similar to other MEAs and their compliance mechanisms, the CM of the Kyoto Protocol does not always function through only one logic, but both can be influential on its functioning.

To Mitchell (2005), in predicting the short-term influence of the Kyoto regime, it is appropriate to adopt the logic of consequences model. To this, in the short term, the incorporation of flexibility into the regime is likely to contribute to the compliance rates encouraging further behavioural changes by committed states, further compliance by contingent states (but with not much behavioural change), and convincing resistant states to reevaluate their position on remaining parties to the agreement and its requirements.

For the long term, Mitchell (2005) stresses the need of adopting the logic of appropriateness model with new supplements that can contribute to climate change, and deeper transformations of the goals and norms. He argues that flexibility can provide these “deeper transformations” (Mitchell, 2005:66). These transformations are assured by reinforcing the committed states’ views on protecting the climate, by convincing some contingent states to comply with the relevant requirements of the Protocol, and enabling some resistant states to join the regime during the second commitment period as contingent states.

This is in parallel with the MP’s CM in that, even there seems a system of bringing together the facilitation and enforcement functions under the same mechanism, management approach applying not only LoC but also LoA and equipped with facilitative-positive measures, raises as more dominant approach adopted in the KP’s CM as well.

5.2 Improving the Components of the Compliance Mechanisms: Lessons Learned from Two Cases

Because any recommendation for improvement in the current system needs to be based on a comprehensive assessment of the major weaknesses of that system, in this part, the discussion will be on the potential weaknesses in CMs undermining the efforts to ensure better compliance. It will question how these weaknesses can be overcome and what can be learned from them to change the system to yield the desired results for enhancing compliance.

The potential weaknesses of the mechanisms will be evaluated relying on three main components of the CMs: gathering information on the parties' performance, non-compliance procedures, and response measures.

5.2.1 Gathering Information on the Parties' Performance

The findings of the previous chapters show that, nearly all the parties of both Montreal and Kyoto Protocols are tended to comply with reporting obligations from the beginning. But still, there are some challenges which should be addressed.

Under most of the MEAs, information is usually gathered through self-reporting system. The first challenge about reporting is this self-reporting problem which raises as a challenge under most MEAs, and in the Montreal and Kyoto Protocols as well.

In self-reporting method, the states can review their performance through a self-assessment procedure without the interference of the other parties. This method can result with a "vaguely formulated" (Faure&Lefevre,1999:147) information, and "underreporting" (Berntsen, Fuglestvedt and Stordal, 2005:91). This is because, states avoid condemnation and wants to maintain their good reputation, and this makes the reports' objectivity and reliability questionable. However, information can/should be gathered from other sources -from which the availability of information is rarely possible in CMs-as well:

- from an independent international institution (not yet present, the Cooperative Programme for the Monitoring and Evaluation of the Long Range Transmission of Air Pollution in Europe(EMEP) can be raised as an example, but

it is not an independent institution. It is established under the Convention on Long-range Transboundary Air Pollution of 1979 through a Protocol (28 September 1984) (Maljean-Dubois&Richard, 2004; Marauhn, 1996).

- from the reports provided by other states (can be used as supplementary, yet its applicability in practice is little if any),
- from the activities of the MEA's competent organ (such as requesting further information, monitoring, verification, site visits (under Montreal protocol, site visits are only possible if the party concerned invites the ImplCom for information-gathering in its territory. Under Kyoto Protocol, site visits are exercised within the in-depth reviews, taking the approval of the party concerned as well (Decision 2/COP 1, para.2c).
- from international organizations and NGOs (not have practical importance).

Under the Kyoto Protocol, self-reporting, as being in the case of the Montreal Protocol, is an important problem as well. Yet, here, there is opportunity to benefit from relevant factual and technical information provided by qualified IGOs and NGOs (NCP, Section VIII, 4; RoP, 20) and expert advice (NCP, Section VIII, 5; RoP, 21) for the relevant branch while deciding on the issue. So, these sources of data in addition to national reports are considered seriously by the ERTs and by the each branch of the ComplCom in practice, the verification of the information can be more reliable and effective under the CM of the KP.

Moreover, the threat by the related organ of the MEA "to rely on estimates or non-official information if the state does not submit official data" (Sachariew, 1991:43) can be a further means of improving compliance with reporting obligations as a first step, but, incrementally, to improve overall compliance of MEAs' requirements.

The complexity of the ODSs or greenhouse gases that should be reported (e.g. the abundance of the number of ODSs in the Montreal Protocol) is also another crucial issue making the reporting challenging. The Kyoto Protocol is primarily based on six specified greenhouse gases and emission targets with quantified-binding nature. So, it is generally expected that the estimates of emissions can be

managed in an easy manner and the review of the inventories of these estimates can accurately render the assessment of compliance. However, it is not feasible to lead to certain emission estimates in practice, because of “the inclusion of several gases from a variety of sources, including managed ecosystems and even carbon sinks in forests” (Berntsen, Fuglestvedt and Stordal, 2005:85) which can change over time.

So, the MEAs should stipulate reporting requirements and provisions as clear as possible to make the assessment of compliance easier, thus, to improve it further (Weiss, 1999). Raustiala(2001), in his analysis on ten major MEAs covered in the UNEP GEO-2000 report, notes that compliance review institutions are most developed where MEA commitments are most specific.

In addition, reporting can be incomplete or insufficient, since the methods used by parties in collecting data are not known well. In fact, different criteria used by different parties for reporting makes difficult gathering objective and qualitative information, and so makes harder “any meaningful discussion” on the information reported and “assessment of the reports at the next procedural level” (Sachariew, 1991:44).

The likelihood of compliance can be to a large extent increased by creating elaborate harmonized procedures to reduce the workload and costs on reporting, and provide consistency between the reports of all parties. So, qualified reporting requires “a uniform format of reporting with clear and precise requirements as to how and what to report” (Wang and Wiser, 2002:183). Criteria of the reporting is also necessary to hinder reporting in different ways. But also, it requires standardization and harmonization for reporting procedures-deadlines..etc, and so for guidelines in order to help the parties to prepare their reports in these standard formats.

Some MEAs can provide “template[s]” (Raustiala, 2001:70) (or “reporting formats”)⁶⁸ (Sachariew, 1991:45) to establish the harmonization and standardization of the information reported, the methods used for gatherin this

⁶⁸ In the last MOP of the MP, the EU had proposed to use a revised reporting format for imports and exports in order to improve data collection and to reduce the burden of discrepancies between reports of imports and exports of ODSs (MOP 24, 2012: paras. 155-158).

information and also deadlines for the submission of reports (e.g. Montreal Protocol, Decision II/10) and provide guidelines to help the parties to prepare their reports. The UNEP's guideline prepared for the Montreal Protocol can be given as an example to these guidelines (UNEP, 1999). The Intergovernmental Panel on Climate Change (IPCC) also provides uniform forms for estimating the emissions in the reports, and the Kyoto Protocol also requires periodic reviews of the guidelines for national systems (art.5.1), the preparation of inventories (art.7.4), as well as for the review of implementation of the KP by expert review teams (8.4). This way can render a more systematic basis for the methods used by parties in collecting data and for making the comparisons of that data. On the other hand, "[e]xperiences gained in the framework of the Montreal Protocol in using customs statistics and co-operating with the [World Customs Organisation] WCO to improve the harmonised system of customs codes should therefore be quite relevant for developing similar mechanisms under the Kyoto Protocol" (Oberthür, 2001:366). However, all these efforts can only be meaningful for enhancing compliance, if they can be achieved on a systematic basis and can be acceptable for all parties to the MEA in question.

These all make data collection and reporting burdensome for the parties, particularly for developing country parties, due to their lack of capacity to provide sufficient technical, financial and human resources, although there is an important way of forcing them to give further information and to fulfil their data-reporting requirements. In fact, they can lose their status-to be classified as developing country parties under art. 5, Montreal Protocol- if they do not report their base-year data as required by the Protocol within one year of the approval of their country programme and their institutional strengthening by the Executive Committee (MOP 6, Decision VI/5, 1994). So, very recently, in Rio+20 as well, it is again underlined that, to provide the "integration of sustainability reporting," taking into account particularly "the needs of developing countries, including for capacity building, "should be encouraged for managing the best in the reporting process (Rio+20 Report, 2012:8,9).

Regarding challenge of capacity building in particularly developing countries, in some MEAs, for example, under the UNFCCC, developed countries are

required to meet the “agreed full incremental costs” of developing country parties for providing the implementation of their reporting obligations. The 1990 Montreal Protocol amendment has also stipulated to “meet all agreed incremental costs” (art.10.1, MP) of developing countries, and Multilateral Fund renders funds to them for the foundation of national ozone units of which basic function is the preparation and submission of these reports. Developed countries are required to meet the “agreed full incremental costs” (art.11.2b, KP) of developing country parties for providing the implementation of their reporting obligations under the Kyoto Protocol as well.

The complexity of the reporting criteria and procedures and lack of necessary capacity-building triggers late reporting among the parties. It can become a usual situation for the parties, although there is a certain date has been determined for the submission of reports (e.g.30 June for each year in Decision XV/15, MP). This situation affects negatively the Executive Committee of the Multilateral Fund’s work (see also Decision XXII/14), and so prevents necessary assistance granted to the developing countries to enable them to comply with the Protocol’s control measures.

The other problem in the CMs regarding reporting is the lack of third party monitoring and verification. To overcome the shortcomings on monitoring and provide a more effective monitoring mechanism, Young (2002) proposes to establish a global mechanism namely, “Global Environmental Observing, Monitoring and Assessment Programme (GEOMAP).” This is supposed to be a mechanism for monitoring and evaluating the state of the environment, financed by UNEP and UNDP and working closely with the secretariats of MEAs. However, in the present system, the competent organs of the MEAs generally carry out the function of assessment on the gathered information. Indeed, while monitoring is generally governed by the organs of the MEAs, that is, COPs, MOPs, ImplComs or secretariats through their assessments on states’ reports; verification is undertaken usually by the secretariats of the MEAs, and in few cases, by an expert team (e.g.KP CM). In fact, the number of MEAs providing third-party monitoring or verification is less than those providing self-reporting systems (UNEP, 2007). However, for an effective operation of a compliance

mechanism, assessment should be preferably by independent experts rather than the organs of the related MEAs.

Under the CM of the Montreal Protocol, when the parties' reports come to the secretariat, it makes them available to the parties and provides information to non-party observers (art.12 (c, f), MP). It analyses and assesses the data reported during the course of preparing its report. When it finds the signs of possible non-compliance by any party with the obligations under the Protocol, to verify compliance, it can ask for more information and data from the party in question (NCP, para.3). However, while it has entitled to seek for clarification on data, if an agreement can not be reached on it, it has to use the data provided by the party to it (MOP 7, Decision VII/20, 1995). The secretariat prepares a summary report on such information. Through this summary report, it also provides information to the ImplCom on the parties' failures or possible failures concerning compliance with the provisions of the Protocol.

The Implementation Committee (ImplCom), on the other hand, can also request further information through the secretariat (NCP, para.7c), where it considers necessary. It can undertake information-gathering in the territory of that party to carry out its functions (NCP, para.7e). However, such on-site visits is only possible if the party concerned invites the ImplCom for information-gathering in its territory, so in practice (in the context of Kyoto Protocol, site visits are exercised within the in-depth reviews), the ImplCom can only rely on the reports provided by the parties. Remarkably, in the *Ad Hoc* Report of 1998, it is noted that conflicting information from different informal sources can result in problems of verification, and so can make it difficult for the ImplCom to make recommendations. In addition, the ImplCom 4(1992) obviously states that it "has no mandate to verify the data reported by the Parties."

In brief, there is no supplementary third-party monitoring and verification mechanism provided by the Montreal Protocol, these functions are carried out by the organs of the Protocol. Only through assessment panels and implementing agencies, an indirect check can be rendered on the parties (Brack, 2003). This is not seen as adequate to obtain reliable data, and to decrease the questions on the quality and so reliability of data.

Under the CM of the Kyoto Protocol, verification is provided by a subsequent independent expert review. ERTs have the power to conduct a “thorough and comprehensive technical assessment” of the performance of the parties to the Protocol. They identify questions of implementation providing independent information to the review process. Yet, as their report is prepared on the basis of comprehensive technical assessment, their complexity and technical nature can make the controversial issues regarding these processes rather difficult to follow for the public and thus can undermine the “transparency and openness” of the system (Andresen and Gulbrandsen, 2005:180).

Discussing the gathered information with the public and rendering NGO participation are also very important in the reporting process, as they can decrease the question marks in the minds on the objective nature of the information in the reports. They can be involved into the phases of the reporting of the parties or reports prepared by the related organs of the MEAs. Their participation to the reporting of the parties depends generally on the attitude of the party towards NGO participation (e.g.MP). If it accepts, NGOs can participate to their preparation or can give the their findings or critics to the party.

In the stage of preparation of summary reports by the related organs(generally secretariats), it depends on the authority given by the MEA to the secretariat. If it has entitled to employ additional sources of information provided by the NGOs in the report, it can do it. Otherwise, it can not. So, the secretariats in some MEAs can decide to launch the NCP on the basis of information gathered from other NGOs. Thus, NGOs can support monitoring through providing information to these organs. Yet, the main control in general is held by the organs of the MEA, the right to vote is not given to the NGOs (Beyerlinet al., 2006).

Given the fact that more transparency, ensuring more openness in gathering and assessing of the information within the reports, has the potential to increase the public’s pressure, improving the NGO participation both to the stage of the reporting of the parties and the stage of preparation of summary reports by the secretariats should be considered as one of the main principals of the system.

Because of the problems mentioned above, reporting procedures under MEAs require more comprehensive and effective operation in order to ensure “accurate,

up-to-date, complete, transparent and comparable” (Kolari, 2002:37) information provided by states.

In order to overcome these problems, Sachariew (1991:50) suggests the establishment of a “supervision package” composed of several techniques connected logically with each other and combining the advantages of each.” Thus, he aims to provide a linkage between different applications of supervision in different MEAs. In this system, the reports are evaluated by a body of experts entitled to request additional information and to assess the compliance of the parties, but not to give response measures to them. It can be supplemented by fact-finding, inquiry or inspection. It deems necessary to adopt more elaborated procedural rules on the submission, format and contents of the reports, measures that can be given to non-complying party, on the right to request additional information..etc.

The creation of a “world-wide environmental supervision agency” (Sachariew, 1991:51)⁶⁹ which would operate in parallel with the MEAs’ competent organs, yet lessen overlapping reporting requirements providing a network on the reporting procedures, is his another suggestion. It is proposed specifically due to the “multiplication of reporting systems” (Kiss, 2006:245) which cause “the problem of cooperation and coordination” (Kiss, 2006:245) between the different MEAs’ competent organs.

5.2.2 Non-compliance Procedure(NCP)

The weaknesses located in the non-compliance procedure and the need of improvement of these procedures should be analysed on the basis of the the ImplCom/ComplCom- institution created under the NCP-, the impartiality and independency of this institution, procedural safeguards, and financial problems.

⁶⁹ See Sachariew (1991) for another view suggesting that a centralized coordinated information management system is necessary for developing countries to implement MEAs, and also see Batagoda1, Perera and De Alwis (2004) for a new strategy for centralized information management on MEAs in developing countries.

The institution created under the NCP (ImplCom/ComplCom):

With respect to the Committee created under the NCP, in the Kyoto Protocol's CM, the MOP does not have the power to decide on non-compliance and also to adopt responses about it. Decisions by its each branch are self-executing and the consequences for non-compliance follow automatically from these decisions. That is, unlike the CM under the Montreal Protocol, there is no need for adoption of the decisions by the MOP. The MOP can have power to decide on non-compliance only in case of an appeal against the EB's decision for denial of due process. Through appeal procedure, the EB's decision can be referred back to the EB, and it is examined again by a three-fourths majority vote of the parties present and voting at the meeting (NCP, Section XII (e); NCP, Section XI).

In contrary to the CM of the Kyoto Protocol which has given a very limited role to the political organ of the procedure, under the Montreal Protocol, the MOP has final authority to give decisions. The Committee's role, on the other hand, is limited to make recommendations to the MOP.

So, it can be concluded that, each mechanism under the KP and MP gives competences to different organs for determining the power to decide on non-compliance and also to adopt responses about it. Giving the power to decide on non-compliance to the Committee with its two branches, FB and EB, whose members should be qualified in climate change and in relevant fields (the scientific, technical, socio-economic or legal fields), independently of the political organ of the mechanism, the CM under the KP seems more promising than that of the MP. However, it should be also underlined that, under the CM of the MP as well, the ImplCom can have a strong impact on the decisions made by the MOP with its recommendations. This is particularly because, in the process of deciding what action to take to bring about full compliance of the party with the Protocol, the MOP evaluates the circumstances of the matter on the basis of the ImplCom's report including any recommendations it considers appropriate (NCP, para.9), and it can also invite the ImplCom to make further recommendations to assist its consideration of matters of possible non-compliance (NCP, para.14).⁷⁰

⁷⁰ The proposal raised by the US on the amendment of the NCP of the MP -involving allowing increased continuity in the participation on the ImplCom, speeding up the timing for

The Impartiality and Independency of the Committee:

An ImplCom generally consists of parties elected by the MOP (e.g. MP NCP, para.5). This is questionable as experts serving in their personal capacity as members of the Committee are expected to be more independent than representatives of the parties.

Additionally in terms of requirements on parties' representatives, there is no criteria in the NCP, MP. This is most possibly because, the dominant view among the parties is that each party should have the right to decide on the background of its representative. However, it would be better to have greater expertise from different areas, because an ImplCom composed only of lawyers, or only of scientists or technicians, or of diplomats and policy experts can have difficulties to deal with cases involving the matters of areas other than their expert areas (Széll, 1995).

Under the Kyoto Protocol, there are crucial provisions supporting the independency and impartiality of the Committee. To illustrate, the membership of a member or alternate can be suspended or revoked if he is found to have materially violated the independency and impartiality of the Committee (KP RoP, 4). In addition, for the EB, members should have also legal experience (NCP, Section V(3)) and should serve in their personal capacities (NCP, Section II (6); RoP, 4). Here, it should be also noted that, like the use of outside technical experts, it may also be considered to apply the use of outside legal experts, if legal disagreements continue to arise within the EB (Doelle, 2010).

On serving in their personal capacities, the issues like the reimbursement of the costs of travelling and subsistence and the enjoyment of privileges and immunities, can be thought as problematic issues which can affect the independency of the Committee's members while deciding on matters (Lefeber, 2009). Under the Kyoto Protocol, even though the Committee has repeatedly requested the MOP to provide funding for the regular participation of all members

communication between the Secretariat and parties, urging parties to submit information according to art.7(3) within a shorter time period and to participate all meetings of the ImplCom, and removing language difficulties- was not accepted, because of the lack of agreement on its all elements (MOP 14, 2002:13, paras. 83-88).

(ComplCom 2, 2007:para.5;ComplCom 3, 2008:4f;ComplCom 4, 2009:para.4c), presently, only members and alternates from developing countries and from some low-income countries with economies in transition can utilize from reimbursement of the secretariat for their travel and subsistence expenses (Oberthür and Lefeber, 2010). This negatively affects the regular attendance of the members to the meetings.

Procedural Safeguards

Despite the opportunities granted by the NCP of the Montreal Protocol, when it is compared with NCP of the Kyoto Protocol, it is found out that, the Kyoto Protocol's NCP generally has more detailed rules on the procedural structure and necessary procedural safeguards in the process of related proceedings through its NCP adopted by Decision 24/COP 7, but also through its RoP prepared for the working of ComplCom by Decision 27/MOP1.

The Rights of the Party Concerned:

As different from Kyoto Protocol's NCP, in the MP's NCP, it is not possible to find provisions concerning the rights of the party in question to access to any information considered by the ImplCom, and any information upon which recommendations are given by the ImplCom or decisions made by the MOP, to comment on such information and on any recommendation of the ImplCom or decision of the MOP, or to have the opportunity to present its views or expert testimony.

Predetermined Timetables: The mechanism under the Montreal Protocol includes strict timelines for different processes of the proceedings. However, contrary to the Kyoto Protocol's NCP, they are not so much in number and not providing a clearly defined timetable for each step in the proceedings of the ImplCom regarding compliance evaluation.

Another important difference is the expedited procedure incorporated to the Kyoto Protocol's NCP(NCP, Section 10), for questions of implementation relating to eligibility requirements under articles 6, 12 and 17 of the Protocol, both for proceedings to suspend eligibility and proceedings to have eligibility reinstated. There is no this kind of procedure in the NCP of the Montreal Protocol.

Therefore, it can be argued that the NCP, Kyoto Protocol, through its “strict timelines” and the expedited procedure, has more potential to prevent time-consuming (Brunnée, 2003:275).

Fixed Consequences: The Montreal Protocol includes an indicative list of measures for compliance built into the Protocol in the form of positive measures (such as financial and technical assistance) and negative measures (like suspension of some rights), yet, no list of possible situations of non-compliance, as different from the CM of the KP including a system of predefined non-compliance situations with predefined responses. So, it may be proposed to adopt a similar system for the MP system as well, but, the issue even for the KP system is still controversial (will be detailed in section on responses (5.2.3)).

The binding nature of the consequences is also one of the most important issues for debate regarding the consequences in both CMs under KP and MP, and there is no consensus on it in both of them. Yet, it is possible to argue that as the cooperative-facilitative approach is dominant for their practical application, their application in both mechanisms can be effective even without a formally binding status, when a strong cooperation and coordination between parties can be ensured within the system (will be detailed in section on responses (5.2.3)).

Transparency: Regarding as a weak side of the KP’s NCP on transparency, NCP Section VIII(6), KP should be stressed here, as it allows information to be kept from the public until the conclusion of the proceedings on request of the party being investigated and at the discretion of the EB. However, this has not been used till to date, and both the ComplCom and two branches “have made considerable efforts toward transparency” (Doelle, 2010:258). Yet as Doelle(2010) attracts attention, there are basically three limitations of the CM under the Kyoto Protocol regarding transparency issue: 1. working documents 2. electronic means of communication that are not publicly access, but, can be public there is a reason to keep them confidential 3. more detailed annual reports and decisions of the committee and its branches that can fill the gaps stemming from the inaccessibility of working documents and e-mails.

The NCP, Montreal Protocol, para.16, on the other hand, opens the way of making the ImplCom’s reports available to anyone upon request, thus providing

its publicity, and also the way of making all information exchanged by or with the ImplCom related to its any recommendation to the MOP to any party upon its request. However, while allowing this kind of openness, the NCP also restricts this opportunity with the reports not containing any confidential information, and with the obligation to protect the confidentiality of information that the part has received in confidence (NCP, para.16). Moreover, it obliges the members of the ImplCom and the parties involved in its deliberations to ensure the confidentiality of information they receive in confidence (NCP, para.15).

Here, the questions can raise about determining whether information is confidential or not, and the possible results of not meeting with these rules of the NCP. As it is not so detailed in the NCP, there are no specific rules on who decides whether information is confidential or not, or what will be if the members of the ImplCom or parties do not protect the confidentiality of the information (Marauhn, 1996).

Regarding this issue, Chasek, Downie and Brown (2006:275) suggests establishing mechanisms by which secretariats or COPs would publicly consider complaints brought by states, IOs, NGOs, or other actors about non-compliance by a particular party.

Possibility for Appeal: Within the NCP of the Kyoto Protocol, as a rule, there is no opportunity to appeal against decisions of the branches of the ComplCom. However, as an exception, it is possible for the parties to appeal to the MOP against final decisions of the EB relating to emissions targets (art. 3(1), KP) about whether the rules of the due process are applied to the party concerned (NCP, Section XI,1). However, the appeal does not suspend the EB's decision, and the MOP can not give a final decision on the QoI, instead, it should refer the QoI back to the EB.

Within the NCP of the Montreal Protocol, even this kind of appeal opportunity is not possible. This is particular because, if it is possible, it would be against decisions of the MOP, as different from the appeal applied in the Kyoto Protocol's NCP. Therefore, "no support was expressed for creating such a mechanism, although some experts expressed the view that, while the proposal was premature, it should not be discarded out of hand"(Ad Hoc WG, 1998:10, para.57).

Strengthening the Role of NGOs in CMs: Strengthening the role of NGOs in CMs would result in many positive effects for better compliance and also governance.⁷¹ In fact, their participation to the process can promote compliance due to their experiences, expertise and capacity on environmental issues, especially in the fields of analyzing these issues, distribution of information, strengthening the transparency, and ensuring dialogue between the related parties, even if there have been no formal measures (particularly negative ones) (Mitchell, 1996).

Yet, in practice, it is observed that, even though NGOs have played active role in the negotiations of both Protocols and their amendments which have been selected as case studies of the thesis (and within most of other MEAs), their participation to the initiation of the process, to the reporting (explained above) phase, to the proceedings and to the processes of monitoring compliance have been so limited.

In fact, depending on the provisions of the related MEA, NGOs can participate to the meetings of the MEA's organs as observers (or "the status of "partner NGOs"" (Maljean-Dubois and Richard, 2004:19), but if there is no objection of the parties. Yet, in general, in the assessment stage of the reporting, their role is restricted further, as they usually can not attend to the meeting for assessing the report, if of any one party requests. If they are admitted to participate, they can not have the right of veto (e.g. VC, art.6(5); MP art.11(5); RoP 7(2)).

The IGOs and NGOs are also not allowed to trigger the NCP, they can solely submit relevant factual and technical information to either branch of the ComplCom (NCP, Section VIII, para.4), although it is strongly advised that NGOs should have the "formalised possibility" to trigger a NCP by some scholars (Epiney, 2006:344).

Doelle (2010:257) suggests "a non-party trigger process," that is, to allow civil society to trigger the process before the ComplCom. However, as a starting stage, he suggests to allow the branches to review the ERT reports, and trigger the process if they identify issues of concern within their jurisdiction. He underlines

⁷¹ For a further discussion on the need for a stronger involvement of NGOs and strengthening their roles in the CMs process, see Epiney (2006), and see also Fodella (2009) for the debate on the difficulty of NGOs in being truly objective pursuing the interests of the collectivity, not actors' interests and agendas, and the problem of providing their independency.

that, combined with a formal trigger competence, the FB could also be given the competence to carry out periodic automatic consultations with parties on their commitments without a triggering process.

Under the KP mechanism, they are merely allowed to submit relevant factual and technical information to either branch of the ComplCom (KP, NCP, Section VIII, para.4). Indeed, it is observed in practice that a number of environmental organizations struggle to monitor the compliance of the parties and share the information that they gathered by the public.⁷² In addition to environmental organizations, industrial companies can also have important role in providing necessary and relevant information to the system.⁷³ These efforts, particularly the efforts of NGOs, can considerably contribute a more transparent mechanism which can lead to a larger mass, and thus, a larger participation of the public to the mechanism in direct or indirect ways.

In fact, like being in the Kyoto Protocol, in the CM of the MP as well, there is no formal way of participation for NGOs to the ImplCom proceedings in which only the ImplCom members, the secretariat and parties involved in submissions can participate. There is only one way of providing their participation to the proceedings. This way allows the secretariat to notify any body to participate to the Protocol's meetings. That is, likewise the secretariat can notify the UN and its specialized agencies, the International Atomic Energy Agency (IAEA), and any state not party to the Protocol to provide their participation to its meeting (RoP, 7), it can also notify any body or agency, whether national or international, governmental or nongovernmental, qualified in fields relating to the protection of the ozone layer (RoP, 7). If there is no objection from the parties present to their participation, such bodies can participate as 'observers' to the proceedings of any meeting, so without having the right to vote (RoP, 6-7).

This situation specifically stems from "confidentially problems posed by the sensitive technical and commercially valuable information that the Committee has to handle" (Handl, 1997:40). Yet, on the other hand, the balance between

⁷² See (Andresen and Gulbrandsen, 2005) for details on environmental organizations' contributions.

⁷³ For details see (Skjærseth, 2005).

providing confidentiality and legitimacy should not be lost while considering on issues of non-compliance in that kind of structure (Handl, 1997).

In the processes of monitoring compliance, the reasons lying under their limited role can be explained with their inadequate resources (money, staff, scientific capacity, institutional structure, etc.). In addition, data needed to monitor compliance of the parties can be “classified as a trade secret in many states which hinders monitoring efforts” (Weiss, 1998:149).⁷⁴ Also, due to “the high cost of maintaining large-scale permanent monitoring networks” (Sachariew, 1991:39), NGOs’ participation to the activities of monitoring remains at low levels, as restricted to only some areas of monitoring.

Financial Challenges: As a positive side of both mechanisms under MEAs, it should be underlined firstly that they support financial and technical assistance towards developing country parties. Indeed, the adoption of ‘the principle of common but differentiated responsibilities’ in the MEAs (reaffirmed in the last UN Conference as well (Rio+20 Report, 2012:3)) has initiated an increasing trend towards facilitating the parties’s (specifically the developed countries’) contributions to financial resources of the CMs.

Indeed, through this principle, both under the Montreal Protocol (art.5, par.5) and the UNFCCC (art.4, par.7), while the developed countries have a legal obligation to provide financial and technical assistance to developing countries, the developing states have to take required measures related to their commitments under these agreements. For example, the Multilateral Fund of the Montreal Protocol stipulates developed countries to “meet all agreed incremental costs of developing countries parties in order to enable their compliance with the control measure” (art.10(1), MP; art.5(5), MP, see also UNFCCC, art.4, art.11, KP for similar provisions). Developing states, on the other hand, implement their obligations, if developed states fulfill their commitments to provide financial resources on the basis of “compliance requirement” (Boisson de Chazournes,

⁷⁴ OzonAction should also be mentioned here, as through OzonAction, the Montreal Protocol also supports compliance through providing the assistance of the industry for gaining information on industrial substitutes for regulated chemicals and also for providing a forum for the countries concerned with implementing the treaty. For the detailed information on the role of NGOs and industry in the Montreal Protocol, see Weiss (1998).

2006). If developed states do not fulfill their commitments effectively, developing states can resort to the MOP to decide on the matter. Thus, “a new form of reciprocity,” “serv[ing] as a mechanism to provide for compliance,” has been established between developed and developing states (Wolfrum, 1999:148).

However, the examination on the CMs regarding financial issues also exposes that, the accessibility to facilitative tools and resources assisting the parties (particularly developing and less-developed parties) in their efforts to meet their commitments, raises as one of the key issues that should be coped with within these mechanisms.

In CMs, financial resources are generally provided from the general budget prepared and adopted by the COP/MOP for the MEA in question. Based on its estimations on future expenses necessary for effective functioning of the compliance mechanism, it determines the necessary budget for a definite term. It also determines the contributions (binding ones) that should be granted by the contracting parties “on the basis of the UN General Assembly’s scale of assessment” of which legal basis is the UN Charter (Jacur, 2009b:422). To strengthen these obligations, the decisions are also adopted on the basis of “an equal basis of developed and developing countries, consensus or double qualified majorities” (Jacur, 2009b:431). In the majority-voting, both the majority of the countries present and voting and also the majority of contributors, are required for deciding on the replenishment and on disbursement of resources.

In addition to the contributions determined by the budget, also voluntary contributions of the parties form the financial resources to the compliance mechanisms. However, as the voluntary contributions are not able to be estimated correctly and precisely, and the binding contributions can not be gathered timely and completely from the parties, financial resources usually fail to meet the needs of the compliance mechanisms.

Thus, both voluntary and binding contributions existing in the current system fail to guarantee a regular, more “timely,” “stable” and more “predictable” payment for financing compliance mechanisms (Jacur, 2009b:437).

Lack of proper financing in CMs, on the other hand, can lead to raising some significant problems in their functioning. To illustrate, first of all, it can result in

reduction in the participation to the meetings of the ComplCom,⁷⁵ and other bodies of the agreement. Jacur's (2009b:426) proposal involving to hold committee meetings that take place in conjunction with COP meetings and with other subsidiary organs for which funds are available, can be assessed here as a remedy to this problem. It can also result in being unable to carry out some necessary activities for improving the parties' compliance, such as providing experts' views, and on-site examination and information gathering, and so failure in making scientific research, also in failure in assisting to developing countries in constituting, improving and maintaining their (technical-administrative) capacities, training the officials responsible for the implementation and compliance, and failure in encouraging the developed countries to comply decreasing their compliance costs.

In the final analysis, each of these shortcomings can cause delays and deficiencies of the parties in complying with the agreement's obligations, and so in environmental protection and in global environmental governance and sustainable development interconnectedly.

In the recent period, there are new trends to improve financial resources, and thus to improve compliance. New funds established for specific agreements can be given as an example to these new trends. To illustrate, the current financial mechanism the CM of the Kyoto Protocol, which is operated basically by the Global Environment Facility (GEF),⁷⁶ includes four funding opportunities: GEF Trust Fund, the Adaptation Fund (AF), the Special Climate Change Fund (SCCF) and the Least Developed Countries Fund (LDCF). In addition to them, the Prototype Carbon Fund (PPFC), which is established by the World Bank, and not institutionally linked to the UNFCCC or the Kyoto Protocol, should also be underlined here, as, through public-private partnerships, it assists to finance

⁷⁵ It could be noted that, very recently, the efforts for extending the eligibility for funding on travel-related expenditures of members and alternate members of the ComplCom for participation to the meetings (MOP 7, 2011, Decision 12, para.4, MOP 8-Compliance, para.7), have resulted in the recommendation of the SBI to the MOP for its consideration that the current practice should be maintained (FCCC/SBI/2012/15) SBI 36, para.270).

⁷⁶ See also (Handl, 1994:321-325) for details particularly on GEF and (Wolfrum and Matz, 2003:197, 203) for incremental costs on GEF, and for the role of the GEF in the coordination of international agreements.

activities involving relevant objectives (Wolfrum and Friedrich, 2006). It is also noteworthy here to mention the Green Climate Fund which was established very recently, in 2010, at COP 16, by Decision 1/COP16 (para.102), as an operating entity of the financial mechanism of the Convention (art.11). Its basic aim is to support developing country parties with adequate and predictable financial resources for meeting their needs to limit or reduce their greenhouse gas emissions and to adapt to the effects of climate change. So, its governing instrument was approved by Decision 3/COP 17 (para.2), and by Decision 6/COP 18 (para.5), it was decided to make it operational as soon as possible. Its launch was also welcomed specifically in Rio+20 (Rio+20 Report, 2012:37).

The Multilateral Fund of the Montreal Protocol (art. 10, MP), the World Heritage Convention Fund, the Ramsar Convention's Wetlands Conservation Fund, the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) as the funding mechanism for relevant projects under the issues related to the climate change (art.11, UNFCCC; art.11, KP), can be counted amongst the other new funds (Jacur, 2009b; Maljean-Dubois and Richard, 2004).

As a response to these shortcomings, instead of providing financial resources from the general budget, a "specific budget line" (Jacur, 2009b:422) can also be proposed for financing of CM in this regular budget. "[S]elf-financing of compliance bodies" (Jacur, 2009b:437) in which a determined amount of financial resources is separated to finance the commitments for complying with the obligations of the MEA, so, to finance specifically the compliance mechanisms of the MEA, can be the means of overcoming the problems on financing of CMs allowing "them to be independent from the often irregular and unpredictable funding approved by the COP" (Jacur, 2009b:437).

While reducing the costs of compliance, financial assistance allows more countries to consider compliance more important and thus "mitigates the free-rider problem" (Kolari, 2002:43). However, adopting these kinds of financial mechanisms can be seen as "rather expensive in comparison to a more traditional sanction-based system" (Kolari, 2002:43). In addition, although these efforts aim to strengthen the contributions to financing of these mechanisms, in general, the

bodies concerning financial issues in compliance mechanisms do not have power to evaluate “the compliance of parties with their obligations to disburse financial resources” (Jacur, 2009b:435). Their authority is limited with “facilitative activities, such as the provision of advice and facilitation of financial assistance” (Jacur, 2009b:435).

This is also valid in general international law in practice, despite the existence of its legal basis in art.19 of the UN Charter. In fact, this provision allows the suspension of the right to vote for states failing to pay their contributions for two years. However, in practice, it has been observed that the General Assembly has never used this provision against states failing to pay their contributions.

The other important issue that should be considered is to provide the utilisation of financial resources in a most efficient way, so to provide proper financial assistance for the parties is not adequate to solve the financial problem within the compliance issue. This is because, if the assistance can not be managed properly, it can result in waste of time, service and money. So, it should be “targeted toward the most important needs, monitored to avoid waste, provided conditionally in stages to promote real action, continually assessed and reviewed so that procedures can be improved, and coordinated within and across regimes to achieve potential synergies and to avoid duplication and unintended negative consequences” (Chasek, Downie and Grown, 2006:216).

Regarding this issue, it can also be argued that, strengthening the staff, Powers (in monitoring, assistance, assessment) and the budget of the secretariats which functions to support the other bodies of the MEAs and its parties in their activities, can also render a crucial contribution to compliance of the parties (Chasek, Downie and Grown, 2006).

5.2.3 Non-compliance Response Measures

Werksman(2005:19-20) describes the strength and toughness of the consequences/measures of the Kyoto Protocol compliance system with three components: with their “prescriptiveness,” their “punitiveness” and their “legal character.” Prescriptiveness implies establishing which consequences to which situations should be applied. Punitiveness means to make the costs of non-

compliance further than the costs of compliance. Their legal character, on the other hand, explains the extent to which a non-compliant party is bound with the consequence imposed on it.

Pursuant to this identification of Werksman(2005), the need for improvement of the multilateral non-compliance response measures can be discussed in three sub-groups: their prescriptiveness, their punitiveness and their legal character.

As regards their prescriptiveness, the Montreal Protocol includes an indicative list of measures for compliance built into the Protocol in the form of positive measures (such as financial and technical assistance) and negative measures(like suspension of some rights), yet, the NCP does not define the situations of non-compliance with the Protocol, they should be inferred from the provisions of the Protocol.The response measures which should be applied to the non-compliant party within the NCP of the Kyoto Protocol, on the other hand, are predetermined consequences. Indeed, NCP, Section XIV obviously defines which consequences should be applied by the FB, and XV defines which ones should be applied by the EB as response to three circumstances of non-compliance with different commitments: non-compliance with reporting requirements, non-compliance with eligibility requirements and non-compliance with emission commitments.

So, while the CM under the MP adopts a list of measures of non-compliance, that under the KP determines both the measures and the circumstances of non-compliance.

As regards determining the fixed measures according to the circumstances of non-compliance, it can be argued that, as the evaluation phase of non-compliance should not involve much flexibility, instead, less flexibility and less political but more judicial features in itself, they can enhance the predictability and prevent the use of powers wrongly. Nevertheless, it should not be forgotten that, even just adopting a list of mesures like in the CM under the MP, can be seen “an undue constraining factor” (Handl, 1997:44) on the mechanism and its flexibility, as it draws the possible borders of being in compliance and in non-compliance through this kind of list. So, to establish clearly which situations would lead to what kind of measures in a list like in the CM under the KP, can bee seen improper, as it can also prevent the choice of appropriate consequences to the circumstances of each

individual case at hand (Handl, 1997; Ulfstein and Werksman, 2005). Given the statement used in art. 18, Kyoto Protocol, emphasizing the development of list of consequences taking into account the cause, type, degree and frequency of non-compliance, it is also questioned whether the use of predesigned, certain consequences is consistent with this article (Ulfstein and Werksman, 2005).

Despite the ongoing debate on the use of predetermined consequences, this system of ‘predefined non-compliance situations to predefined responses’ has been successfully implemented in the CM of the Kyoto Protocol so far, so, can be thought for the Montreal Protocol system as well. However, under the CM of the MP, even though it appears that there is a general agreement on the necessity of determining the causes of non-compliance in arriving at appropriate recommendations/ consequences, developing such criteria in a formal list for making “an objective judgement on whether a case of non-compliance was a wilful breach or a result of factors beyond the control of the party concerned” is considered as something that should be achieved over time (*Ad Hoc* WG, 1998: 5-6, para.27). A proposal regarding giving assistance to the ImplCom in matching responses to particular types of non-compliance was examined by the WG of 1998. Yet, it was decided that the ImplCom and the MOP have the discretion to adapt their response to the particular case, so, there was no need to change the present text on this issue (*Ad Hoc* WG, 1998: 7, para.40).

In order to discuss their punitiveness, the views of Hovi, Froyen and Bang (2007) on the KP’s system can be beneficial here. They argue that, first of all, the punitive consequences can result in withdrawal of parties from the Protocol (art.27, KP). In addition, for the punitive consequences to restore compliance “there must be *incomplete information*” (Hovi *et al.*, 2007:444). In other words, there should be two conditions: first, the non-compliant party does not anticipate the application of punitive consequences, second it can not estimate their costs (both of them can exist together). For the Kyoto Protocol’s CM, the first one can not be materialized, as it has predetermined consequences determined in the NCP, Section XIV for the FB, and in Section XV for the EB. The second condition is also unlikely to be occurred, because the consequences are applied only to developed country parties which are generally able to estimate the cost of these

consequences due to their financial and administrative capacities (Hovi *et al.*, 2007). Even all parties have complete information, if the threat of punitive consequences fail to deter a party from non-compliance, then still their application does not restore compliance.

To illustrate, under the CM of the KP, if the non-compliant is a large economy and a net seller in the emissions trading market, the suspension of its right to engage in transfers under art.17 can cause price levels to rise remarkably in the market. This is because, the non-compliant reduces its emissions further, and the demand for fossil fuel and its price fall. In addition, as the supply of emission permits is also reduced, the permit price rises. Under such a circumstance, the decision of whether to punish a non-compliant country with a suspension of its right to engage in transfers can imply significant economic losses or gains for other countries that operate in related markets. So it is usually expected from parties that are buyers to vote against that kind of suspension. If the members of the EB take into account these implications, a non-compliant party can easily escape the response measures of its non-compliance. This situation can decrease the deterrent effect of the compliance mechanism (Hagem and Westskog, 2005).

So, based on their findings, they conclude that the punitive consequences are rarely able “to make much of a *difference* in a country’s decision about whether to return to compliance” (Hovi *et al.*, 2007:438). Because of such cases increasing the possibility of the failure in deterring the parties from non-compliance, Hovi *et al.* (2007) suggest “external pressure”⁷⁷ to accomplish return to compliance rather than applying punitive consequences. It can be also proposed (Doelle, 2010) to forbidden borrowing in two sequential commitment periods to hinder to continuously borrowing from future commitment periods, and instead be required to pay a financial penalty, to increase 1.3 rate in case of repeated failure to meet emission-reduction targets, to be subject to more rigorous international review of

⁷⁷ External enforcement should be identified here. It means imposing an enforcement mechanism to a non-compliant party using the means not addressed by the relevant agreement or taken by a non-signatory party to punish it. It is argued that external enforcement may enhance the deterrent effect of a compliance system, but, it may also undermine its legitimacy, so should be applied in line with the rules of international law. Only if it can be applied within the rules of international law and can improve the deterrent effect of internal consequences, it can enhance compliance without undermining the system’s legitimacy (Hovi, Stokke and Ulfstein, 2005; Hovi, 2005).

the compliance action plan, to reconsider the establishment of a compliance fund,⁷⁸ as responses measures to ensure and promote compliance in the KP system.

For the Montreal Protocol's system, it should be stressed that, as its list forms an indicative list, not a complete list of measures that should be taken against non-compliance, the MOP is free to apply different measures not identified in this list. However, all measures applied by the MOP should be necessarily "advisory and conciliatory," and aiming to assist to particularly developing countries to enable them to comply with the Protocol (MOP 3, Decision III/2, 1991). This is because, the main aim of the CM has arisen as not to impose any punitive measures against the non-compliant party, but, to endeavour to bring it back to compliance. But, still, it can be suggested to use trade sanctions in conscious non-compliance to convince the parties "that they will face penalties for the violation but also that the costs of the violation will exceed the gains expected from it" (Chasek, Downie and Brown, 2006:222).

Regarding their legal character, in the MP's system, decisions of the MOP are accepted as recommendatory rather than mandatory. There have been some discussions on the binding status of the decisions, yet, there has been still no consensus on this matter. Therefore, it can be argued that non-complying parties do not really feel threatened by these measures. Yet, sometimes, even to be identified as a non-complying party in MOP decisions can be a deterrent factor for that party, and can hinder its non-compliance (but sometimes to be identified as a non-complying party can also be useful for ensuring further compliance in the forthcoming period, through "helping[...]to argue with colleagues at home the need for greater urgency in dealing with the issue" (Brack, 2003:218)). Then, it should be kept in mind that, sometimes rules/decisions which have no binding status can lead greater changes in behaviour than the likely change which the binding rules/decisions can produce.

⁷⁸ The deduction approach was adopted despite its shortcomings, because no other response was found feasible instead of it, e.g. compliance fund requiring making payments by the parties to a fund was found by some "as a potential form of financial penalty," and by some others as a means of setting a "price cap" on the compliance costs of parties (Wang and Wiser, 2002: 196). See also (Oberthür and Lefeber, 2010:150) for the view the deduction approach does not form a "penalty" or "penalizing" the party concerned.

In the Kyoto Protocol's system, the implications of the question- whether or not a response measure should be considered binding under art.18, KP- can be different for each of the measures. In brief, except the measure requiring deductions of assigned amounts at a penalty rate (equal to 1.3 times the amount in tonnes of excess emissions) (NCP, Section XV, 5a), -due to the fact that the parties that have withheld their consent to consequences adopted by decisions of COP/MOP (Decision 24/COP 7, Decision 27/MOP1) can argue that they are not bound by these deductions-, the other measures can be considered to be within the implied powers of the Protocol's organs, that is, within the competence of the EB (see section 4.2.3.3 for details). However, insistence on adoption of this measure in legally binding form by an amendment to the Protocol can result in the unwillingness of some parties to ratify it, and thus directly affect the compliance attitudes of the parties, and so the attitude of the whole regime. It is also arguable here as well that, likewise in the CM of the MP, whether legally binding consequences significantly promote their effectiveness (Brunnée, 2003). This is particularly because, in the CMs based on the cooperative approach, in the processes of finding solutions to the problems, relying on consensus by the parties rather than a decision by an institution is more important (Ehrmann, 2002). In addition, consequences applied against non-compliance are not only factors that move the party forward towards the compliant behaviour. There are several other factors: the party's characteristics (social-economic conditions), the legitimacy of international norms, their implementation and adoption in the national systems,..etc. So, the non-compliant party can resist to be in non-compliance despite the existence of legally binding response measures, because of the other factors triggering the party towards non-compliance. But, if they see the process and its consequences fair, they can comply with the requirements voluntarily, even if they are non-binding (Epiney, 2006). So, "the utility of the non-binding instruments in international cooperation" and "the comparative advantages of different legal forms" should also be taken into account while assessing the effectiveness of the instruments on the basis of their having binding status or not (Raustiala, 2000:427).

Finally, it is also noteworthy that there are no provisions which can enforce the non-compliant country to comply with the consequences adopted within these NCPs. So, the effectiveness of the responses in particular and the effectiveness of the CM in general, to a large extent, depends on the non-compliant party, and its tendency towards to comply with them, rather than continue to non-compliance (Barrett, 2003).

5.3 Stronger Coordination Between Compliance Mechanisms

Given the outcomes of practical application of CMs in both Kyoto and Montreal Protocols and the various shortcomings of the CMs examined in the thesis, it becomes necessary to go beyond simply improvement of existing system, but instead, together with its improvement, to improve the current system in which many CMs of different MEAs can interact more efficiently and effectively in realizing the compliance as an ultimate goal. Thus, following that way, not only some aspects of the current situation will be presented, but also a more forward-looking perspective with some prospects with regard to the future will be tried to develop, in consideration of the conditions for more developed and coordinated mechanisms for better compliance, and gradually for better GEG.

Hence, in addition to decreasing the weaknesses of the mechanisms, another prerequisite for achieving the characteristics of better compliance in CMs appears undoubtedly as to be based on further coordination providing coherent attitudes through good communications and dialogues between all parties. In fact, with better coordination, all of these efforts to address the problems of the mechanisms can help speed up the progress towards better compliance and GEG as well, providing the use of resources most effectively, coherence/consistency and avoiding duplication among similar bodies.

It is generally admitted that, even though all environmental problems,- and also the international environmental system within itself- are interrelated, CMs have been built under a decentralized system, that is, under regimes that are considered in relative isolation addressing the specific issue areas individually.

In such a system, despite the current new developments for strengthening coordination, -e.g.the creation of the GEF for integrating financial mechanisms,

developments on reporting for integrating obligations (particularly in biodiversity-related MEAs, UNEP's guidelines on non-compliance..etc,- the major drawback still appears as the coordination problem.

In order to overcome this problem, to find out the key interactions⁷⁹ and interlinkages (issue linkages-institutional linkages) (Levy, Young and Zürn, 1995) between these mechanisms, and thus, to form a strong cooperation and coordination between them, instead of a new central organization to replace all existing ones, raises as a more logical way of achieving better compliance for the short term. That is, in Chamber's words, there is a need to create a "principle of interlinkages" which can have the potential "to maintain consistency between treaties" (Chambers, 2008:247).

This is particularly because, this decentralized system will most probably continue to exist in the near future, despite the debate on establishing a centralized network on the basis of an international environmental organization. This will be also valid for CMs, as the establishment of a uniform regime on compliance will not be possible in the future, due to the self-contained character of the MEAs in which CMs are established (Beyerlin *et al.*2006; Pineschi, 2004; Wolfrum, 1999).

Therefore, the suggestion to establish a WEO should be considered as a long-term strategy (Biermann, 2007; Charnovitz, 2002, 2005a; Rechkemmer, 2005; Simonis, 2002). Presently, to benefit from the existing system's positive sides, while try to decrease its negative sides to the lowest levels, seems a better way of leading to better compliance and better governance.

Therefore, for achieving more wide-ranging coordinated efforts for creating more effective compliance and also governance in the short term, first of all, it is necessary to establish the environmental regimes (and so their mechanisms) as "acceptable to most of the countries," and providing active participation of both developed and developing countries, to allow them to make necessary substantive changes in the operation of the regime, and thus to make them more committed to their requirements (Hunter, Salzman and Zaelke, 2002).

⁷⁹ See (Oberthür and Gebring, 2006) for the details on the cases of interaction in which the core institutions interact with other international institutions and pieces of EU legislation, and also details on casual mechanisms of institutional interaction: cognitive interaction, interaction through commitment, behavioral interaction, impact-level interaction.

Then, in order to achieve better compliance in the short run and environmental governance through CMs in the long run, it can be suggested, as a first step, to strengthen the existing informal ways of cooperation and coordination between the parties of mechanisms (Andresen, 2001; Pitea, 2009; Raustiala, 2001), and to aim to produce formal ways of coordination leading the various compliance mechanisms regarding themselves not as isolated, but rather as parts of a global effort to protect the environment for the benefit of present and future generations.

There is also an obvious and urgent need to the strong coordination and creating synergies (thematic or operative synergies,⁸⁰ or procedural synergies)⁸¹ and interactions across the components of the same CM, but also different CMs, particularly for those within the same cluster, together with strengthened CMs (Beyerlin and Wolfrum, 2006; Chambers, 2008; Chasek *et.al.*, 2006; Levy *et.al.*, 1995; Oberthür, 2006, 2002, 2001; Oberthür and Gehring 2006; Pitea, 2009; Wolfrum and Matz, 2003).

So, it is essential to focus and analyze how current mechanisms can encourage and support coordination on different components of the CMs- coordination on the creation of rules and norms, information gathering, NCPs (institutions-procedures- scientific, technological and economic assessment and their institutions), response measures (capacity building and technical and financial support and negative measures)- and how opportunities for coordination can be expanded.

There are several suggestions on improving the coordination like;

- developing a sort of general code for CMs (Epiney, 2006),
 - entrusting a single body with addressing compliance issues (Beyerlin *et al.*, 2006; Ehrmann, 2002; Pitea, 2009),
- and on the basis of clustering issue of MEAs,⁸²

⁸⁰ For details see (Mrema, 2006).

⁸¹ For details see (Pitea, 2009).

⁸² On the issue of clustering, the Second Consultative Meeting of MEAs on IEG agreed that, clustering of MEAs for promoting collaboration and coordination should be carried out at the sectoral level (e.g. the biodiversity-related conventions, the land conventions, the chemicals and hazardous wastes conventions, the atmosphere conventions and the regional seas conventions and

- creating a permanent location for a number of COPs or co-locating MEA secretariats (Oberthür, 2002),
- arranging regular meetings of representatives from different mechanisms.

With respect to creating a sort of categorisation, it should be stated that this categorization of different possible procedures would provide a generally accepted part of the procedures, and for each MEA, an adaptation would be applied to its conditions. If a deviation from this general part wants to be applied, then, its reasons should be justified. However, if a general convention could be envisaged for this kind of categorization, and if its parties are not the same as the parties of the different MEAs, the problem here raises. Moreover, as every MEA has its specific features- the tailor-made structure of MEAs- and specific compliance mechanisms involving specific institutional structures and procedures in accordance with these features, here again another problem raises (Epiney, 2006).

Similar problems emerge also in establishing a single body for addressing compliance issues. Here again, as each MEA has its own features, each requires specific expertise and the technical information and capability concerning the environmental problem in question (Beyerlin *et al.*, 2006). As a sample to this kind of body, the idea of creating a central ImplCom, which has only been come into question for the Protocols of the 1979 Convention on Long Range Transboundary Air Pollution, can be given (Ehrmann, 2002). Regarding this issue, the possibility of creating a universal CM can also be discussed, yet, it is generally evaluated as “an unrealistic and unsuitable perspective” (Pitea, 2009:441).

Clustering issue involve proposals for clustering the organisational elements and for clustering the common functions of MEAs.

- Clustering the bodies of MEAs involve creating a permanent location for a number of COPs and their subsidiary bodies, establishing an umbrella institution

related agreements), the functional level (e.g. trade-related MEAs, conventions with prior-informed consent procedures and conventions with customs procedures) and the regional level (e.g. capacity-building, enforcement and compliance..etc.) (UNEP, 2001). See also (Oberthür, 2002) for the details on clustering.

through MEA secretariat (Fodella, 2009) and also co-locating the MEA secretariats (Oberthür, 2002).

Of those, the importance of MEA secretariats in compliance issue should be stressed here. In fact, through their functions, particularly, on directly accessing to information, they have a special position in ensuring compliance within the CMs in practice. They also have an important role in providing coordination and cooperation among and between compliance mechanisms. Yet, they are generally hosted by an IGO. This is good for improving the functioning of the CM, as it makes easy the use of “technical expertise, inter-institutional networking and resource availability” (Fodella, 2009:366) on the one hand. However, on the other hand, it raises the problem of power-balance between the host organization and the secretariat. In fact, although the IGO hosting the secretariat has no competence on the COP or subsidiary bodies, it has powers on the staff’s employment conditions, appointment..etc. In addition, as they are located in different places from the related IGO’s secretariat, the problem of coordination also raises (Chambers, 2008).

It can be suggested to co-locate MEA secretariats instead of applying the present system involving the rotating meeting locations. Yet, the possibility of the “fierce competition” (Oberthür, 2002:322) which can be emerged between host countries makes its realization difficult in practice. Moreover, it is also argued that the present system has also some advantages, such as “[a]rranging for separate meetings limits the overall administrative and organisational burden for host countries, [r]otating meeting places also serves the purpose of heightening awareness of the respective environmental problem in the host country/region” (Oberthür, 2002:322). To abandon this system means to abandon its advantages (Oberthür, 2002).

- Clustering of MEAs’ common functions (such as implementation review and compliance (including dispute settlement), have potential advantages relating to reducing the costs, enhancing coherence and making the overall functioning more efficient. Nevertheless, due to the diverse functional needs of CMs in MEAs, successful harmonization of them would require substantial similarities in their functional needs (Oberthür, 2002).

Regarding organizing meetings of representatives from different mechanisms, the meetings of the national ozone focal points in particular regions funded by Montreal Protocol Multilateral Fund can be given as an example. These regional meetings can support the creation and the expansion of networks between government officials for gathering and sharing information, and also can help the emergence of pressure (politic or public) on non-compliant actors for bringing them back to compliance (Oberthür, 2001; Raustiala, 2001). Also, the efforts under the CM of Kyoto Protocol for establishing a dialogue with compliance bodies under other treaties to exchange information on compliance-related matters (MOP 8_Compliance, para.6). can be expressed as positive attempts towards further dialogue between different bodies studying on compliance-related issues.

Finally, as an additional note, it should be stressed that, while considering on the interlinkages between different MEAs and their CMs and on using these interlinkages for their functioning more effectively, it is certainly necessary to think on their own characteristics in a more elaborated and careful way.

To illustrate, given the interlinkages between the Montreal and Kyoto Protocols, which have been chosen as case studies of this thesis, it becomes clear that, both Protocols involve systems created for dealing with atmospheric problems, -aiming to stabilize “greenhouse gas concentrations in the atmosphere”(art.2, UNFCCC) and “to prevent depletion of the ozone layer” (art.2.1, VC).

Indeed, providing the phase-out of ODSs (which are also GHGs), regulating and preventing the growth of them, the Montreal Protocol has seriously contributed the efforts for struggling the troubles of climate change and for reducing its effects on the earth (Newman, 2009; Zaelke and Grabel, 2009). On the other hand, the Kyoto Protocol has also served since its creation for the success of the Montreal Protocol’s aims and efforts.

Nevertheless, both can also serve for the failure of each other as well, if a good coordinated relation between the relevant bodies of the two Protocols can not be established between them. To illustrate, HFCs, PFCs and SF6 were included in the group of GHGs, yet, the problem is that as HFCs have been promoted as substitutes for CFCs and other ODS, this could result in compliance problems- delaying ODS phaseout- under the Montreal Protocol (Oberthür, 2001).

CHAPTER VI

CONCLUSION

The design of this research was based on the main research question asking whether CMs created under MEAs can contribute to ensure and improve compliance of the parties with their commitments under MEAs. On the basis of this question, sub-questions which have formed the different sections of the thesis were also asked, e.g. questions on the meanings of the concepts of compliance, CM and MEA (chapter 2), on the two basic explanatory models (approaches) on compliance (chapter 2), on the development of CMs, the reasons of their emergence, the preparatory and triggering reasons behind their development, also the questions on the limitations of traditional means and on the main characteristics of CMs (chapter 3), and the questions on the basic characteristics of the case studies's components -gathering information-NCPs and response measures- and their operation in practice (chapter 4), and finally questions on the ways of improving CMs to make them more effective on meeting the demands for providing better compliance, in the short run and for better governance in the long run (chapter 5).

The research method applied is a comparative case analysis based on both international relations and international environmental law literatures.

With respect to the case selection, it should be underlined that they were chosen particularly because, it was considered that, both Protocols of Kyoto and Montreal, can render beneficial lessons for the themes in discussion in the face of the great number of practices experienced, and outcomes stemmed from them can be employed for finding out the possible ways of enhancing compliance.

Overall, the first section of the thesis, identifying its outline and the way that should be forward, highlighted the major argument of the study as to improve the current system of the CMs, eliminating its shortcomings and strengthening the coordination between different mechanisms, for ensuring better compliance with

the commitments under MEAs in the short term and perhaps better environmental governance in the long term.

In the second section, in order to enable and facilitate the discussion on compliance and compliance mechanisms under MEAs, the focus was on clarifying what the concepts of compliance and compliance mechanisms and MEA mean in general, and in the context of this study in particular. In this sense, regarding the concept of compliance, it was stated that, in this study, compliance would be used to explain exclusively whether the states' (party to the related MEA) behaviour conform to the agreement-based requirements (procedural-substantive), because of MEAs' compliance mechanisms, rather than conform to the broader categories of other non-explicit rules, like principle and norms and upholding the spirit of the treaty. Thus, according to this definition, non-compliance occurs when the states' behaviour departs from the related MEAs' requirements.

Before proceeding further, it was also scrutinized what the concept of compliance mechanism (CM) within the multilateral environmental agreement (MEA) refer to and how it can be defined within the context of this study. For this purpose, firstly, MEA and also environmental regime were defined, due to the fact that IEL has been developed mostly through environmental regimes created under these MEAs. Then, after mentioning about diverse categorizations made for defining CMs by different scholars, the definition of CMs under MEAs as employed under the thesis was put forward. According to this definition, CMs were identified as international-internal mechanisms of MEAs involving three components: information-gathering, NCPs, response measures.

In this section, two basic explanatory models on compliance mechanisms were also focused on: management approach which has been very effective on the design of the CMs under MEAs and enforcement approach which has been basically established by the critics made towards the management approach.

The examination made on these two models revealed that, both approaches have similarities, but at the same time, basic differences particularly regarding the reasons of non-compliance and the forms of sanctions (either in the form of coercive economic or military, or in the form of social enforcement). There are

also some missing elements regarding other forms of free-riding like non-participation in both approaches. In addition, depending on the problem and its conditions, each can explain different aspects of compliance processes, and under some circumstances, neither of them can be adequate to explain the existing situation. So, different approaches can be required for different countries, depending on their features with respect to compliance. Regarding the question which one is better to promote compliance and to improve environmental quality, it was also exposed that, in the current system, combining the two approaches (management approach-enforcement approach), dominantly leaning on the management approach in the short period, raises as the best way, instead of leaning on merely harder mechanisms in line with the enforcement approach.

The third section involved mainly two sub-sections: development of CMs and the components of a CM.

By following these sub-sections, first of all, the development of compliance mechanisms and reasons behind their development was discussed briefly through preparatory and triggering reasons.

Of those, within the preparatory reasons, the followings were analyzed: the change in the international system and the concept of sovereignty, the distinct features of IEL from other fields of international law, requiring the application of primarily preventive approach, and of the MEAs which do not have reciprocal obligations as different from bilateral agreements. With regard to the triggering reasons, the limitations of traditional means and the features making CMs more attractive and preferable were studied on.

Then, three main components of the CM complementing and supporting each other in line with the definition given in the second chapter were focused on: gathering information reviewing the parties' performance, institutionalised multilateral NCPs (including the legal basis of NCPs, institution created under NCPs: Committee, procedural phases and safeguards), and multilateral non-compliance response measures (including positive measures, negative measures and their binding effect). In that part, it was only aimed to make a general overview on the system of the CMs, to form a basis for the subsequent part on case studies of the thesis.

In the fourth section of the thesis, based on the background information on compliance mechanisms given in general in the previous chapters, a comparative analysis was made between compliance mechanism under Montreal Protocol (MP) and compliance mechanism under Kyoto Protocol (KP).

While doing this analysis, firstly, the history of their development up to the present particularly taking the evolution of the NCPs- which have formed the building block of the entire mechanism -as basis for examination was studied on. Then, their three components and the application of the mechanisms in practice was explored. Thus, it was aimed to make the analysis on the basis of four basic dimensions: their three main components (gathering information, NCPs -involving Committee, procedures and phases- and response measures) and functioning in practice.

In the final section, based on its overall assessment on existing compliance mechanisms made so far, a search was made to find out whether it is necessary to make possible improvements of weaknesses of the current mechanisms for better compliance. In this respect, benefiting from the key outcomes stemmed from two cases analyzed in the thesis, it was focused on the ways of improving their components and operation and providing stronger coordination between CMs.

After submitting this brief summary of the previous chapters, from now on, the basic findings of the thesis will be indicated on the basis of two case studies and four dimensions: gathering information, procedures/institutional structure, responses and their operation in practice.

Regarding the first dimension, gathering information on the parties' performance, it should be stated that, nearly all the parties of both Montreal and Kyoto Protocols are tended to comply with reporting obligations from the beginning. But still, there are some challenges for both CMs which should be coped with, like self-reporting, complexity of the substances that should be reported, challenge of capacity-building, the quality and reliability of data, need of harmonization, no third-party monitoring and verification, insufficiency of public, NGO participation.

With respect to non-compliance procedures, there are main findings which should be identified in four sub-groups: institutional structure, procedural safeguards, the role of NGOs in CMs and financial challenges.

On the institutional structure, it is concluded that, each mechanism under the KP and MP gives competences to different organs to decide on non-compliance and also to adopt responses about it. Under the CM of the MP, the ImplCom can have a strong impact on the decisions made by the MOP with its recommendations, as the MOP usually evaluates the circumstances of the matter on the basis of the ImplCom's report including these recommendations. The CM under the KP seems more promising than that of the MP, as it gives the power to decide on non-compliance to the Committee with its two branches, FB and EB, whose members should be qualified in climate change and in relevant fields (the scientific, technical, socio-economic or legal fields), independently of the political organ of the mechanism.

Regarding the Committees' impartiality and independency, it is underlined that, under the CM of the MP, ImplCom consists of parties elected by the MOP. This is questionable as experts serving in their personal capacity as members of the Committee are expected to be more independent than representatives of the parties. Additionally in terms of requirements on parties' representatives, there is no criteria in the NCP, MP. This is most possibly because, the dominant view among the parties is that each party should have the right to decide on the background of its representative. Under the Kyoto Protocol, on the other hand, members of the EB should have also legal experience and should serve in their personal capacities. There are very crucial provisions supporting the independency and impartiality of the Compliance Committee, such as the suspension of the membership of a member when he is found to have materially violated the independency and impartiality of the Committee.

The research also displays that, the Kyoto Protocol's NCP generally has more detailed rules on the procedural structure and necessary procedural safeguards in the process of related proceedings. Indeed, as different from Kyoto Protocol's NCP, in the MP's NCP, it is not possible to find provisions concerning the rights of the party in question. The mechanism under the MP includes strict timelines for

different processes of the proceedings. However, contrary to the Kyoto Protocol's CM, they are not so much in number and not providing a clearly defined timetable for each step in the proceedings of the ImplCom. There is also no expedited procedure in the CM, MP. The CM, KP, through its strict predetermined timetables and the expedited procedure, raises as having more potential to prevent time-consuming. With respect to transparency, the NCP Section VIII(6), KP allows information to be kept from the public until the conclusion of the proceedings on request of the party being investigated and at the discretion of the EB. However, this has not been used till to date, and transparency has been supported both by the ComplCom and its two branches. The NCP, Montreal Protocol, para.16, opens the way of making the ImplCom's reports available to anyone upon request, thus providing its publicity. It also makes available all information exchanged by or with the ImplCom related to its any recommendation to the MOP to any party upon its request. However, it restricts this opportunity with the reports not containing any confidential information, and with the obligation to protect the confidentiality of information that the part has received in confidence. Moreover, it obliges the members of the ImplCom and the parties involved in its deliberations to ensure the confidentiality of information they receive in confidence. Here, the questions can raise about determining whether information is confidential or not, and the possible results of not meeting with these rules of the NCP. Finally, under the CM, KP, as a rule, there is no opportunity to appeal against decisions of the branches of the ComplCom. As an exception, it is possible for the parties to appeal to the MOP against final decisions of the EB relating to emissions targets about whether the rules of the due process are applied to the party concerned. Under the CM, MP, even this kind of appeal opportunity is not possible. There is also no support for creating such a mechanism, particularly because, it would be against decisions of the MOP, as different from the appeal applied in the Kyoto Protocol's CM.

As regards strengthening the role of NGOs in CMs, it is found that, under the MP, NGOs can participate to the meetings of the MEA's organs as observers, but if there is no objection of the parties. Yet, in the assessment stage of the reporting, their role is restricted further, as they usually can not attend to the meeting for

assessing the report, if of any one party requests. If they are admitted to participate, they can not have the right of veto (e.g.VC, art.6(5); MP art.11(5); RoP 7(2)). Under the KP mechanism, they are merely allowed to submit relevant factual and technical information to either branch of the ComplCom. Like being in the MP, in the CM of the KP as well, there is no formal way of participation for NGOs to the ComplCom proceedings. Under both CMs, the IGOs and NGOs are also not allowed to trigger the NCP, they can solely submit relevant factual and technical information, and NGOs' participation to the activities of monitoring remains at low levels, as restricted to only some areas of monitoring.

For both, lack of proper financial resources also raises as an important problem, particularly because both mechanisms have to support financial and technical assistance towards developing country parties under the principle of common but differentiated responsibility.

With respect to the third dimension of the analysis, it is found that, while the CM under the MP adopts a list of measures of non-compliance, yet, no list of possible situations of non-compliance, that under the KP includes a system of predefined non-compliance situations with predefined responses. This results in a debate questioning which system is better for the compliance mechanisms, and it also provides the emergence of different views on the situation.

Indeed, it is possible to argue that, as the evaluation phase of non-compliance should not involve much flexibility, instead, less flexibility and less political but more judicial features in itself, determining the fixed measures according to the circumstances of non-compliance can enhance the predictability. Nevertheless, even just adopting a list of measures like in the CM under the MP, can be seen as an restrictive factor on the mechanism and its flexibility, even though there is not a complete list of measures that should be taken against non-compliance, and the MOP is still free to apply different measures for different circumstances. This is because, it draws the possible borders of being in compliance and in non-compliance through this kind of list. So, the system in the CM under the KP can be seen improper, as it can also prevent the choice of appropriate consequences to the circumstances of each individual case at hand. However, because this system has been successfully implemented so far in practice, it is proposed for the

Montreal Protocol system as well. Yet, under the CM of the MP, developing such criteria in a formal list is considered as something that should be achieved over time (*Ad Hoc* WG, 1998: 5-6, para.27).

Also, it is expressed that, for both, there have been some discussions on the binding status of the decisions. Although it is observed that facilitative response measures rather than punitive ones have been preferred under both ones in practice, there has been still no consensus on this matter. However, all measures applied by the MOP under the MP are necessarily accepted as recommendatory, rather than mandatory. In the Kyoto Protocol's system, except the measure requiring deductions of assigned amounts at a penalty rate, the other measures can be considered to be within the implied powers of the Protocol's organs, that is, within the competence of the EB. It should be kept in mind that, as the cooperative-facilitative approach is dominant under both mechanisms, the application of response measures can be effective even without a formally binding status, when a strong cooperation and coordination between parties can be ensured within the system.

Finally, on the last dimension-functioning of the mechanisms in practice-, the findings stemming from the analysis on the different non-compliance cases brought before the CMs of both MP and KP express the followings:

Under the CM of the MP, the first type of triggering by the party against another party has not arisen to date, while the second type arose by CEITs in 1990s. But, the most used one is the third type, triggering by the Secretariat. Many parties, both developed and developing, have met their phase out targets in line with their schedules. Thus, a high level of compliance rate on the commitments of the parties, contributing to a decline in the production and consumption of ODSs, has been achieved. None of the parties has been deprived of international assistance or encountered with the measures consistent with item C of the indicative list of measures. Except the application of trade restrictions and conditional assistance (even it was usually considered favourably in order to provide funding for projects to implement its national programme) on some parties (like Russia, Belarus and Ukraine), negative measures have not been applied against non-compliant parties. Even though there seems a combination of

two approaches (enforcement approach with punitive measures like restricting trade with non-parties to the MP, and management approach with facilitative-positive measures, like granting developing parties financial assistance or a ten year grace period, and strengthening their capacity building), management approach appears as more dominant approach in the CM of the MP.

Under the CM of the KP, likewise under the CM of the MP, despite the existence of opportunity of the parties to trigger the mechanism, there has been no submission to the EB by the parties. The submissions made, up to now, have been triggered by the ERTs. FB has been applied only in the case of QoI raised against the 15 Annex I parties by South Africa. However, no decision could be taken about these submissions; only in Latvia and Slovenia cases, the FB decided not to proceed, but, could not give decision on their substance. So, it is usually argued that the FB requires to be further developed to address the potential non-compliance through its early warning function. To date, the subjects of the QoIs that come before the EB have been generally about national system requirements, but not have been related to whether the concerned parties are in compliance with their 2012 emissions target, because, non-compliance with emissions targets is a subject that can not be brought before the EB until after the end of the first commitment period in 2012. Although the NCP of the Protocol involves various response measures (positive-negative, except financial measures or loss of credits), most of them have been very rarely applied in practice, if applied at all, have been very limited in scope. In parallel with the MP's CM, even there seems a system of bringing together the facilitation and enforcement functions under the same mechanism, management approach applying not only LoC but also LoA and equipped with facilitative-positive measures, raises as more dominant approach adopted in the KP's CM as well.

Overall, keeping all these findings of this study in mind, the following conclusions can be drawn on two case studies: although the CM under the KP has grounded on a shorter time of experience than the CM under the MP, both CMs under the MP and the KP reasonably offers a strong basis for ensuring and improving compliance with the related MEAs's requirements. As the CM under the KP is better structured than that of MP, with a more detailed and

comprehensive institutional structure (with two branches), formalized procedures based on a quasi-judicial character and through involving precise time limitations on the duration of proceedings and specific deadlines for intermediate steps in the process, it raises as well-functioning as that of MP, and in some cases, more effective than that of the MP. It also promises much more given that an agreement over the second commitment period could be achieved to lead in the last MOP (from 1 January 2013 to 31 December 2020) in MOP (FCCC/KP/CMP/2012/L.9).

Then, it can be concluded that, the assessment of existing compliance mechanisms made so far in the thesis displays that, CMs under the MP and the KP have already played largely a more effective role in ensuring compliance than traditional means such as Law of Treaties, responsibility of states, dispute settlement procedures (DSPs), and so even their current system reasonably offers a strong basis for ensuring and improving compliance with the related MEAs's requirements.

When weighed their strengths and weaknesses, it also becomes clear that, they have potential to seriously contribute to better compliance. Indeed, their primary potentials -on reducing workload, costs, duplication and conflicts of efforts and creating consistency hindering diverging assessments on the similar issues, thus, on reducing the potential tensions between the mechanisms- can eventually speed up the progress towards better compliance in the short run and better environmental governance through CMs in the long run. Even if level of such contribution -it can appear as not so high- remains uncertain now, appears to be rather positive than negative on balance, if their improvement of components and functioning in practice and coordination between them can be achieved properly.

Nevertheless, these conclusions should not be accepted as valid for all CMs, as it is naturally not possible to draw firm conclusions about all CMs' overall functioning capacity and affect on ensuring compliance, just based on two cases analysed within this thesis, even if they are generally admitted as the most successful ones among others. Yet, still, the lessons learnt from the Montreal and Kyoto Protocol CMs experiences can provide to understand the weak sides of these mechanisms which can both involve common deficiencies related to their

each component and also special compliance challenges resulting from their specific characteristics. Thus, they can also help the establishment of more efficient compliance mechanisms under different MEAs.

Based on the findings, then, it should be finally stated that, in such a decentralized system of environmental agreements and institutions, to benefit from the potential contributions of the current system through further improving its functioning and creating conditions for stronger coordination between different mechanisms, -even if it should not be advocated as a panacea for compliance issue-, raises as an important means of enhancing CMs of the MEAs. Therefore, in this thesis, it is argued that, in case that the weaknesses of the compliance mechanisms are improved and the coordination between them is ensured, the current system of compliance mechanisms can be responsive for better compliance in the short term, and for better environmental governance in the long term.

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ANNEXES

ANNEX A: COPS TO THE VIENNA CONVENTION AND MOPS TO THE MONTREAL PROTOCOL*

Session No.	Date	Location	Session No.	Date	Location
COP 1	26-28 April 1989	Helsinki, Finland	MOP 1	2-5 May 1989	Helsinki, Finland
			MOP 2	27-29 June 1990	London, England
COP 2	17-19 June 1991	Nairobi, Kenya	MOP 3	19-21 June 1991	Nairobi, Kenya
			MOP 4	23-25 Nov. 1992	Copenhagen Denmark
COP 3	23 Nov. 1993	Bangkok, Thailand	MOP 5	17-19 Nov. 1993	Bangkok, Thailand
			MOP 6	6-7 Oct. 1994	Nairobi, Kenya
			MOP 7	5-7 Dec. 1995	Vienna, Austria
COP 4	25-27 Nov. 1996	San José, US	MOP 8	25-27 Nov. 1996	San José, US
			MOP 9	15-17 Sept. 1997	Montreal, Canada

			MOP10	23-24 Nov. 1998	Cairo, Egypt
COP 5	29 Nov.-3 Dec.1999	Beijing, China	MOP 11	29 Nov.-3 Dec. 1999	Beijing, China
			MOP 12	11-14 Dec. 2000	Ouagadou gou,Burkin a Faso
			MOP 13	16-19 Oct. 2001	Colombo, Sri Lanka
COP 6	25-29 Nov. 2002	Rome,Italy	MOP 14	25-29 Nov. 2002	Rome,Italy
			MOP 15	10-14 Nov. 2003	Nairobi, Kenya
			MOP 16	22-26 Nov. 2004	Prague, Czech Republic
COP 7	12-16 Dec. 2005	Dakar	MOP 17	12-16 Dec. 2005	Dakar, Senegal
			MOP 18	30 Oct.-3 Nov. 2006	NewDelhi, India
			MOP 19	17-21Sept. 2007	Montreal, Canada
COP 8	16-20 Nov. 2008	Doha	MOP 20	16-20 Nov. 2008	Doha, Qatar
			MOP 21	4-8 Nov. 2009	Port Ghalib, Egypt
			MOP 22	8-12 Nov. 2010	Bangkok, Thailand

COP 9	21-25 Nov. 2011	Bali,Indon esia	MOP 23	21-25 Nov. 2011	Bali, Indonesia
			MOP 24	12-16 Nov. 2012	Geneva, Switzerlan d

* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at: http://ozone.unep.org/new_site/en/index.php.

ANNEX B: MOPS AND THEIR DECISIONS RELATED COMPLIANCE*

MOP 7 (5-7 December 1995), Vienna,	Decisions VII/15-19(respectively): Compliance with the Montreal Protocol by Poland, Bulgaria, Belarus, Russian Federation, Ukraine
MOP 8 (25-27 November 1996), San Jose	Decisions VIII/22, 23, 25: Compliance by Latvia, Lithuania and Russian Federation
MOP 9 (15-17 September 1997), Montreal	Decisions IX/29-31: Compliance by Latvia, Lithuania and the Russian Federation Decision IX/32: Compliance by the Czech Republic with the freeze in consumption of methyl bromide in 1995
MOP 10 (23-24 November 1998), Cairo	Decisions X/20-28: Compliance by Azerbaijan, Belarus, the Czech Republic, Estonia, Latvia, Lithuania, the Russian Federation, Ukraine, Uzbekistan
MOP 11 (11-14 December 1999), Beijing	Decisions XI/24-25: Compliance by Bulgaria, Turkmenistan
MOP 13 (16-19 October 2001), Colombo	Decision XIII/16: Potential non-compliance with the freeze on CFC consumption in article 5 parties in the control period 1999-2000 Decisions XIII/17-25: Compliance by the Russian Federation, Armenia, Kazakhstan, Tajikistan, Argentina, Belize, Cameroon, Ethiopia, Peru.
MOP 14 (25-29 November 2002), Rome	Decision XIV/17: Potential non-compliance with the freeze on CFC consumption by parties operating under article 5 for the control period July 2000 to June 2001 Decision XIV/28: Non-compliance with consumption phase-out by parties not operating under article 5 in 2000(on Belarus and Latvia) Decisions XIV/18-26, 35: Compliance by Albania, Bahamas, Bolivia, Bosnia and Herzegovina, Namibia, Nepal, Saint Vincent and the Grenadines, Libyan Arab Jamahiriya and Maldives, the Russian Federation
MOP 15 (10-14 November 2003), Nairobi	Decision XV/21: Potential non-compliance with consumption of Annex A, group I, ozone-depleting substances (CFCs) by Article 5 parties for the control period 1 July 2001-31 December 2002 Decision XV/22: Potential non-compliance with consumption of Annex A, group II,

	<p>ozone-depleting substances (halons) by article 5 parties in 2002</p> <p>Decision XV/23: Potential non-compliance with consumption of the Annex C, group II, ODS(hydrobromofluorocarbons) by Morocco in 2002</p> <p>Decision XV/24: Potential non-compliance with consumption of the controlled substance in Annex E (methyl bromide) by non-Article 5 Parties in 2002(on Latvia and Israel)</p> <p>Decision XV/2: Potential non-compliance with consumption of the ODS in Annex E (methyl bromide) by article 5 parties in 2002</p> <p>Decisions XV/26-45: Compliance by Albania, Armenia, Azerbaijan, Bolivia, Bosnia and Herzegovina, Botswana, Cameroon, the Democratic Republic of the Congo, Guatemala, Honduras, the Libyan Arab Jamahiriya, Maldives, Namibia, Nepal, Papua New Guinea, Qatar, Saint Vincent and the Grenadines, Uganda, Uruguay, VietNam.</p>
MOP 16(22–26 November 2004), Prague	<p>Decision XVI/19: Potential non-compliance with consumption of Annex A, group II, ODS(halons) by Somalia in 2002 and 2003</p> <p>Decision XVI/20: Potential non-compliance in 2003 with consumption of the controlled substance in Annex B, group III (methyl chloroform) by article 5 parties</p> <p>Decisions XVI/21-30: Compliance by Azerbaijan, Chile, Fiji, Guinea-Bissau, Lesotho, Libyan Arab Jamahiriya, Nepal, Oman, Pakistan, Saint Vincent and the Grenadines</p>
MOP 17 (12–16 December 2005), Dakar	<p>Decision XVII/30: Potential non-compliance in 2004 with consumption of the controlled substances in Annex B group I (other fully halogenated chlorofluorocarbons) by China</p> <p>Decision XVII/35: Potential non-compliance in 2004 with the controlled substances in Annex A, group I (CFCs) by Kazakhstan</p> <p>Decisions XVII/25-29, 31-33, 36-38: Compliance by Armenia, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Chile, Ecuador, Federated States of Micronesia, Fiji, Kyrgyzstan, the Libyan Arab Jamahiriya and Sierra Leone</p>
MOP 18(30 October–3 November 2006), New Delhi	<p>Decision XVIII/24: Potential non-compliance in 2005 with the control measures of the MP overning consumption of the controlled substances in Annex A, group</p>

	<p>I, (CFCs) by Eritrea Decision XVIII/27: Potential non-compliance in 2005 with the control measures of the MP governing consumption of the controlled substance in Annex B group II, (carbon tetrachloride) by the Islamic Republic of Iran Decisions XVIII/20-23, 25, 28, 30-33: Compliance by Armenia, the Democratic Republic of the Congo, Dominica, Ecuador, Greece, Kenya, Mexico, Pakistan, Paraguay, Serbia</p>
MOP 19(17–21 September 2007), Montreal	<p>Decision XIX/23: Potential non-compliance in 2005 with the provisions of the MP governing consumption of the controlled substance in Annex E (methyl bromide) by Saudi Arabia Decisions XIX/21-22, 27: Compliance by Greece, Paraguay, the Islamic Republic of Iran</p>
MOP 20(16–20 November 2008), Doha	<p>Decision XX/18: Potential non-compliance in 2006 with the provisions of the MP in respect of consumption of the controlled substances in Annex A, group I, (chlorofluorocarbons) by Solomon Islands Decisions XX/16, 19: Compliance by Ecuador, Somalia</p>
MOP 21(4–8 November 2009), Port Ghalib	<p>Decisions XXI/17-23, 25-26: Compliance by Bangladesh, Bosnia and Herzegovina, the Federated States of Micronesia, Mexico, Saudi Arabia, Solomon Islands, Somalia, Turkmenistan, Vanuatu</p>
MOP 22(8–12 November 2010), Bangkok	<p>Decisions XXII/13, 15, 16, 18: Compliance by Singapore, Saudi Arabia, the Republic of Korea and Vanuatu</p>
MOP 23(21-25 November 2011), Bali	<p>Decision XXIII/23: Potential non-compliance in 2009 with the provisions on consumption of the controlled substances in Annex A, group II (halons), by Libya Decisions XXIII/26, 27: Compliance by the European Union, the Russian Federation</p>
MOP 24 (12-16 November 2012), Geneva	<p>Decision XXIV/18: Non-compliance with the MP by Ukraine</p>

* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at: http://ozone.unep.org/new_site/en/index.php.

ANNEX C: SUMMARY ON IMPLCOM REPORTS ON COMPLIANCE OF THE PARTIES TO THE MONTREAL PROTOCOL*

ImplCom 3, Geneva, 11 April 1992	No cases of non-compliance with the control measures of the Protocol/however, many parties failed to report complete data on time.
ImplCom 4, Geneva, 14 Sept. 1992	Concern was expressed at non-reporting or late reporting by many parties/although many parties achieved reducing their consumption of controlled, there are some art. 5 parties having increased consumption of controlled substances, particularly halons.
ImplCom 5, Geneva, 9 March 1993	The status of reporting from the Central and Eastern European Countries (CEECs) was discussed
ImplCom 6, Geneva, 26 August 1993	The Committee noted the improvement in the status of reporting and its satisfaction with the reduction of consumption of ODS by many of the parties.
ImplCom 7, Bangkok, 16-17 Nov. 1993	Nearly all non-art. 5 parties had reported their data for 1991 and most of them had reported their data for 1992. the parties that had consistently failed to provide data concerning their production and consumption of controlled substances as required by the Protocol were also reported.
ImplCom 8, Nairobi, 4 July 1994	Even though there had been an encouraging progress, no data had yet been received from some of the parties (only two parties operating under art. 5 had reported production data, Argentina and China).
ImplCom 9, Nairobi, 3 October 1994	Due to its problems in implementing a reduction of CFC consumption in the years 1994 and 1995, Poland wished to join the limits for the two years and import the maximum possible in 1994 and 1995 to avoid tensions within Polish industry and the economy. Since Poland had not yet ratified the Copenhagen Amendment, it was not legally bound by art. 2, par. 3 of the Protocol. So, it was decided by the ImplCom that once Poland had ratified the Amendment, it could explain its non-compliance under para. 4 of the NCP.
ImplCom 10, Geneva, 25 August 1995	ImplCom decided that, the statement made by the Russian Federation on behalf of Belarus, Bulgaria, Poland and Ukraine, constituted a submission under para. 4 of the NCP.

ImplCom 11, Geneva,31 August 1995	Consultations with the other countries (Belarus, Bulgaria, Poland and Ukraine) concerned by the statement of the Russian Federation regarding non-fulfilment of their obligations under the MP.
ImplCom 12, 27-29 Nov. and 1 Dec. 1995	Information was submitted by the Russian Federation, Belarus and Ukraine on recycling facilities, statistical data and measures on the phase-out of ozone-depleting substances. The Committee noted the countries of which reports were overdue by more than two years. It stressed that the trend of late reporting should end particularly in respect of those countries in which institutional strengthening projects have been carried out under the Multilateral Fund.
ImplCom 13, Geneva, 18-19 March 1996	The ImplCom noted, on Belarus, the Russian Federation and Ukraine, that while the information available showed a situation of non-compliance for 1996 for these parties, they had taken important steps in complying with relevant MOP Decisions (Decision VII/17, 18, 19) and towards achieving full compliance with the control measures of the Protocol. The Secretariat received a letter in December 1995 from the Governments of Estonia, Latvia and Lithuania requesting a longer timeframe for phasing out ozone-depleting substances because of the institutional and financial problems facing their countries. The Secretariat had advised Estonia that the NCP was only applicable to parties, and Latvia and Lithuania to make a formal submission under par. 4 of the NCP. In response, Lithuania had submitted a plan of action to phase out ozone depleting substances, while no response was received from Latvia.
ImplCom 14, Geneva, 23 August 1996	<p>On Latvia and Lithuania: The ImplCom noted that Latvia and Lithuania would be in a situation of non-compliance with the Montreal Protocol in 1996 and there was a possibility of non-compliance by them also in 1997, despite their efforts to meet its obligations under the Protocol, even in the absence of external financial assistance for investment projects.</p> <p>On the Russia Federation: it also noted that it was in a situation of non-compliance with the Protocol in 1996, despite its considerable progress made, so, the situation regarding the phase-out of ozone-depleting substances should be kept under review and the disbursement of financial assistance for ODS-phase-out in the country should continue to be contingent on developments with regard to non-compliance and the settlement of any problems with the ImplCom.</p>
ImplCom 15, San José, 18 November 1996	<p>The ImplCom noted that;</p> <p>On Belarus: Belarus was in a situation of non-compliance with the Protocol in 1996, and it ratified the London Amendment.</p> <p>On Bulgaria: the information provided by the Government of Bulgaria and its efforts to implement the Protocol fully.</p>

	<p>On Poland:Its ratification of both the London and Copenhagen Amendments to the Montreal Protocol.</p> <p>On Ukraine:It was in the process of ratifying the London Amendment.It had established a final phase-out for ODS in 1999, It had drafted provisions to license the import and export of ODS. It had submitted data on consumption and production of ODS up to 1995 It had phased out the production of carbon tetrachloride, the only ODS produced in Ukraine, by 1994.</p> <p>On Latvia and Lithuania:draft decisions VIII/19 and VIII/20 regarding non-compliance with the Montreal Protocol by Latvia and Lithuania, respectively.</p> <p>On Russian Federation:draft decision VIII/21 regarding non-compliance with the MP by the Russian Federation.</p> <p>On Czech Republic:The ImplCom noted that;</p> <p>non-compliance by Czech Republic with the halons reduction schedule for 1994, as production of halons in 1994 was in violation of the control measures established in the amended Montreal Protocol,no further action was necessary regarding non-compliance in 1994, in view of the total phase-out in 1995.</p>
<p>ImplCom 16, San José, 20 Nov. 1996</p>	<p>On Russian Federation:according to its written submissions and the statements of the representative of the Russian Federation at the ImplCom 13, 14, 15 and 16, the Russian Federation was in a situation of non-compliance with the Montreal Protocol in 1996,</p> <p>On Czech Republic:no further action is necessary in view of the Czech Republic's complete phase out of halon consumption according to the data submitted to the Secretariat pursuant to art.7 of the Montreal Protocol for 1995</p>
<p>ImplCom 17, Geneva, 15-16 April 1997</p>	<p>On Latvia, Lithuania:the situation regarding ODS phase-out in Lithuania should be kept under review.</p> <p>On Poland:Poland's consumption of CFCs in 1996 was below the level of the essential-use exemptions granted it by the MOP 6.</p> <p>On Russian Federation:the Russian Federation was in non-compliance with the Protocol for 1996;</p> <p>it had continued to produce ODS during 1996 contrary to the provisions of the Montreal Protocol and decision VII/18;it had exported both new and reclaimed substances to, and also imported ODS from, many Parties operating under art. 5 and those Parties not operating under that art.</p>

<p>ImplCom 18, Nairobi, 2-4 June 1997</p>	<p>On Latvia and Lithuania:To urge them to ratify the London Amendment by October 1997 as indicated in their timetable;they are in a situation of non-compliance with the MP in 1997 and there is a possibility of non-compliance in 1998 in light of the their commitment reflected in the their country programmes and related official communications to the parties, international assistance, particularly by the GEF, should be considered favourably in order to provide funding for projects to implement their programme for phasing out ozone depleting substances in the countries;to keep under review the situation with regard to ODS phase-out.</p> <p>On the Russian Federation:the Russian Federation was in a situation of non-compliance with the Protocol for 1996 and there is an expectation of non-compliance in 1997. To keep under review the situation regarding the phase-out of ozone-depleting substances in the Russian Federation</p>
<p>ImplCom 19, Montreal, 8-10 Sept. 1997</p>	<p>On the Russian Federation:international assistance, particularly by the GEF, should continue to be considered favourably in order to provide funding for the Russian Federation for projects to implement the programme for the phaseout of the production and consumption of ozone-depleting substances in the country.</p> <p>On Czech Republic: although the 1995 imports of methyl bromide exceeded the freeze level of 6.0 ODP tonnes for the Czech Republic, the average annual consumption for the two years 1995 and 1996 was below that level;no action should be taken on this non-compliance but the Czech Republic should be requested to ensure that similar cases did not occur again.</p>
<p>ImplCom 20, Geneva, 6-7 July 1998</p>	<p>On Latvia and Lithuania:Both had been requested to implement decisions IX/29 and IX/30. Lithuania had ratified both the London and Copenhagen Amendments, but Latvia did not complete the ratification of the London Amendment. Both were in non-compliance in 1996 with the control measures in art. 2 of the Protocol.</p> <p>The Secretariat' report listed a number of Parties whose data suggested they were in non-compliance in 1996 with the control measures in art. 2 of the Protocol (Azerbaijan, Belarus, Czech Republic, Estonia, Russian Federation, Ukraine,Uzbekistan).</p> <p>Their explanations regarding their non-compliance in 1996 and their plans to phase out ozone-depleting substances were outlined by the secretariat, and they were requested to attend the ImplCom 20 to provide further information and discuss the matter in detail.</p>

ImplCom 21, Cairo, 16 Nov. 1998	<p>The Committee agreed to recommend decisions (a-i) (Azerbaijan(a), Belarus(b), the Czech Republic(c),Estonia(d), Latvia (e), Lithuania(f), Russian Federation(g), Ukraine(h) and Uzbekistan(i)) contained in annex I to the present report, for adoption by the MOP.</p> <p>Annex I: Draft Decisions Submitted by the Implementation Committee For the Consideration of the meeting of the parties</p>
ImplCom 22, Geneva, 14 June 1999	<p>On Bulgaria:the Committee noted that Bulgaria had apparently been in non-compliance with the Protocol in 1996 and 1997, although it appeared to have been in compliance in 1998;</p> <p>On Turkmenistan:the Committee noted that Turkmenistan had apparently been in non-compliance with the Protocol in 1996 and 1997, although it appeared to have been in compliance in 1998;consideration of the updated data report for 1996, 1997 and 1998 under article 7 of the protocol</p>
ImplCom 23, Beijing, 27 Nov. 1999	<p>Consideration of information relating to any situations of non-compliance by some parties as well as their statements and adoption of any recommendations to the parties at their 11th meeting (Azerbaijan, Bulgaria, Latvia, the Russian Federation, Turkmenistan, Ukraine)</p>
ImplCom 24, Geneva, 10 July 2000	<p>Some parties operating under art. 5 had not reported some or all data for 1995, 1996 and 1997, and that the Secretariat was therefore unable to determine the baseline for phase-out for Annex A substances, the Committee decided to ask the Secretariat to send a letter to Estonia to alert that country to the deviation from the reduction schedule and requesting clarification on why the benchmark had not been met for Annex A and B substances. As a satisfactory explanation was not given for the deviation from the consumption reduction schedule in the cases of Israel, Kazakhstan and Turkmenistan, the Committee decided to ask the Secretariat to send letters to those countries requesting an explanation. Report of the Secretariat on compliance and on the follow-up on the recommendations of the previous meetings of the ImplCom Evaluation of Data Reported and Policies Adopted by art. 5 Parties to Achieve Compliance With the Initial Control Measures of the MP Fund Secretariat Report on CEITs -GEF secretariat.Progress in establishing licensing systems, regulations and policies-UNEP ozonation Programme</p>

<p>ImplCom 25, Ouagadougou BurkinaFaso</p> <p>9 Dec. 2000</p>	<p>The observer from Israel informed the Committee that, while it was true that a 3 per cent increase in methyl bromide consumption occurred in 1998, in 1999, the country had achieved a reduction of 30 per cent, as against the commitment of 25 per cent. Israel had also introduced a licensing system and was considering further regulations to control the handling of methyl bromide, and also the price, to prevent profiteering. He also assured the Committee of full compliance by Israel in future.</p> <p>The Russian Federation appealed to the parties for understanding after failing to complete the closure of ODS production facilities by June 2000 as agreed. The Committee noted that an agreement had been reached to halt all production of CFCs by 20 December 2000, and looked forward to receiving a report confirming the halt at its next meeting. With respect to those countries with economies in transition, specifically Armenia, Kazakhstan, Kyrgyzstan and Tajikistan, that had not yet submitted their phase-out plans to the Parties, the secretariat was asked to request them to submit their plans to be formulated in cooperation with the implementing agencies. The Committee agreed to recommend to the MOP that it should request Bosnia-Herzegovina and Togo, which were classified as art.5 countries, to provide an explanation in time for consideration by the Committee at its 26th meeting, as they had passed every deadline for the submission of baseline data.</p>
<p>ImplCom 26, Montreal,</p> <p>23 July 2001</p>	<p>Status of compliance with Decisions X/20 (Azerbaijan); X/21 (Belarus); X/22 (Czech Republic); X/23 (Estonia); X/24 (Latvia); X/25 (Lithuania); X/26 (Russian Federation); X/27 (Ukraine); and X/28 (Uzbekistan). The Committee agreed that it was important to determine the underlying country-specific reasons for any party's inability to achieve compliance and also that it was important to take into account whether a party was persistently in a state of non-compliance, or had only recently agreed phaseout benchmarks with either the parties or the GEF.</p> <p>Other countries with economies in transition:</p> <p>Armenia: To alert Armenia for its situation of potential non-compliance, and requesting explanatory information about its consumption figures.</p> <p>Bulgaria: To alert Bulgaria for its situation of potential non-compliance, and requesting explanatory information about its consumption figures.</p> <p>Potential non-compliance of art. 5 parties: arising out of the data report, as well as the status of compliance with decisions of the Parties, and recommendations of the Implementation Committee.</p> <p>Since the first control period for art. 5 phase-out of CFCs was 1 July 1999-30 June 2000, it was not possible to tell for certain whether any of these Parties was actually in non-compliance, but it</p>

	was reasonable to assume that at least those Parties reporting excess consumption in both 1999 and 2000 were potentially in non-compliance.
ImplCom 27, Colombo, 13 Oct. 2001	The Secretariat had been requested to write letters to several parties alerting them to their state of potential non-compliance.
ImplCom 28, Montreal, 20 July 2002	Review of the status of compliance with decisions of the parties and recommendations of the implementation committee on non-compliance issues: Argentina, Armenia, Bangladesh, Belize, Bulgaria, Cameroon, Chad, Comoros, Dominican Republic, Ethiopia, Honduras, Kazakhstan, Kenya, Mongolia, Morocco, Niger, Nigeria, Oman, Papua New Guinea, Paraguay, Peru, Russian Federation, Samoa, Solomon Islands, Tajikistan, Yemen)
ImplCom 29, Rome, 23-24 Nov. 2002	Review of the status of compliance with specific decisions of the parties by Bangladesh, Chad, Comoros, Honduras, Mongolia, Niger, Nigeria, Oman, Papua new guinea, Paraguay, Samoa (Decision XIII/16), Russian federation (Decision XIII/17), Armenia (Decision XIII/18), Kazakhstan (Decision XIII/19), Tajikistan (Decision XIII/20), Belize (Decision XIII/22), Cameroon (Decision XIII/23), Ethiopia (Decision XIII/24), Peru (Decision XIII/25)
ImplCom 30, Montreal, 4-7 July 2003	Review of the status of compliance with specific decisions of the Parties on:a)Non-compliance with data reporting requirements under art. 7 of the MP by parties temporarily classified as operating under art. 5 of the Protocol concerning, b) Non-compliance with data reporting requirement for the purpose of establishing baselines under art. 5 paras. 3 and 8 (d) concerning, c) Non-compliance with specific decisions.
ImplCom 31, Nairobi, 5-7 November 2003	Review of the status of compliance with specific previous decisions of the parties and recommendations by the ImplCom:a) Non-compliance with data reporting requirements under art. 7 of the MP by parties temporarily classified as operating under art. 5 of the Protocol, b) Non-compliance with data reporting requirements for the purpose of establishing baselines under art. 5, paras. 3 and 8 (d), c) Review of the previous recommendations by the Implementation Committee and new information on specific parties:
ImplCom 32, Geneva, 17 and 18 July 2004	Review of the status of non-compliance with specific decisions of the Parties and recommendations of the Implementation Committee:a) Non-compliance with data-reporting requirements for one or more of the base years (1986, 1989 or 1991) for one or more groups of controlled substances under Article 7 of the MP by parties operating under article 5 of the Protocol, b) Non-compliance with data reporting requirements under article 7 of the

	<p>MP by Parties temporarily classified as operating under article 5 of the Protocol, c) Non-compliance with data reporting requirements for the purpose of establishing baselines under article 5, paras. 3 and 8 (d), d) Potential non-compliance with consumption of substances in Annex A, Groups I and II (CFCs and halons), Annex C, Group II (hydrobromofluorocarbons) and Annex E (methyl bromide) (decisions XV/21, XV/22 and XV/25):e) Review of compliance with specific decisions by individual parties</p>
<p>ImplCom 33, Prague, 17-19 Nov. 2004</p>	<p>Review of the status of compliance with specific decisions of the parties and recommendations of the Implementation Committee on non-compliance:a) Parties required to limit their consumption of ozone-depleting substances according to the agreed benchmarks applicable for 2003, b) Follow-up on previous decisions and recommendations for individual parties, c) Follow-up on recommendations by the Implementation Committee for groups of parties</p> <p>Consideration of compliance issues arising out of the data report:</p> <p>(a) Data reporting;</p> <p>(b) Compliance with control measures.</p>
<p>ImplCom 34, Montreal, 2 July 2005</p>	<p>Review of the status of compliance with specific decisions of the parties on non-compliance:a) Non-compliance with data reporting for 2003 (Decision XVI/17), b) Non-compliance with data reporting for Parties temporarily classified as operating under article 5, para. 1, of the MP(Decision XVI/18), c) Follow-up on previous decisions requesting parties to submit explanations or plans of action for their return to compliance, d) Follow-up on previous decisions of the parties and recommendations of the Implementation Committee regarding compliance by parties with commitments contained in their approved plans of action for their return to compliance with the MP.</p>
<p>From ImplCom 35, Dakar, 7-9 Dec.2005 to ImplCom 49, Geneva, 8-9 Nov.2012</p>	<p>The ImplCom has usually adopted the following agenda related to the compliance issue which can change in some degree in some cases:</p> <ul style="list-style-type: none"> - Report by the Secretariat on data and information under articles 7 and 9 of the MP and on related issues. - Information provided by the Secretariat for the implementation of the MP on relevant decisions of the Executive Committee of the Fund and on activities carried out by implementing agencies (the UNDP, UNEP, UNIDO and the World Bank) to facilitate compliance by parties. - Follow-up on previous decisions of the parties and recommendations of the ImplCom on non-compliance-related

	<p>issues:</p> <ul style="list-style-type: none"> (a) Data-reporting obligations (b) Existing plans of action to return to compliance (c) Draft plans of action to return to compliance (d) Other recommendations and decisions on compliance (e) Plans of action for establishment and operation of licensing systems for ozone-depleting substances (for ex. at ImplCom 42) (f) Requests for change of baseline data (for ex. at ImplCom 41, ImplCom 49) <ul style="list-style-type: none"> - Consideration of other non-compliance issues arising out of the data report. - Consideration of the report of the Secretariat on parties that have established licensing systems (article 4B, para. 4, MP). - Information on compliance by parties present at the invitation of the ImplCom.
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* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at: http://ozone.unep.org/new_site/en/index.php.

ANNEX D: MOP DECISIONS ON COMPLIANCE OF THE ALL RELATED PARTIES TO THE MONTREAL PROTOCOL*

Parties categorized as operating under art.5 para. 1 of the MP	Related Decisions	Parties not categorized as operating under art. 5 para. 1 of the MP	Related Decisions
Albania	Decision XIV/18, Decision XV/26	Azerbaijan	Decision X/20, Decision XV/28, DecisionXVI/21, DecisionXVII/26
Argentina	Decision XIII/21	Belarus	Decision VII/17, Decision X/21, Decision XIV/28
Armenia ⁸³	Decision XIII/18, Decision XIV/31, Decision XV/27, Decision XVII/25, Decision XVIII/20	Bulgaria	Decision VII/16, Decision XI/24
Bahamas	Decision XIV/19	Czech Republic	DecisionVIII/24, Decision IX/32, Decision X/22
Bangladesh	DecisionXIV/29, Decision XVII/27, Decision XXI/17	Estonia	Decision X/23
Belize	Decision XIII/22, Decision XIV/33	European Union	DecisionXXIII/26
Bolivia	Decision XIV/20, Decision XV/29	Greece	DecisionXVIII/25, Decision XIX/21
Bosnia and Herzegovina	Decision XIV/21, Decision XV/30, Decision XVII/28, Decision XXI/18	Kazakhstan	Decision XIII/19, Decision XVII/35:

⁸³ Armenia was reclassified as developing country operating under art. 5 through Decision XIV/2, MOP 14 (2002).

Botswana	Decision XV/31	Latvia	Decision VIII/22, Decision IX/29, Decision X/24, Decision XIV/28
Cameroon	Decision XIII/23, Decision XIV/32, Decision XV/32	Lithuania	Decision VIII/23, Decision IX/30, Decision X/25
Chile	Decision XVI/22, Decision XVII/29	Poland	Decision VII/15
China	Decision XVII/30	Russian Federation	Decision VII/18, Decision VIII/25, Decision IX/31, Decision X/26, Decision XIII/17, Decision XIV/35 Decision XXIII/27
Democratic Republic of the Congo	Decision XV/33, Decision XVIII/21	Tajikistan	Decision XIII/20
Dominica	Decision XVIII/22	Ukraine	Decision VII/19, Decision X/27, Decision XXIV/18
Ecuador	Decision XVII/31, Decision XVIII/23, Decision XX/16	Uzbekistan	Decision X/28
Ethiopia	Decision XIII/24, Decision XIV/34		
Eritrea	Decision XVIII/24,		
Federated States of Micronesia	Decision XVII/32, Decision XXI/19		
Fiji	Decision XVI/23, Decision XVII/33		
Guatemala	Decision XV/34		
Guinea-Bissau	Decision XVI/24		

Honduras	Decision XV/35, Decision XVII/34	
Islamic Rep. of Iran	Decision XIX/27	
Kenya	Decision XVIII/28	
Kyrgyzstan	Decision XVII/36	
Lesotho	Decision XVI/25	
Libyan Arab Jamahirya	Decision XIV/25, Decision XV/36, Decision XVI/26. Decision XVII/37	
Maldives	Decision XIV/26, Decision XV/37	
Mexico	Decision XVIII/30, Decision XXI/20	
Namibia	Decision XIV/22, Decision XV/38	
Nepal	Decision XIV/23, Decision XV/39, Decision XVI/27	
Nigeria	Decision XIV/30	
Oman	Decision XVI/28	
Pakistan	Decision XVI/29, Decision XVIII/31	
Paraguay	Decision XVIII/32, Decision XIX/22	
Papua New Guinea	Decision XV/40	
Peru	Decision XIII/25	
Republic of Korea	Decision XXII/16	

Saudi Arabia	Decision XXI/21, Decision XXII/15	
Serbia	Decision XVIII/33	
Solomon Islands	Decision XXI/22	
Somalia	Decision XX/19, Decision XXI/23	
Qatar	Decision XV/41	
Saint Vincent and the Grenadines	Decision XIV/24, Decision XV/42, Decision XVI/3	
Sierra Leone	Decision XVII/38	
Singapore	Decision XXII/13	
Turkmenistan ⁸⁴	Decision XI/25, Decision XXI/25	
Uganda	Decision XV/43	
Uruguay	Decision XV/44, Decision XVII/39	
Vanuatu	Decision XXI/26, Decision XXII/18	
Viet Nam	Decision XV/45	

* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at:http://ozone.unep.org/new_site/en/index.php.

⁸⁴ Turkmenistan was reclassified as developing country operating under art. 5 through Decision XVI/39, MOP 17 (2005).

ANNEX E: MOP DECISIONS ON COMPLIANCE OF THE COUNTRIES WITH THEIR ECONOMIES IN TRANSITION (CEITS) TO THE MONTREAL PROTOCOL*

MOP 9 (15-17 September 1997)	Decision IX/32: Non-compliance by the Czech Republic with the freeze in consumption of methyl bromide in 1995
MOP 10 (23-24 November 1998)	Decisions X/20, 22, 23, 28: Compliance by Azerbaijan, the Czech Republic, Estonia, Uzbekistan
MOP 11 (11-14 December 1999)	Decisions XI/25: Compliance by Turkmenistan
MOP 13 (16-19 October 2001)	Decisions XIII/18, 19: Compliance by Armenia and Kazakhstan
MOP 15 (10-14 November 2003)	Decisions XV/28: Compliance by Azerbaijan
MOP 16 (22-26 November 2004)	Decisions XVI/21: Compliance by Azerbaijan
MOP 17 (12-16 December 2005)	Decision XVII/35: Potential non-compliance in 2004 with the controlled substances in Annex A, group I (CFCs) by Kazakhstan Decisions XVII/25, 26: Compliance by Azerbaijan

* Prepared on the basis of information/documentation given on the official web site of UNEP/Ozone Secretariat. See at: http://ozone.unep.org/new_site/en/index.php.

ANNEX F: MOP DECISIONS ON COMPLIANCE OF THE DEVELOPING COUNTRY PARTIES TO THE MONTREAL PROTOCOL*

<p>MOP 13 (16-19 October 2001), Colombo</p>	<p>Decision XIII/16: Potential noncompliance with the freeze on CFC consumption in article 5 parties in the control period 1999-2000</p> <p>Decisions XIII/21-25: Compliance by Argentina, Belize, Cameroon, Ethiopia, Peru.</p>
<p>MOP 14 (25-29 November 2002), Rome</p>	<p>Decision XIV/17: Potential noncompliance with the freeze on CFC consumption by parties operating under article 5 for the control period July 2000 to June 2001</p> <p>Decisions XIV/18-26: Compliance by Albania, Bahamas, Bolivia, Bosnia and Herzegovina, Namibia, Nepal, Saint Vincent and the Grenadines, Libyan Arab Jamahiriya and Maldives.</p>
<p>MOP 15 (10-14 November 2003), Nairobi</p>	<p>Decision XV/21: Potential non-compliance with consumption of Annex A, group I, CFCs by article 5 parties for the control period 1 July 2001-31 December 2002</p> <p>Decision XV/22: Potential non-compliance with consumption of Annex A, group II, halons by article 5 parties in 2002</p> <p>Decision XV/23. Potential non-compliance with consumption of the Annex C, group II, hydrobromo fluorocarbons by Morocco in 2002</p> <p>Decision XV/25. Potential non-compliance with consumption of the methyl bromide by article 5 parties in 2002</p> <p>Decisions XV/26,27, 29-45: Compliance by Albania, Armenia, Bolivia, Bosnia and Herzegovina, Botswana, Cameroon, the Democratic Republic of the Congo, Guatemala, Honduras, the Libyan Arab Jamahiriya, Maldives, Namibia, Nepal, Papua New Guinea, Qatar, Saint Vincent and the Grenadines, Uganda, Uruguay, VietNam.</p>

<p>MOP 16 (22–26 November 2004), Prag</p>	<p>Decision XVI/19: Potential noncompliance with consumption of Annex A, group II, halons by Somalia in 2002 and 2003</p> <p>Decision XVI/20: Potential noncompliance in 2003 with consumption of the controlled substance in Annex B, group III (methyl chloroform) by parties operating under article 5</p> <p>Decisions XVI/22-30: Compliance by Chile, Fiji, Guinea-Bissau, Lesotho, Libyan Arab Jamahiriya, Nepal, Oman, Pakistan, Saint Vincent and the Grenadines</p>
<p>MOP 17 (12–16 December 2005), Dakar</p>	<p>DecisionXVII/30:Potential noncompliance in 2004 with consumption of the controlled substances in Annex B group I (other halogenated chlorofluorocarbons) by China</p> <p>DecisionXVII/35:Potential noncompliance in 2004 with the controlled substances in Annex A, group I (CFCs) by Kazakhstan</p> <p>Decisions XVII/25, 27, 28, 29, 31-33, 36-38: Compliance by Armenia, Bangladesh, Bosnia and Herzegovina, Chile, Ecuador, Federated States of Micronesia, Fiji, Kyrgyzstan, the Libyan Arab Jamahiriya and Sierra Leone.</p>
<p>MOP 18 (30 October–3 November 2006), New Delhi</p>	<p>DecisionXVIII/24Potential noncompliance in 2005 with the control measures of the MProtocol governing consumption of the controlled substances in Annex A, group I, (CFCs) by Eritrea</p> <p>DecisionXVIII/27Potential noncompliance in 2005 with the control measures of the MP governing consumption of the controlled substance in Annex B group II, (carbon tetrachloride) by the Islamic Republic of Iran</p> <p>Decisions XVIII/20-24, 28, 30-33: Compliance by Armenia, the Democratic Republic of the Congo, Dominica, Ecuador, Eritrea, Kenya, Mexico, Pakistan, Paraguay, Serbia</p>

* Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at: <http://unfccc.int/documentation/decisions/items/3597.php>.

ANNEX G: COPS TO THE UNFCCC AND MOPS TO THE KP

Session No.	Date	Location
COP 1	28 March-7 April 1995	Berlin, Germany
COP 2	8-19 July 1996	Geneva, Switzerland
COP 3	1-11 December 1997	Kyoto, Japan
COP 4	2-14 November 1998	Buenos Aires, Argentina
COP 5	25 Oct.-5 Nov. 1999	Bonn, Germany
COP 6	Part I	13-25 November 2000 The Hague, The Netherlands
	Part II	16-27 July 2001 Bonn, Germany
COP 7	29 Oct.-10 Nov. 2001	Marrakesh, Morocco
COP 8	23 Oct.-1 Nov. 2002	New Delhi, India
COP 9	1-12 December 2003	Milan, Italy
COP 10	6-18 December 2004	Buenos Aires, Argentina
COP 11 (MOP 1)	28 Nov.-10 Dec. 2005	Montreal, Canada
COP 12 (MOP 2)	6-17 November 2006	Nairobi, Kenya
COP 13 (MOP 3)	3-15 December 2007	Bali, Indonesia
COP 14 (MOP 4)	1-12 December 2008	Poznan, Poland
COP 15 (MOP 5)	7-19 December 2009	Copenhagen, Denmark
COP 16 (MOP 6)	29 Nov.-10 Dec. 2010	Cancun, Mexico
COP 17 (MOP 7)	28 Nov.- 9 Dec. 2011	Durban, South Africa
COP 18 (MOP 8)	26 Nov.-8 Dec. 2012	Doha, Qatar

*Prepared on the basis of information/documentation given on the official web site of the UNFCCC. See at: <http://unfccc.int/documentation/decisions/items/3597.php>.

ANNEX H: TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü	<input type="checkbox"/>
Sosyal Bilimler Enstitüsü	<input checked="" type="checkbox"/>
Uygulamalı Matematik Enstitüsü	<input type="checkbox"/>
Enformatik Enstitüsü	<input type="checkbox"/>
Deniz Bilimleri Enstitüsü	<input type="checkbox"/>

YAZARIN

Soyadı : SAVAŞAN

Adı : ZERRİN

Bölümü : ULUSLAR ARASI İLİŞKİLER BÖLÜMÜ

TEZİN ADI (İngilizce): COMPLIANCE MECHANISMS UNDER MULTILATERAL ENVIRONMENTAL AGREEMENTS: A COMPARATIVE ANALYSIS OF MONTREAL AND KYOTO PROTOCOLS

TEZİN TÜRÜ : Yüksek Lisans Doktora

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir.
2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir.
3. Tezimden bir (1) yıl süreyle fotokopi alınamaz.

TEZİN KÜTÜPHANEYE TESLİM TARİHİ:

ANNEX I: CURRICULUM VITAE

PERSONAL INFORMATION

Surname, Name: Savaşan, Zerrin

Nationality: Turkish (TC)

Date and Place of Birth: 22 April 1979, Susurluk/Balıkesir

Marital Status: Single

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EDUCATION

Degree	Institution	Year of Graduation
MS	METU European Studies	2006
BS	Ankara University Law Faculty	2001
High School	Bolu Anatolian High School	1997

WORK EXPERIENCE

Year	Place	Enrollment
2004- Present	METU Department of European Studies	Research Assistant
2001-2002	Law Office (supervision by lawyer Celal Kaşak)	Apprenticeship

FOREIGN LANGUAGES

Advanced English

PUBLICATIONS

1. Savaşan, Zerrin. "The Credibility of EU Human Rights Conditionality: Turkey's Case," Belgin Akçay and Bahri Yılmaz (Eds.), Accession of Turkey to the European Union: Political and Economic Challenges, Lexington Books, 45-70 (2012).
2. Savaşan, Zerrin. "A Brief Overview on EU Institutional Change: From Foundation to Lisbon," Review of European Studies, Vol.11, No.1, 61-84 (2012).
3. Savaşan, Zerrin. "The Impact of European Integration Process on the Nature of Sovereignty," Review of European Studies, Vol.8, No.2, 89-108 (2009).
4. Savaşan, Zerrin. "AB'de Sığınma Hakkı: Ortak Sığınma Sistemi Oluşturma Amacı ve Devam Eden Kısıtlamalar," İnsan Hakları Yıllığı, TODAIE, Vol.27 (2009).
5. Savaşan, Zerrin. "CFSP/ ESDP and the New EU Treaty," Perceptions: Journal of International Affairs, Summer-Autumn, 1-26 (2007).

FIELDS of INTEREST

EU Constitutional Law, EU Institutional Law, EU Human Rights Law, EU-Turkey Relations, International Environmental Law, International Environmental Politics.

ANNEX J. TURKISH SUMMARY

Bu çalışmanın temel amacı, küresel çevre yönetiminin temel sorunlarından biri olan uygunluğun sağlanması konusunda, çok taraflı çevre anlaşmaları altında kurulan uygunluğun sağlanması mekanizmaları kapsamında, detaylı bir inceleme yapmaktır.

Bu bağlamda, çalışmada temel olarak uygunluğun sağlanması mekanizmalarının tarafların çok taraflı çevre anlaşmaları altındaki taahhütlerini daha iyi yerine getirmelerindeki rolü incelenmektedir.

İnceleme çerçevesinde, dört ana boyut temelinde,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler ve mekanizmaların pratikteki işleyişleri-, Montreal Protokolü ve Kyoto Protokolündeki uygunluğun sağlanması mekanizmaları arasında karşılaştırmalı bir analiz yapılmaktadır.

Elde edilen bulgular temelinde, kısa vadede, mekanizmaların zayıf yönlerinin iyileştirilmesi ve mekanizmalar arasındaki eşgüdümün temin edilmesi durumunda, mevcut sistemin, uygunluğun daha iyi yerine getirilebilmesine yanıt verebileceği ileri sürülmektedir.

Çalışmanın temel araştırma alanlarını şu konular oluşturmaktadır:

- Mevcut sistemin kavramsal ve teorik çerçeve esas alınarak incelenmesi.
- Mevcut sistemin eksiklerinin belirlenmesi.
- İki vaka çalışmasını (Montreal ve Kyoto Protokollerindeki uygunluk mekanizmaları) esas alarak (dört ana boyut temelinde,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler ve mekanizmaların pratikteki işleyişleri), daha fazla uygunluk temini için yapılması gerekli iyileştirmelerin belirlenmesi.
- Farklı mekanizmalar arasında sağlanması gerekli daha güçlü bir eşgüdüm ihtiyacının incelenmesi.
- Elde edilen bulgular temelinde, uygunluk mekanizmaları konusunda yapılan akademik tartışmaların teşvik edilerek ve bu tartışmalara katkıda bulunulması.

Bu konular temelinde tezin ilk bölümünde, tezin tamamında izlenecek yol ve yöntem konusunda genel bir çerçeve çizilerek, çalışmanın temel tartışma konusunun, kısa vadede çok taraflı çevre anlaşmaları altındaki taahhütlere daha fazla uygunluk sağlanması ve belki uzun vadede daha iyi bir çevresel yönetim sağlanması için, mevcut uygunluğu sağlama mekanizmalarının, eksik yanlarının azaltılarak ve farklı mekanizmalar arasındaki eşgüdüm güçlendirilerek, iyileştirilmesi olduğu vurgulanmaktadır.

Daha sonra, tezde kullanılan belli başlı kavramların ne ifade ettiği, belli tanımlar çerçevesinde, bu kavramlarını sınırları çizilerek açıklanmaktadır. Ayrıca, iki açıklayıcı model (yönetim ve zorlama modelleri) temel alınarak, uygunluk mekanizmalarının teorik olarak nasıl açıklandıkları üzerinde durulmakta, böylece, pratikte bu mekanizmaların nasıl uygulandıklarını daha kolay açıklamak için zemin hazırlanmaktadır.

Uygunluğun sağlanması mekanizmaları konusundaki tartışmanın yapılabilmesi için, öncelikle uygunluğun sağlanması, uygulunun sağlanması mekanizması ve çok taraflı çevre anlaşması kavramları hem genel anlamları hem de tezde kullanıldıkları şekillerde açıklanmışlardır. Bu kapsamda, uygunluğun sağlanması kavramı, çalışma içinde, ilgili çok taraflı çevre anlaşması taraflarının anlaşma hükümlerine uygun davranışlar sergileyip sergilemediklerini açıklamak için kullanılmıştır. Bu tanımlamaya göre, uygunluğun sağlanmaması durumunun taraf devletin ilgili hükmü yerine getirmemesi durumunda ortaya çıkacağı belirtilmiştir. Çok taraflı anlaşma ve çevre rejimleri kavramları da ayrıca tanımlanmış, bu tanımlar esas alınarak da, uygunluğun sağlanması mekanizması çok taraflı çevre anlaşmalarında kurulmuş olan, üç ana unsuru,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler- içinde barındıran, uluslararası-dahili mekanizma olarak ifade edilmiştir.

Bu bölümde ayrıca uygunluğun sağlanması konusunda iki önemli model, uygunluğun sağlanması mekanizmalarının oluşturulmasında etkili olmuş olan yönetim modeli ve yönetim modeline yöneltilen eleştiriler sonucunda kurulmuş olan zorlama modeli- ele alınmıştır.

Bu modeller üzerinde yapılan inceleme, her iki modelin de benzerlikler ve özellikle uygunluğun sağlanamamasının nedenleri ve yaptırım biçimleri bakımından temel farklılıklar içerdiğini göstermektedir. Ayrıca, her iki modelde de, katılım sağlanamaması konusunun eksik bırakılmış olduğu görülmektedir. Soruna ve sorunun koşullarına bağlı olarak, her modelin uygunluğun sağlanması süreçlerinin farklı aşamalarını açıklamakta etkili olabileceği, ve her iki modelinde tek başına tüm süreçleri açıklamak konusunda yeterli olamayacağı belirtilmektedir. Bu yüzden, farklı yaklaşımların farklı koşullar için kullanılabilmesi fikri gündeme gelmektedir. Mevcut sistemde ve mevcut koşullarda, her iki modelin birleştirilerek kullanımının (yönetim modeline ağırlık vererek) kısa vadede etkili bir yöntem olabileceği savunulabilmektedir.

Üçüncü bölüm temel olarak iki alt bölüme ayrılmıştır: uygunluğun sağlanması mekanizmalarının ortaya çıkışlarının ve gelişmelerinin nedenleri (hazırlayıcı ve tetikleyici nedenler)/geleneksel araçların sınırları ve bu mekanizmaların ana unsurlar bağlamında genel özellikleri.

Hazırlayıcı nedenler kapsamında, uluslar arası sistemdeki değişim, uluslar arası çevre hukukunun, öncelikli olarak önleyici yaklaşımın uygulanmasını zorunlu kılan ve onu uluslar arası hukukun diğer alanlarından ayıran özellikleri ve iki taraflı anlaşmalardan farklı olarak karşılıklı gerektirmeyen yükümlülükler içeren çok taraflı çevre anlaşmalarının özellikleri incelenmiştir. Tetikleyici nedenler ise, geleneksel araçların içerdikleri kısıtlamalar ve uygunluğu sağlama mekanizmalarının daha tercih edilir olmasını sağlayan özellikleri kapsamında tartışılmıştır.

Mekanizmaların üç ana unsuru ise, tezin dördüncü bölümünde yapılacak olan vaka çalışmasına temel oluşturmak amacıyla, sadece mevcut sistemin genel özellikleri dikkate alınarak, detaylara girmeden, ele alınmıştır.

Önceki bölümlerde sağlanan temel bilgiler ışığında tezin dördüncü bölümünde, Montreal ve Kyoto Protokollerindeki uygunluk mekanizmaları, öncelikle, bir önceki bölümde izlenen yöntem izlenerek, mekanizmaların gelişimleri ve ana unsurları (bilgi toplama, prosedürler/ kurumsal yapı, tedbirler) ele alınarak, ve

daha sonra, bir önceki bölümden farklı olarak, bu mekanizmaların pratikte nasıl uygulanı geldikleri, nasıl daha etkili uygulanabilecekleri de ele alınarak, karşılaştırmalı olarak incelenmektedir.

Söz konusu analiz yapılırken, ilk olarak, özellikle tüm mekanizmanın temel yapı taşı oluşturulan, uygunluğun sağlanması prosedürlerinin oluşumu ele alınarak, mekanizmaların günümüze kadar olan gelişmeleri tarihsel olarak incelenmiştir. Daha sonra, üç ana unsur ve mekanizmaların pratikte işleyişleri araştırılmıştır. Böylece, dört ana boyut kapsamında,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler ve mekanizmaların pratikteki işleyişleri-, analizin tamamlanması amaçlanmıştır.

Bu nedenle burada, çalışmada uygulanan araştırma yönteminin, hem uluslar arası ilişkiler hem de uluslar arası çevre hukuku kaynaklarına dayanan karşılaştırmalı vaka analizi olduğu, vaka seçimi ile ilgili olarak ise, seçilen vakaların (Montreal ve Kyoto Protokollerindeki uygunluğun sağlanması mekanizmaları), tez içinde tartışılan konular için yararlı dersler çıkarılmasını sağlayabilecek olmaları ve uygunluğun sağlanması ve güçlendirilmesi için gerekli yolların bulunmasında bu vakalardan yararlanılabilecek olmasının önemli rol oynadığı özellikle vurgulanmalıdır.

Beşinci bölümde, mekanizmaların daha iyi işler hale gelmesi için izlenebilecek yol ve yöntemler araştırılmaktadır. Bu bağlamda, bu bölüme kadar mevcut mekanizmalar üzerinde yapılan değerlendirmeler temelinde, daha fazla uygunluğun temini için, mevcut sistemin eksikliklerinin giderilmesi ve bu eksiklikler üzerinde muhtemel iyileştirmelerin yapılmasının gerekli olup olmadığı konusu üzerinde durulmuştur. Araştırma kapsamında, mekanizmaların pratikte işleyişleri ile ilgili iki vaka çalışmasından çıkarılan dersler değerlendirilmiş, mekanizmaların ana unsurlarının (bilgi toplama-prosedürler/ kurumsal yapı ve tedbirler) iyileştirilmesi yolları ele alınmış ve son olarak farklı mekanizmalar arasında daha güçlü bir eşgüdüm ihtiyacının olup olmadığı konusu incelenmiştir. Böylece, iki vaka çalışmasından elde edilen sonuçlardan yararlanarak, ana

unsurların ve pratikte işleyişin iyileştirilmesi ve farklı mekanizmalar arasında daha güçlü bir eşgüdümün sağlanması yolları incelenmiştir.

Sonuç bölümünde ise, elde edilen bulgular temelinde, mevcut sistemin unsurlarını iyileştirmenin, pratikte uygulanabilirliğini arttırmanın ve farklı mekanizmalar arasındaki eşgüdümü güçlendirmenin kısa vadede çevre anlaşmalarına taraf devletlerin çevre taahhütlerine uygunluğunu sağlama ve arttırma konusunda gerekli süreci hızlandırabileceği, çevre taahhütlerine uygunluğun artmasının ise uzun vadede bu uygunluk mekanizmaları aracılığı ile daha iyi bir çevre yönetimi anlayışının kurulmasını sağlayabileceği ileri sürülmektedir.

Yapılan bu kapsamlı inceleme sonucunda, tez çalışmasının elde ettiği temel bulgular, ele alınan iki vaka çalışması-Montreal Protokolü uygunluğun sağlanması mekanizması ve Kyoto Protokolündeki uygunluğun sağlanması mekanizması- ve inceleme alanı olarak seçilen dört ana boyut ,-bilgi toplama, prosedürler/ kurumsal yapı, tedbirler ve mekanizmaların pratikteki işleyişleri-, kapsamında, şu şekilde özetlenebilir:

İlk boyutla, bilgi toplama konusu, ile ilgili olarak, hem Montreal hem de Kyoto Protokollerinin hemen hemen tüm taraflarının rapor verme yükümlülüklerine başlangıçtan itibaren uyma eğiliminde oldukları belirtilmiştir. Fakat, hala, her iki mekanizma için çözülmesi gereken, -kendi kendini raporlama, raporlanması gereken maddelerin karmaşıklığı, kapasite oluşturma ve geliştirme, verilerin kalitesi ve güvenilirliği, uyum sağlanması gerekliliği, denetleme ve doğrulama mekanizmalarının ve sivil toplum örgütleri/halkın katılımının yetersizliği-, gibi sorunların varlığına da dikkat çekilmiştir.

Uygunluğun sağlanması prosedürleri konusundaki temel bulgular ise, kurumsal yapı, usuli koruma hükümleri, sivil toplum örgütlerinin rolü ve finansal sorunlar, olmak üzere dört alt grupta açıklanmıştır.

Kurumsal yapı bakımından, Montreal ve Kyoto Protokollerindeki mekanizmaların uygunluğun sağlanması konusunda karar verme ve alınan karara

göre gerekli tedbirlerin alınmasını sağlama konularında yetkileri farklı organlara verdikleri tespit edilmiştir. Montreal Protokolü'ndeki uygunluğu sağlama mekanizması, karar verici organ olarak Taraflar Toplantısını yetkili kılarken, Uygulama Komitesi'nin tavsiyelerinin yer aldığı raporlarının uygulamada Taraflar Toplantısı'nın kararlarında oldukça etkili oldukları gözlemlenmiştir. Kyoto Protokolü'ndeki uygunluğu sağlama mekanizması, bu anlamda Montreal Protokolü'ndeki sistemden daha etkili görünmektedir, zira, burada karar verme yetkisi, mekanizmanın politik organından bağımsız olarak, Uygunluğun Sağlanması Komitesi ve onun iki alt dalına, Sağlayıcı /Kolaylaştırıcı Dala ve üyelerinin iklim değişimi ve ilgili alanlarda (bilimsel, teknik, sosyo-ekonomik, hukuki alanlarda) yeterlilik göstermesi zorunlu olan Zorlayıcı Dala verilmiştir.

Komite'nin tarafsızlığı ve bağımsızlığı konusunda ise, Montreal Protokolü'ndeki uygunluğu sağlama mekanizmasında, Uygulama Komitesi'nin Taraflar Toplantısı tarafından seçilen taraflardan oluşmasının, Komite üyesi olarak kişisel yetkisine dayanarak hizmet veren uzmanların, tarafların temsilcilerinden daha bağımsız olmaları beklendiği için, sorunlu bir alan oluşturduğu vurgulanmıştır. Ayrıca, Montreal Protokolü'ndeki uygunluğu sağlama mekanizmasında, tarafların temsilcileri ile ilgili koşullar hakkında da herhangi bir kriter olmadığına altı çizilmiş, bunun taraflar arasındaki, her bir tarafın kendi temsilcisini seçerken gerekli koşulları kendi belirlemesi gerektiğini belirten hakim görüşten kaynaklanabileceği belirtilmiştir. Kyoto Protokolü'ndeki sistemde ise, Zorlayıcı Dal'ın üyelerinin kişisel yetkisine dayanarak hareket etme gerekliliklerinin yanı sıra, hukuki tecrübelerinin varlığı da olması gerekenler arasında belirtilmektedir. Ayrıca, bu sistemde, bir üyenin Komite'nin tarafsızlığını ve bağımsızlığını ihlal etmesi durumunda, bu üyenin üyeliğinin iptal edilmesi gibi, Komite'nin tarafsızlığı ve bağımsızlığını destekleyen önemli hükümler de bulunduğu vurgulanmıştır.

Araştırma ayrıca, Kyoto Protokolü'nün uygunluğu sağlama prosedürünün, usuli yapı ve ilgili işlem süreçlerinde gerekli usuli koruma hükümleri üzerinde genellikle daha detaylı kurallara sahip olduğunu ortaya koymaktadır. Gerçekten de, Montreal Protokolü'nün uygunluğu sağlama prosedüründe, Kyoto

Protokolü'nün uygunluğu sağlama prosedüründen farklı olarak, ilgili tarafın hakları ile ilgili hükümler bulabilmek mümkün değildir. Montreal Protokolü'nün uygunluğu sağlama mekanizması farklı işlem süreçleri için sıkı zaman sınırlamaları içermektedir. Ancak, Kyoto Protokolü'nün uygunluğu sağlama prosedürünün aksine, bunlar sayısal olarak çok fazla olmayıp, Uygulama Komitesi'nin işlemlerindeki her aşama için tanımlanmış bir zaman çizelgesi de sağlamamaktadır. Ayrıca, Montreal Protokolü'nün uygunluğu sağlama mekanizmasında hızlandırılmış prosedür gibi bir usul de öngörülmemiştir. Bu nedenlerle, Kyoto Protokolü'nün uygunluğu sağlama mekanizması, sıkı -önceden belirlenmiş zaman çizelgeleri ve hızlandırılmış prosedürü ile zamanın daha verimli ve yerinde kullanılmasını sağlama potansiyeline sahip bir mekanizma olarak karşımıza çıkmaktadır.

Şeffaflık konusuna ilişkin, Kyoto Protokolü'nün uygunluğu sağlama prosedürü Bölüm VIII(6), araştırma konusu tarafın isteği üzerine ve Zorlayıcı Dal'ın takdiri ile, ilgili işlemler sonuçlanıncaya kadar bilginin kamuya açıklanmamasına izin vermektedir. Bununla birlikte, bu husus günümüze dek uygulama alanı bulmamış, ve şeffaflık hem Uygunluğun Sağlanması Komitesi hem de onun her iki dalı tarafından mümkün olduğunca desteklenmeye çalışılmıştır. Montreal Protokolü'nün uygunluğu sağlama prosedürü, paragraf 16, Uygulama Komitesi'nin raporlarının istek üzerine herkese açık olabilmesi yolunu açarken, ayrıca, elde edilen tüm bilginin isteği üzerine taraflardan her birine sağlanabilmesi imkanını da vermiştir. Fakat, raporların taraflara açık olması hususu, gizli bilgi içermeyen raporlarla, ve elde edilen bilginin gizliliğinin korunması zorunluluğu ile sınırlı tutulmuştur. Ayrıca, Uygulama Komitesi'nin üyelerini ve görüşmelerde yer alan tarafları elde ettikleri gizli bilgilerin gizliliğini sağlamaları konusunda zorunlu kılınmıştır. Bu durum da, bilginin gizli olup olmadığının belirlenmesi ve uygunluğu sağlama prosedürlerinin kurallarına uymamanın muhtemel sonuçları konusunda soru işaretlerinin ortaya çıkmasına neden olmaktadır. Son olarak, Kyoto Protokolü'nün uygunluğu sağlama mekanizmasında, kural olarak, Uygunluğu Sağlama Komitesi'nin dallarının kararlarına karşı Taraflar Toplantısı'na başvuru yolu açık tutulmamıştır. İstisna olarak, tarafların Taraflar

Toplantısı'na başvuru yolunun mümkün olması, Zorlayıcı Dal'ın kararlarına karşı olabilmektedir. Bu halde de, Taraflar Toplantısı, Zorlayıcı Dal'ın kararını sadece usul yönünden inceleyebilir. Montreal Protokolü'nün uygunluğu sağlama mekanizmasında ise, bu tarz bir istisna dahi mevcut olmadığı gibi, böyle bir mekanizmanın kurulması için herhangi bir destek de mevcut değildir. Bu durum, böyle bir mekanizmanın olması durumunda, Kyoto Protokolü'nün uygunluğu sağlama mekanizmasındaki başvuru imkanından farklı olarak, burada Taraflar Toplantısı'nın kararlarına karşı başvuru yapılması gereğinin doğmasından kaynaklanmaktadır.

Sivil toplum örgütlerinin mekanizmalar içindeki rolünün güçlendirilmesi konusunda, Montreal Protokolü'nde, sivil toplum örgütleri, anlaşmanın organlarının toplantılarına, tarafların herhangi bir itirazı olmaması halinde, gözlemci olarak katılabilmektedirler. Fakat, raporlamanın değerlendirme aşamasında, bu örgütlerin rolleri daha da kısıtlanmıştır. Bu halde, herhangi bir tarafın talebi halinde, raporların değerlendirme aşamasına katılamamaktadırlar. Eğer katılmaya kabul edilirlerse, veto hakkına sahip olamamaktadırlar (MP md.11(5)). Kyoto Protokolü'nün uygunluğu sağlama mekanizmasında ise, söz konusu örgütlere sadece ilgili olgusal ve teknik bilgiyi Uygunluğu Sağlama Komitesi'nin her bir dalına sağlama konusunda izin verilmiştir. Montreal Protokolü'ndeki gibi, Kyoto Protokolü'nün uygunluğu sağlama mekanizmasında da, örgütlerin resmi anlamda Uygunluğu Sağlama Komitesi'nin işlemlerine katılma olanağı öngörülmemiştir. Her iki mekanizmada da, hem hükümetler arası örgütler hem de sivil toplum örgütlerinin ilgili usulleri başlatması da mümkün kılınmamış, sadece gerekli olgusal ve teknik bilgiyi sağlamalarına izin verilmiştir. Ayrıca, sivil toplum örgütlerinin denetim faaliyetlerine katılımı da sadece denetimin belli alanlarında, düşük seviyelerde kalmaktadır.

Bu kapsamda incelenen diğer önemli bir konu ise, finansal kaynakların yetersizliğidir. Her iki mekanizma da ortak ama farklılaştırılmış sorumluluk ilkesi altında, finansal ve teknik yardım konularında gelişmekte olan ülkeleri desteklemek durumundadırlar. Ancak, bu konuda yeterli kaynağa sahip olmadıkları gibi bu kaynakları üretme kapasitesine de sahip görünmemektedirler.

Bu nedenle, kaynakların yetersizliđi konusu da bu mekanizmaların etkili olabilmesinde çok önemli bir problem olarak ortaya çıkmaktadırlar.

Analizin üçüncü boyutu ile ilgili olarak ise, öncelikle Montreal Protokolü'nün uygunluđu sağlama mekanizmasında, uygunluđun sağlanmaması durumunda uygulanacak tedbirlerin bir listesinin verildiđi, önceden belirlenmiş tedbirlerle birlikte uygunluđun sağlanmaması durumlarını da içeren Kyoto Protokolü'nün uygunluđu sağlama mekanizmasından farklı olarak, uygunluđun sağlanmaması durumlarının hangi hallerde ortaya çıkacağını ortaya koyan bir listenin verilmediđinin altı çizilmektedir. Bu durum, hangi sistemin uygunluđun sağlanması mekanizmaları için daha iyi olduđunun tartışılmasına ve konu ile ilgili farklı fikirlerin ortaya çıkmasına neden olmuştur. Gerçekten de, bir taraftan, uygunluđun sağlanıp sağlanmadıđının değerlendirilmesi aşamasının çok fazla esneklik içermemesi gerektiğinden, uygunluđun sağlanmaması durumlarına göre önceden belirlenmiş tedbirlerin var olmasının öngörülebilirliđi arttırabileceđi öne sürülebilir. Bununla birlikte, diđer taraftan, Montreal Protokolü'nün uygunluđu sağlama mekanizmasındaki gibi sadece tedbirler listesinin benimsenmesi bile,- tam bir liste olmamasına ve Taraflar Toplantısı farklı durumlar için farklı tedbirler uygulama konusunda serbest olmasına rağmen-, mekanizmanın esnekliđini kısıtlayıcı bir faktör olarak görülebilir.

Bu konular tezde detaylı olarak tartışılırken, kararların bağlayıcı statüleri konusunda da her iki mekanizma için yapılan tartışmaların varlığına da dikkat çekilmektedir. Bu konuda yapılan araştırmaya göre, sağlayıcı tedbirlerin cezalandırıcı olanlardan pratikte her iki mekanizmada da daha fazla tercih edildiđi gözlemlenmektedir. Ancak literatürde bu konuda hala bir mutabakat sağlanamamıştır. Montreal Protokolü'nde Taraflar Toplantısı'nın uyguladıđı tedbirler zorunlu olmaktan ziyade tavsiye niteliğinde kararlar olarak kabul edilmektedirler. Kyoto Protokolü'nde ise, belirlenmiş miktarların cezai faiz oranında azaltılmasını öngören tedbir haricinde, diđer tedbirler Protokol'ün organlarının zımni yetkisi içinde, dolayısıyla Zorlayıcı Dal'ın yetkisi içinde düşünölmekte ve buna göre değerlendirilmektedir.

İşbirlikçi-sağlayıcı yaklaşım her iki mekanizmada da hakim yaklaşım olduğu için, sistem içinde taraflar arasında güçlü bir işbirliği ve eşgüdüm temin edilebilirse, tedbirlerin uygulanmasının -resmi bağlayıcı bir statü olmasa bile- etkili olabileceği görüşünün varlığı da burada ayrıca vurgulanmaktadır.

Son olarak, son boyutla ilgili-mekanizmaların pratikte işleyişleri-, Montreal ve Kyoto Protokollerinin uygunluğun sağlanması mekanizmalarında ortaya çıkan farklı uygunluğun sağlanması vakaları üzerinde yapılan analizden çıkan bulgular şunları göstermektedir:

Montreal Protokolü'nün uygunluğu sağlama mekanizmasında, mekanizmanın başlatılmasını sağlayan ilk yöntem olan bir tarafın diğer tarafa karşı başvuruda bulunması bugüne dek hiç uygulama alanı bulmamışken, ikinci yöntem özellikle 1990'lı yıllarda geçiş ekonomisine sahip ülkeler tarafından kullanılmıştır. Fakat en çok kullanılmış olan yöntem, Sekretarya tarafından mekanizmanın işletilmeye başlatılması yöntemidir. Hem gelişmiş hem de gelişmekte olan ülkelerden pek çok taraf devlet, kendi takvimlerine uygun olarak emisyon azaltma hedeflerini karşılamış bulunmaktadırlar. Böylece, ozon tabakasını inceltici maddelerin üretim ve tüketiminin azaltılmasını katkıda bulunarak, yüksek bir uygunluğun sağlanması oranı yakalanmış durumdadır. Taraflardan hiçbiri uluslararası yardımdan mahrum bırakılmamış, tedbirler listesinin C kaleminde yer verilen tedbirlerle karşılaşmak durumunda bırakılmamıştır. Bazı taraflara (Rusya, Belarus gibi..) uygulanan ticari kısıtlamalar ve koşullu yardım uygulaması dışında, negatif tedbirler uygulama alanı bulmamıştır. Teorik yaklaşımlar açısından, Montreal Protokolü'nün uygunluğu sağlama mekanizmasında, iki temel modelin (yönetim ve zorlama modelleri) birleşiminin daha fazla yer bulduğu gibi bir görünüm ortaya çıksa da, yönetim modeli ve yaklaşımının hakim yaklaşım olduğunu söylemek daha doğru bir görüş olacaktır.

Kyoto Protokolü'nün uygunluğu sağlama mekanizmasında ise, Montreal Protokolü'nün uygunluğu sağlama mekanizmasına benzer biçimde, tarafların Zorlayıcı Dal'a herhangi bir başvurusu olmamış, tüm başvurular uzman gözden geçirme ekipleri tarafından yapılmıştır. Kolaylaştırıcı Dal ise, sadece Güney

Afrika tarafından 15 adet EK-I tarafına karşı yapılan başvuruda uygulama alanı bulmuştur. Bu olayda, başvuru hakkında kesin bir karara varılamamıştır. Sadece Letonya ve Slovenya ile ilgili başvurularda, Kolaylaştırıcı Dal devam etmeme kararı vermiş, ancak asıl meseleye ilişkin bir karara varmamıştır. Bu nedenle de, Kolaylaştırıcı Dal'ın erken uyarı fonksiyonunu kullanarak olması muhtemel uygunluğun sağlanamaması durumlarını önceden çözüme kavuşturma kapasitesine sahip hale getirilmesi gerektiği, bu konuda yeni düzenlemelere ihtiyaç olduğu ileri sürülebilmektedir.

Mekanizmanın pratikte işleyişi ile ilgili ise, günümüze dek, Zorlayıcı Dal'ın önüne gelen başvuruların genelde ulusal sistem gereklilikleri ile ilgili olduğu belirtilmelidir. İlgili tarafların 2012 emisyon azaltma hedefine uyup uymadıkları başvuru konusu olmamıştır. Bu durum, emisyon azaltma hedefine uymama konusunun Zorlayıcı Dal önüne ilk taahhüt döneminin (2008-2012) sonuna kadar getirilemeyecek bir konu olmasından kaynaklanmaktadır.

Son olarak, Kyoto Protokolü sisteminin barındırdığı pek çok pozitif/negatif karşı tedbirler bulunmaktadır. Bunların pek azı pratikte uygulama alanı bulurken, uygulama alanı bulduklarında da genelde kapsamları çok fazla geniş tutulmamaktadır. Montreal Protokolü'nün uygunluğu sağlama mekanizmasına paralel biçimde, kolaylaştırma ve zorlama işlevlerini bir araya getiren bir sistem var gibi gözükse de, yönetim yaklaşımı bu mekanizmada da daha fazla benimsenmiş olan, daha hakim yaklaşım olarak ortaya çıkmaktadır.

Tezin iki vaka çalışması kapsamında elde edilen bu bilgiler ışığında, şu sonuçlar ortaya konabilir:

Mevcut mekanizmalarla ilgili yapılan karşılaştırmalı analiz sonucunda hem Montreal Protokolü'ndeki hem de Kyoto Protokolü'ndeki mekanizmaların geleneksel yöntemler olarak kabul edilen Antlaşmalar Hukuku, Devletlerin Uluslararası Sorumluluğu, Uyuşmazlık Çözüm Usulleri gibi yöntemlerden büyük ölçüde daha etkili bir rol oynadıkları söylenebilir.

Kyoto Protokolü'nün uygunluğu sağlama mekanizması Montreal Protokolü'ndeki mekanizmadan daha kısa sürelik bir deneyime sahip olmasına rağmen, her iki mekanizma da tarafların ilgili anlaşma hükümlerine uygunluğunun sağlanması için oldukça güçlü bir temel sağlamaktadırlar.

Hatta, Kyoto Protokolü'nün uygunluğu sağlama mekanizması, detaylı ve kapsamlı kurumsal yapısı, yarı-yargısal temele dayanan resmi hale gelmiş usulleri, kesin zaman sınırlamaları ile Montreal Protokolü'ndeki mekanizmadan daha iyi yapılandırılmış olduğundan, Montreal Protokolü'ndeki kadar-bazen ondan da iyi- iyi işleyen bir görünüm arz etmektedir. Son Taraflar Toplantısı'nda (FCCC/KP/CMP/2012/L.9) ikinci taahhüt dönemi (2013-2020) üzerinde anlaşmaya varılmış olması da, Kyoto Protokolü'ndeki mekanizmayı daha da umut verici hale getirmektedir.

Her iki mekanizmanın güçlü ve zayıf yanları göz önüne alındığında da, daha fazla uygunluğun sağlanması yolunda bu mekanizmaların ciddi anlamda katkı sağlayabileceği gerçeği apaçık ortaya çıkmaktadır. Gerçekten de, sahip oldukları potansiyel düşünüldüğünde,-özellikle iş yükünü, masrafları, tekrarları ve çelişkileri azaltan, benzer durumlarda farklı değerlendirmelerin olmasını engelleyerek tutarlılığı sağlayan özellikleri-, bu mekanizmalar kısa vadede tarafların anlaşma taahhütlerine daha fazla uygunluğunun sağlanması, uzun vadede ise daha iyi bir çevre yönetimi sağlama yönünde süreci hızlandırıcı etkiye sahip olabilirler. Katkıları şu an için tam olarak bilinemese de, eğer mekanizmaların ana unsurlarında, pratikteki işleyişlerinde ve aralarındaki eşgüdümde gerekli iyileştirmeler yapılırsa, olumsuzdan ziyade olumlu bir katkıları olacağı açıktır.

Bununla birlikte, elde edilen sonuçların tüm uygunluğun sağlanması mekanizmaları için geçerli olabileceği düşünülemez, zira doğal olarak tezde incelenen sadece bu iki vaka çalışması ile, -bunlar genellikle benzerleri arasında en başarılı olarak kabul edilseler de-, tüm mekanizmaların genel çalışma kapasitesi ve uygunluğu sağlamadaki etkileri ile ilgili kesin sonuçlar çizilebilmesi mümkün değildir. Ancak bu çalışmalardan öğrenilen dersler yine de

mekanizmaların genel olarak zayıf yanlarını anlamaya yardımcı olabilirler. Böylece de, bu zayıf yanların giderilmesi yollarının araştırılmasında ve daha etkili çalışan uygunluğu sağlama mekanizmalarının kurulmasında etkin ve öncü bir rol oynayabilirler.

O halde, elde edilen bulgulara dayanarak, son olarak, mevcut çevresel anlaşmalar ve kurumlar sisteminde, çok taraflı çevre anlaşmaları altında kurulmuş var olan uygunluğu sağlama mekanizmalarının güçlü yanlarından (zayıf yanlarını azaltarak-iyi hale getirerek) ve muhtemel katkılarından yararlanılmasının-bu yöntem uygunluğun sağlanması konusu için genel bir çare olmaktan uzak olsa da- çok taraflı çevre anlaşmalarının altında kurulmuş olan uygunluğu sağlama mekanizmalarının geliştirilmesinde etkin bir yöntem olarak kullanılabilirdiği ileri sürülebilir. Çünkü, mevcut sistemin unsurlarını iyileştirmek, pratikte uygulanabilirliğini arttırmak ve farklı mekanizmalar arasındaki eşgüdümü güçlendirmek, kısa vadede çevre anlaşmalarına taraf devletlerin çevre taahhütlerine uygunluğunu sağlama ve arttırma konusunda gerekli süreci hızlandırabilecek, çevre taahhütlerine uygunluğun artması ise uzun vadede bu uygunluk mekanizmaları aracılığı ile daha iyi bir çevre yönetimi anlayışının kurulmasını sağlayabilecektir.