

Session 5: Lecture Notes on
Some Multilateral Environmental Agreements MEAs

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I. Background

In my earlier lectures, I have dealt with the emergence of IEL, the principles and the normative framework, the role of international organizations in shaping in servicing and also implementing IEL. But the real hard obligations of IEL are always present in treaties. While dealing with sources of international law and specifically IEL, we have known that ‘consent alone’ is the basis of obligation under international law. This is because States, which are free and sovereign, have the ‘consent’ to decide whether they want to abide by a treaty obligation. The best example that comes to mind is America’s refusal to become a party to the Kyoto Protocol knowing fully well that it is the largest emitter of greenhouse gases!

Treaties or MEAs in IEL lingo remain the foremost sources of international obligations. It would be my endeavour to provide u a bird’s eye view of some of the important MEAs. It would well be nigh impossible to look at all the MEAs. I therefore would attempt the regime on biological diversity, climate change, ozone depletion, and hazardous wastes. We shall also cover MEAs and the available dispute settlement mechanisms.

II. Some Multilateral Environmental Agreements

A. Convention on Biological Diversity

The United Nations Convention on Biological Diversity was adopted on 5 June 1992 at UNCED and entered into force on 29 December 1993. As

of date 190 States are parties to the Convention and this wide adherence is ample evidence of the importance States attach to the Convention.

One of the important conventions adopted at the Rio Conference it defines biological diversity as “the total variety of genetic strains, species and eco- systems. Furthermore, Article 2 of the CBD defines biological diversity as “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems, between species and ecosystems”. It is thus seen that the Convention provides for protection and conservation of biological diversity not only on legal grounds but also on moral and humanitarian grounds.

The key objectives of the Convention as provided under Article 1 are: the conservation of biological diversity and the sustainable use of its components; and the fair and equitable sharing of benefits arising out of utilisation of genetic resources.

The Convention provides for a number of environmental provisions such as those relating to general measures of conservation including *in-situ* and *ex-situ* conservation, monitoring of bio-diversity components, environment impact assessment, public education and awareness for conservation of biological diversity, access to genetic resources, access to technology and financial resources by developing countries.

It may be noted that ‘biological resources’ are not shared resources or common property like global commons - atmosphere, oceans and deep seabed. And as most of the bio-reserves are located within the territory of States, the Convention provides that States shall have the sovereign right to exploit their own resources pursuant to their own environmental policies. However, this right of permanent sovereignty of States over the natural resources is qualified and not absolute as States have ' the responsibility to

ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction'.

The Convention sets out obligations and objectives for States to: combat the destruction of plant and animal species and ecosystems and integrate conservation and sustainable use of biological diversity into relevant sectoral plans and policies and develop systems of protected areas. The Convention also provides for States to implement the obligations under provisions of the Convention and to decide themselves on the measures most effective to conserve biodiversity. Furthermore, the Contracting Parties agree to respect, preserve, and maintain knowledge and practices of indigenous and local communities, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge and practices.

The GEF services the implementation of the Convention through the implementing agencies - the United Nations Environment Programme, the United Nations Development Programme and the World Bank.

The Conference of the Parties decides issues of policy, programme priorities, and eligibility criteria relating to access to the financial mechanism.

B. Cartagena Protocol on Biosafety

As has been stated elsewhere, the Convention on Biological Diversity constitutes the most comprehensive and integral legal regime for the conservation and sustainable use of the living resources of our planet and the system which support them. Article 8 (g) of the CBD mandates the establishment or maintenance of a means to regulate, manage or control the risks associated with use and release of Living Modified Organisms (LMOs) resulting from biotechnology which are likely to have adverse environmental

impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health. To fulfill the mandate given in Article 8 (g) and also pursuant to Article 19 (3) the CBD established an open-ended ad-hoc working group of experts to consider the need for a Protocol. The Second Conference of the Parties (COP 2) decided to establish a working group to prepare a draft protocol. The working group met a total of six times, beginning in July 1996 and concluded its work in February 1999 at its sixth meeting.

The chief objective of the Protocol is to contribute to adequate level of protection in the field of safe transfer, handling and use of LMOs resulting from modern biotechnology that may have adverse affect on the conservation and sustainable use of biological diversity, taking also into account the risks to human health, specially focusing on trans-boundary movements. The scope of the Protocol provides that it “applies to all LMOs that may have adverse affect on the consideration and sustainable use of biological diversity”.

The Protocol is the first full-fledged agreement wherein the precautionary principle has been incorporated in the operative provisions. This means lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the potential adverse affects of LMOs on bio-diversity will not prevent a party to allow or prohibit imports of LMOs.

A number of other important provisions of the Protocol, *inter alia*, include: advance informed agreement (AIA) procedure for LMOs intended for direct release into the environment; elaborate risk assessment procedures and risk management; capacity building of developing countries; provisions for developing mechanisms for liability and redress; and, provisions for

developing detailed guidelines for handling, transport, packaging and identification.

In fact, AIA procedure has been shown as a major tool to regulate the trans-boundary movements of LMOs. It applies to the first shift of LMOs to be introduced intentionally into environment. The obligation is on exporter/exporting party to give notification to importing party and a decision on import will be taken in accordance with the risk assessment and the precautionary principle.

The Protocol provides for a separate procedure for LMOs intended for direct use as food, feed or processing. A party may take a decision on import of LMO-FFPs under its domestic regulatory framework on the information made available through the biosafety clearing house. It also provides an option to developing countries to invoke precautionary principle while importing LMO-FFP.

The provision for risk assessment plays crucial role in the decision making of a State. Risk assessments undertaken pursuant to this Protocol should be carried out in a scientifically sound manner as shown in Annex III. The criteria governing the risk assessment is given in Annex III and provides the parties an option to evaluate the possible adverse affects of LMOs on the conservation and sustainable use of bio-diversity.

Article 27 of the Protocol enables the Conference of the Parties at its first meeting adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from trans-boundary movements of LMOs, analyzing and taking due account of the on-going processes in international law on these matters, and shall endeavour to complete this process within four years. A

working established for this purpose after five meetings is finalizing operational texts on Liability and Redress under the Protocol.

The Cartagena Protocol addresses, like any other contemporary international agreement on environment, the capacity building, public awareness and participation and the socio-economic consideration concerning the impact of LMOs on the conservation and sustainable use of bio-diversity.

C. Vienna Convention on the Protection of Ozone Layer, 1985

The Vienna Convention on the Protection of the Ozone Layer, 1985, was adopted on 23 March 1985 and entered into force on 22 September 1988. The chief objective of the Convention is to protect the human health and the environment against adverse effects resulting from modifications of the Ozone Layer. The importance of this Convention lies in the fact that it recognizes the adverse effects of ozone depletion on climate change and provides for an eco-systemic approach to protect the global environment.

D. The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

This Protocol was adopted on 16 September 1987 and it came into force on 1 January 1989. The Convention one of the most successful environmental treaties provides for more substantive obligations to control global emissions of ozone depleting substances. A Multilateral Fund has been created to especially aid the developing countries in their efforts to reduce ozone-depleting substances.

The Protocol has been amended in 1990 (London), 1992 (Copenhagen), 1997 (Montreal) and 1999 (Beijing). The Protocol sets a number of reduction targets for eight ozone-depleting substances mentioned in its annexes.

The success of the Convention/Protocol regime can be attributed to the special benefits developing countries enjoy and the in-built review and compliance mechanism.

The Convention/Protocol regime despite having done a commendable job has been criticized for not having a deterrent effect as big companies and multinational corporations continue to deplete the ozone layer and ignoring well-established environmental law principles such as polluter pay and the precautionary approach. Another criticism leveled against the Montreal Protocol is that it disregards the abuse of earth's common resources by not providing for any penalties.

F. UN Framework Convention on Climate Change, 1992 (UNFCCC)

According to the Second Report Intergovernmental Panel on Climate Change (IPCC), the body responsible for studying the scientific aspects of climate change, it is estimated that if the present rate of greenhouse gas (GHG) emissions continues, the earth's temperature will rise by 1.4 to 5.8 degrees centigrade by the 2100. The Fourth Report of the IPCC has confirmed unequivocally the warming of the climate system and the increase in global air and ocean temperatures, rising global average sea levels and reductions of snow and ice. The probing questions asked our -How do we define what constitutes "dangerous anthropogenic"? How do we prepare the human race to face sea level rise & a world with new geographical features? Is the current pace and pattern of development sustainable? What changes in lifestyles, behaviour patterns and management practices are needed, and by when?

This is an extremely alarming situation which may would lead to submerging of a number of low-lying states such as Bangladesh, Sri Lanka, Maldives and Egypt and a number of small island States, on account of

rising sea levels, followed by natural disasters such as drought and floods, loss of biological diversity and spread of endemic diseases.

Based on this evidence and a number of other preparatory negotiations the international community adopted the United Nations Framework Convention on Climate Change (UNFCCC) on 9 May 1992. It entered into force on 23 March 1994.

The key thrust of the Convention is to regulate levels of greenhouse gases concentration in the atmosphere to avoid occurrence of climate change on such a level that would impede socio-economic development and threaten food production.

The Convention provides a framework for adopting measures towards reduction of GHG's, based on the principle of common but differentiated responsibilities and a precautionary action, wherein adverse effects of climate change are addressed as a common concern of mankind. Without permitting reservations, the UNFCCC calls upon States to protect the climate for present and future generations. The UNFCCC also provides for two Annexes-I and II, which contain the names of Country Parties responsible for undertaking GHG reduction measures.

G. Kyoto Protocol to the UNFCCC, 1997

To strengthen the UNFCCC, largely a framework convention the Kyoto Protocol was adopted in 1997 and it entered into force in February 2005 with more than 175 parties.

The chief objective of the Protocol is that "...the parties agree to individually or jointly, ensure that the aggregate anthropogenic (human-based) carbon dioxide equivalent emissions or GHG emissions by Annex-I Parties do not exceed their assigned amount, calculated pursuant to their quantified emission limited and reduction commitments in scribed in Annex-

I and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5% below 1990 levels in the commitment period 2008 to 2012”. It also provides for two Annexes A and B that provide a list of the GHGs and countries and their quantified limitation reduction commitments.

In order to achieve these reductions Annex-I (industrialized or developed countries), have been provided with ‘flexibility mechanisms’ through which they can meet their Kyoto targets. These include the clean development mechanisms (CDM), joint implementation and emission trading. CDM involves projects, which are undertaken by the industrialized countries in the developing world for reduction of GHG and sustainable development measures. Joint implementation as a word suggests would be a cooperative exercise between Annex-I parties, to enable trade emission certificates between them on the basis of their assigned amounts. And emission trading involves trading of excess emission allowances, which an industrialized country may have gained.

The implementation of these mechanisms has run into trouble over the issue of ‘sinks’. Sinks - largely denotes the demand of the developed countries to include forest cover in the carbon (GHG) sequestration measures and accounting of the assigned amounts of GHG reduction. The G-77 and China have opposed these moves, as they fear that afforestation, re-forestation and deforestation measures will impinge upon the use of their sovereign resources.

The UNFFCC/Kyoto Protocol provides the legal regime for reduction of GHGs. But the law and international politics don’t see eye to eye. The US largest polluter with more than 24%, the EU with 22%, Russian federation

with 18%, Japan with 7% are the Major GHG emitter states. India and china put together do not account for more than 4% of world GHG Emissions.

The legal regime on climate change casts the historic responsibility on Annex -I parties to undertake green GHG emissions in the first commitment period i.e. from 2008 to 2012. But the evidence and record produced by the UN FCC Secretariat in Bonn says otherwise. Except Norway and Sweden none of the other Annex -I parties have undertaken there assigned amount of GHG reduction. The politics has further undermined the legal regime because the United States refuses to become a party to the Kyoto protocol.

In the latest COP-13 held in Bali, Indonesia in December 2007 a road map was suggested to undertake serious reduction of GHG in the coming years. The developing countries lead by India and China fought tooth and nail the efforts of Annex-I parties to include them within the first commitment period.

The climate change regime rests on the principle of common but differentiated responsibilities. The way forward must be shown by the richer nations of the world upon whom COP13 cast the onerous duty of negotiating a new commitment period post 2012.

H. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 and entered into force on 5 May 1992 with 170 States Parties. Despite the fact that these figures are a proof of its universal acceptance and adherence, it is pertinent to mention here that the largest generator of hazardous wastes, the United States of America has not ratified the Convention.

The Convention is composed of twenty-nine articles and nine annexes. Some of the key provisions of the Convention include: definition of wastes and hazardous wastes, general obligations, the prior-informed consent mechanism, illegal traffic and duty to re-import, mechanisms of implementation and a listing system to regulate hazardous wastes trade.

However, radioactive waste and wastes derived from the normal operations of a ship are excluded from the scope of the Convention on the ground that these wastes are subject to other international regulations on the subject.¹ The former is governed by the London Convention of 1972 and the latter by the International Convention on the Prevention of Oil Pollution from Ships (MARPOL 73/78).

The main objective of the convention is to minimize and control the international trade in hazardous wastes. It places on exporting and importing States a shared responsibility for environmentally sound management and disposal of wastes. It also provides for States Parties an option to prohibit import of hazardous wastes. Under the Convention export of hazardous wastes are prohibited if the State of import does not consent in writing to the specific import. Further, it obliges the State permitting the export of waste to ensure the availability of adequate disposal facilities for the environmentally sound management of hazardous wastes, whatever the place of their place of disposal. The Convention also indicates that States Parties should as a matter of priority locate such places of disposal to the extent possible within its own territory. In addition it is suggested that the transboundary movement of wastes should be reduced to the minimum consistent with the environmentally sound and efficient management of such wastes and is conducted in such a manner, which will protect human health and the environment.

The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa goes beyond the Basel Convention and provides for a total ban on export or import of hazardous wastes.

A Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1999 to supplement the Basel Convention. This provides for a comprehensive regime of liability as well as adequate and prompt compensation for damage resulting from transboundary movements of hazardous wastes and other wastes, including incidents occurring because of illegal traffic in those wastes. Besides, a Multilateral Fund (to pay for clean-up operations until the liable party is identified) and an emergency fund (for urgent action immediately after an incident) were also finalised.

I. Stockholm Convention on Persistent Organic Pollutants (POPs), 2001

Another agreement dealing with hazardous wastes that was adopted by the United Nations Environment Programme is the Stockholm Convention on Persistent Organic Pollutants (POPs). It was adopted on 23 May 2001 and entered into force in 2004 with 146 States Parties.

The problem of POPs has arisen because of a large number of pesticides and industrial chemicals, which are residues or waste products caused on account of disposal such as incineration. POPs when they settle on water bodies and land surface can cause serious damage in the long run as they attack the immune system and the endocrine glands of the body.

The Convention seeks continuous minimization and where possible complete elimination of POPs. In doing so, it provides for undertaking a number of activities such as limiting the production and use of POPs,

restricting imports and exports and regulating newly developed chemicals having POPs characteristics and adoption of measures to manage stockpiles of POPs. It also provides for adoption of the precautionary principle, as there is conflicting scientific evidence as to what risk POPs can cause to the human health and environment.

The treaty provides for a POPs Review Committee, which will be established at the first conference of parties when the Convention comes into effect. The cost of implementing the treaty will require the a huge amount close to US\$ 100 million as the treaty provides that developed countries shall provide new financial resources to developing countries to meet the full incremental cost of implementing measures which will fulfill their obligations under the Convention once its came into force.

It may also be noted that the developing countries have agreed to use the Global Environmental Facility (GEF) as the Convention's temporary financial mechanism. A number of other multilateral environmental agreements along with the POPs treaty can form a cooperative framework for facing out use of chemicals already in place. This includes the Arrhus Protocol on Persistent Organic Pollutant to the Long Range Transboundary Air Pollution Convention, 1998.

J. Rotterdam Convention on Prior Inform Consent Procedure

The Convention on Prior Inform Consent Procedure for certain hazardous chemicals and pesticides in international trade was adopted in Rotterdam on 10 September 1998. The Convention entered into force into force in 2004 with 119 Parties.

The principle of *prior informed consent* is at the heart of any regional or international regime governing transfer, trade or movement of hazardous

wastes or chemicals. The Convention lists out 27 chemicals and another 4 more, which require PIC procedure. The Convention provides that countries importing a specified list of chemicals will have to express their desire by a PIC procedure in writing; is based is that of precautionary approach. Although during the negotiations of the Convention developing countries argued for a mandatory mechanism on compliance, enforcement and liability, they do not find a place in the convention. However, provision has been made for establishment of a legal group, which will address issues relating to non-compliance, dispute settlement and rules of procedure. It should be borne in mind that the convention does not regulate trade but only regulates the procedure needed for facilitating an environmentally sound trade in hazardous wastes and chemicals.

III. Dispute Settlement Bodies (DSBs) in the field of Environment

There are a number of DSBs in the field of environmental law. But the most effective settlement procedure is that of “negotiation and consultation” which is an essential part of every MEA. The COPs also serve to investigate and resolve dispute amongst parties. But parties are free to take up different modes of dispute settlement in the body of the MEA itself. Some of the existing important DSBs have been discussed below.

A. International Court of Justice (ICJ)

The International Court of Justice (ICJ) has addressed issues of environmental law particularly those involving principles of precaution and environmental impact assessment, very cautiously. It must, however, be noted that the Court touched upon two important principles of international law that provided a broad base for the development of international

environmental law. In *the Corfu Channel* case, it gave its imprimatur to the principle contained in the maxim *sic utere tuo ut alienam non laedas* i.e. a State should not knowingly allow its territory to be used for acts contrary to the rights of other States. Second, in the *Barcelona Traction* Case (ICJ 1970) it promulgated the principle of obligation *erga omnes*. This principle could become the basis for developing obligations States owe to the entire international community in areas such as ozone depletion, global warming, pollution of the high seas, depletion of biological diversity.

The ICJ was also approached by New Zealand and Australia in the *Nuclear Test Case* to declare that the atmospheric nuclear tests undertaken by France were prohibited as they violated principles of environmental law, namely the duty to carry out an environmental impact assessment, the precautionary principle and the concept of inter-generational equity and polluter pays principle. The Court, however, declined to exercise its jurisdiction in this case on the ground that the claim of Australia and New Zealand no longer had any object in view of the announcements made by France of its intention to cease the conduct of such tests.

The Court had the opportunity to deal with issues concerning environmental law in the case concerning *the Legality of Use or Threat of Use of Nuclear Weapons*¹. On an application made by the World Health Organization and the UN General Assembly the Court was asked to render advisory opinion on the following questions: "in view of the health and environmental effects would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO constitution?" (WHO), and "is the threat or use of nuclear weapons in any circumstances permitted under international law, (UNGA). The Court rejected the request from the WHO on the ground that

as a specialized agency of the United Nations concerned with effects of use of nuclear weapons on the health or the population of the world it has a mandate to discharge its responsibilities arising out of use of nuclear weapons, irrespective of the fact whether the use of nuclear weapons were legal or illegal. Accordingly, the Court held that WHO did not have the competence to raise the question of legality of nuclear weapons, which is outside its purview. However, in the case of the opinion requested by General Assembly the Court accepted its jurisdiction to render advisory opinion on the question raised by the General Assembly.

It held:

- a. There is neither in customary nor conventional international law specific authorization for the threat or use of nuclear weapons;
- b. a threat or use of force by means of nuclear weapons that is contrary of Article 2(4) of the UN Charter and that fails to meet all the requirements of Article 51, is unlawful;
- c. a threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and undertakings which expressly deal with nuclear weapons; and
- d. there existed an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament under effective international control.

The Court was, however, divided equally by seven votes to seven on the legality of holding nuclear weapons as a measure of nuclear deterrence. On the point that there could be lawful use of nuclear weapons in an extreme

circumstance of self-defence, in which the survival of a State would be at stake. However, with the casting of vote by the President of the Court the Court held that it would be lawful to hold the nuclear weapon as a deterrent and use it in the extreme circumstances of self-defence. However, the Court retrieved its position by once again ruling that the threat or the use of nuclear weapons would generally be contrary to the rules of international law applicable in an armed conflict, in particular the principles and rules of humanitarian law.

This view, incidentally it may be noted, is in accordance with the view held by India as submitted in its memorial. In this connection it may be noted that the view of the Court in respect of the right of self-defence of a State appears to suffer from the disadvantage of treating the right in vacuum. That right should have been balanced as has been rightly pointed out by several judges Bedjaoui, Shahabuddeen, Weeramantary and Koroma, by the imperative needs of preservation of the human species itself and the preservation and protection of human environment.

The Court, however, attempted to balance environmental duties of States with their right of self-defence. The Court first recognized the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control. Noting "that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn", the Court noted that the general obligation of States "is now part of the corpus of international law relating to the environment". While noting that it "does not consider that the treaties¹ in question could have intended to deprive a State or the exercise of its right of self-defence under international law because of its obligation to protect the

environment", the Court pointed out that respect for the environment is one of the elements that needs to be considered, in assessing, whether an action is in conformity with the principles of necessity and proportionality.

In its Judgement in the *Gabcikovo-Nagymoros Project case (Hungary/Slovakia)* of 25 September 1997, the Court once again touched upon a number of important environmental issues. It first noted the observation of the International Law Commission with reference to State practice that "it is primarily in the last two decades that safeguarding the ecological balance has come to be considered an "essential interest" of all States. The Court recalled in this connection its own observation on the respect to be given to the obligations of States concerning environment in the *Case on the Legality of the Threat or Use of Nuclear Weapons*. More specifically, the Court addressed Hungary's contention that it was entitled to terminate the 1977 treaty with Czechoslovakia because new requirements of international law for the protection of environment precluded performance of the treaty. In this connection, the Court noted that neither parties contended that new peremptory norms of environmental law had emerged since the conclusion of 1977 treaty in the absence of which there was no case made out to override or ignore the obligations under the 1977 treaty. On the other hand any newly developed norms of environmental law relevant to the treaty could be incorporated into the treaty, but only by joint agreement.

Moreover, the obligations contained in Articles 15, 19 and 20 of the Treaty of 1977 were general and required to be transformed into specific obligations of performance through a process of consultation and negotiation. Their implementation required a mutual willingness to discuss in good faith actual and potential environmental risks. The Court, however, recognized that the parties disagreed on the consequences of the application

of the principle of precaution to the project in question even as they recognized the importance of the principle. In this connection the Court noted the need for third party involvement, which may be helpful and instrumental in finding a solution, provided each of the parties, is flexible in its position.

A reading of the cases involved indicates that the International Court of Justice regards the basic principles of environmental law as important obligations of States. But it noted that there could be differences on the interpretation and application of the principles in a given case and such differences were to be resolved through negotiation or third party settlement.

B. International Tribunal for the Law of the Law (ITLOS)

The International Tribunal for the Law of the Sea is a specialized judicial body established by the United Nations Convention on the Law of the Sea (UNCLOS) as one of the options available to the parties to the Convention for the compulsory settlement of disputes concerning the interpretation or application of the Convention. The UNCLOS regulates all aspects of the ocean space includes- its uses and its resources and includes, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine scientific research. That is why UNCLOS is often referred to as a “comprehensive constitution for the oceans”.

As a specialized court of law, the jurisdiction of the International Tribunal for the Law of the Sea is limited to matters related to this area of international law, including those contained in UNCLOS.

The ITLOS is not only open to States, but also to international organizations, which are also entitled to become parties to it. In cases

relating to activities in the international seabed area, the Seabed Disputes Chamber, has jurisdiction in such disputes as those between States 2 Parties, the Authority or the Enterprise, State enterprises and natural or juridical persons, and between the Authority and a prospective contractor.

While States have a freedom to choice as regards the procedure under UNCLOS, it may be noted that the ITLOS has compulsory jurisdiction in two legal proceedings which may require urgent action: provisional measures and prompt release of vessels and crews.

Most of the 13 cases submitted to ITLOS, have been limited to the two above urgent proceedings. In the order of the ITLOS on prompt release proceedings may be considered an appropriate and cost effective mechanism for parties faced with the arrest of vessels and crews” n the *MOX Plant Case*, (Ireland v. United Kingdom), concerning the potential harmful effects on the marine environment of the Irish Sea resulting from the extension of a nuclear plant. The Tribunal stressed, “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment” (para.82). Further, it also stated that prudence and caution required that the parties exchange information concerning risks or effects of the operation of the plant (para.84).

In the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, Malaysia v. Singapore, the Tribunal was faced with the question of the consequences on the environment of land reclamation activities carried out by Singapore. The Tribunal reaffirmed the duty of the parties to cooperate and, for this purpose, to enter into consultations forthwith in order to establish promptly a group of independent experts to conduct a study to determine, within a period not exceeding one year, the effects of the land reclamation activities on the marine environment.

The Tribunal in its orders also gives application to a number of principles of international law and IEL. In the M/V “SAIGA” (N° 2) Case, Saint Vincent and the Grenadines agreed to submit to the Tribunal the merits of a dispute concerning the arrest of the vessel *Saiga*. The Tribunal, in its Judgment of 1 July 1999, adopted a number of significant interpretations of the Convention, particularly concerning flags of convenience, hot pursuit, enforcement of customs laws, the espousal of claims relating to crew members not of the nationality of the applicant State, among others.

Another dispute submitted to the Tribunal by special agreement is the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks In the South-Eastern Pacific Ocean*. This dispute between Chile and the European Community has been submitted to a special chamber of the Tribunal composed of four judges of the tribunal and one judge *ad hoc*. This case is still pending because both parties have requested on more than one occasion, the extension of the time limit for making preliminary objections.

C. Permanent Court of Arbitration (PCA)

It has been seen that the international community and civil society are increasingly feeling the need for fast speedy mechanisms for resolving environmental disputes. With the exception of the ITLOS, there are very institutional fora available to States and non-States for recourse to resolve environmental disputes.

The PCA recognizing this gap adopted the Environmental Arbitration Rules and Conciliation Rules in June 2001. These Rules provide a forum where States can “resolve all their environmental disputes peacefully...in accordance with the Charter of the United Nations”. These Rules are

available to all “concerned citizens” with the possibility for access to justice, redress, and remedy. Furthermore, in the spirit of Principle 7 of the Rio Declaration, the PCA has made its Financial Assistance Fund available to aid developing countries. This Fund may be drawn on when developing countries seek to resolve a dispute relating to the environment and/or natural resources using one of the PCA’s sets of the Environmental Rules, or engaging the services of the PCA in facilitating and administering resolution of such a dispute.

The strength of these dispute resolution rules is strengthened by the political will shown by Member States to nominate internationally recognized jurists and scientists from their respective countries to serve on Expert Panels. Currently, there are over 100 persons on the lists of these two PCA Environmental Panels, the Panel of Arbitrators and the Panel of Scientific Experts.

Some innovative features of the PCA Environmental Arbitration and Conciliation Rules are their procedures for the rapid constitution of a tribunal, allowing for a speedy response to a dispute; regulation of confidentiality; availability of provisional measures; and modern choice of law provisions tailored to environmental and/or natural resources dispute resolution. The rules have also been streamlined to keep costs at a minimum.

Throughout its history, the PCA has offered dispute settlement services to the international community: fact/finding and inquiry, mediation/conciliation, and arbitration.

The Rules provide varied flexibility for States and/or non-States to address the issues concerning them in a *unified* forum adding a form of stability to the legal regimes provided by MEAs. Further, conciliation and arbitration under the PCA Rules can be used in the context of existing MEAs to promote their implementation.

IV. Conclusion

The multilateral treaties, which we have seen, are all negotiated instruments, which in the final analysis are as strong or weak as states want them to be. For example the regime on ozone depletion is a stellar example of an international treaty implemented in letter and spirit. The reasons for this are the provisions on helping developing and less developed countries to cope with the incremental cost incur in undertaking obligations. Something similar may also need to be agreed upon in the climate change regime. The conventions on biodiversity and the conventions on a control of hazardous waists have been adhered to by the majority of the international community. In fact there are number of regional agreements and protocols which address various aspects of bio-diversity. In the next lecture note we shall look into these aspects in further detail.

Most of the MEA's provide for disputes settlement clauses where States can enter into negotiations or consultations to settle their disputes amicably. Resort to the ICJ and arbitration has also been provided for in nearly all MEAs. Many of the disputes settlement bodies seen above have grown as specialized chambers dealing with only environmental disputes.