

Introduction to Environmental Governance



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About the course

This 3-hour self-paced course was developed by the UN Institute for Training and Research (UNITAR) based on its long-standing course “International Environmental Governance” a 3-week course, which amounts to 35 learning hours. Dr. Lothar Gündling has collaborated with UNITAR to develop the original course’s substantive contents and to adapt them to this shorter version. UNITAR has reviewed the instructional design and adapted the methodological approach to self-paced learning.

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InforMEA

UNITED NATIONS INFORMATION PORTAL ON
MULTILATERAL ENVIRONMENTAL AGREEMENTS

Introduction to Environmental Governance

This 3-hour self-paced course has been developed under the InforMEA Project. InforMEA is steered by the MEA Information and Knowledge Management (IKM) Initiative with the support of UN Environment and the European Union. The MEA IKM initiative currently includes 43 international and regional legally binding instruments from 18 Secretariats hosted by four UN organizations and the International Union for Conservation of Nature (IUCN).

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ORGANIZATIONS



UN



FAO



UNESCO



UNECE

UNECE



IUCN

GLOBAL TREATIES



UNFCCC



OZONE



BASEL CONVENTION

BASEL



ROTTERDAM



STOCKHOLM



CBD



United Nations
Convention to Combat
Desertification
UNCCD



CITES



WHO



Ramsar



ITPGRFA



CMS

International Environmental Governance

Lesson Objectives

At the end of this lesson you will be able to:

- ➔ Define what International Environmental Governance is
- ➔ Identify the main actors of IEG
- ➔ Identify the elements of IEG

What is International Environmental Governance (IEG)?

In an increasingly globalized world many decisions are influenced by agreements and policies decided at the international level. International Environmental Governance (IEG) comprises global and regional environmental agreements; decisions and policies; as well as the institutions that make them and the processes by which they are made.

IEG is ultimately about international processes and institutional frameworks, including financial mechanisms, that develop and facilitate the implementation of the agreements and policy instruments that regulate environmental protection.

International Environmental Governance is the continuing process of interactive decision-making in international environmental matters. It includes institutions and organizations as well as binding agreements, policy instruments and procedures that regulate environmental protection at the international level.

IEG is a broad, dynamic and complex concept that seeks to improve the state of the environment while supporting sustainable development. IEG covers a wide range of stakeholder and informal arrangements, such as voluntary codes of conduct for private businesses and partnerships between governments and major groups and stakeholders, including non-governmental organizations (NGOs).

Environmental issues may be regulated by regional or global agreements. Some issues, such as air and watercourse pollution or protection of migratory species, may affect several States, and would require regional actions. Other issues may concern all States, such as climate change or the depletion of the ozone layer, raising the need for global cooperation. Even issues that may be perceived as domestic concern might be regulated by an international agreement because of their qualification as a common concern of humankind. An example is the protection of world natural heritage sites.

How does IEG work?

A State is only bound by an international legally binding obligation if it has consented to it. In the absence of an international agreement in force or a binding rule of general international law, there is no over-arching international body or institution that has the right or authority to impose an international obligation upon a State.

International cooperation is often in a State's own interest when it comes to environmental protection. International co-operation can take many forms. It may take the form of a legally binding instrument, such as a treaty, when there is a need for clear and strict rules to regulate an activity (hard law). It can also be a policy instrument, such as a declaration, which is not legally binding but imposes a political or moral obligation on States to act in a certain manner (soft law).

Over the last 30 years there has been a great increase in such binding and non-binding instruments as States respond to emerging environmental challenges.

Principal actors in IEG

● States

States are the primary subjects of international law. They have the capacity to conclude treaties and to make claims with regard to breaches of international law. States' action is the most fundamental part of IEG.

● International organizations

The term 'international organization' refers to intergovernmental organizations (IGOs). They are increasingly accepted as subjects of international law. Intergovernmental organizations are established by international agreements between States.

These agreements determine the organization's legal personality, its mandate, purpose and objectives. An IGO's competence to participate in treaty-making and to claim certain rights can only go as far as States have empowered it to do (e.g. European Union).

Various IGOs working in other fields have included environmental issues in their work to reach their objectives, due to the strong interconnection and mutual dependence of environmental protection, as well as the importance of a functioning environment for development, human well-being and other objectives of international cooperation.

The most prominent example of an IGO which was not founded to work on the conservation of nature, but which has been of major importance to IEG, is the United Nations.

IGOs may be established at the global level with membership open to all the nations of the world as far as they comply with membership criteria and after approval by a general assembly or similar body. They may also be created on a regional or sub-regional level, with membership restricted to those countries located in certain geographical areas (e.g. European Union, African Union).

● Major Groups and other stakeholders (MGoS)

Since the first United Nations Conference on Environment and Development in 1992 - known as the Earth Summit, it was recognized that achieving sustainable development would require the active participation of all sectors of society and all types of people. Agenda 21, adopted at the Earth Summit, drew upon this sentiment and formalized nine sectors of society as the main channels through which broad participation would be facilitated in UN activities related to sustainable development. These are officially called "Major Groups" and include the following sectors:

- Women
- Children and Youth
- Indigenous Peoples
- Non-Governmental Organizations
- Local Authorities
- Workers and Trade Unions
- Business and Industry
- Scientific and Technological Community
- Farmers
- MGoS continue to demonstrate a high level of engagement with intergovernmental processes at the UN. The coordination of their input to intergovernmental processes on sustainable development has been led by UNDESA/Division for Sustainable Development (DSD).
- Member States ultimately decide upon the modalities of participation of MGoS. Thus, the engagement and participation of MGoS in intergovernmental processes related to sustainable development varies depending on the particular sustainable development topic under discussion.

Elements of IEG

International law-making and policy initiation

The international environmental law-making process begins when two or more subjects of international law (States and/or IGOs) identify an environmental issue which in their view requires concerted international action. The States then agree on a forum or institution for their negotiations.

For a global issue, the UN may be the institutional framework. For regional concerns, a forum of a regional organization might be more appropriate. If the negotiations are successful, an agreed text is adopted by the States and signed by their representatives. States then undertake their own national procedures to ratify the treaty. After a certain period specified in the treaty, it enters into force and becomes binding upon States parties.

States may decide that an issue is better addressed by a soft law instrument. In such case, they may use one of the existing structures to decide on a declaration or develop guidelines, codes of conduct or global plans or actions. Sometimes, these soft law instruments may be further developed over time and eventually form the basis of a treaty.

Implementation of International Environmental Law

States are responsible for implementing international law at the national level. National governments must give effect to their treaty obligations through their national law and policy.

For example, to fulfill their obligations resulting from a species-protecting convention, such as [Convention on International Trade on Endangered Species \(CITES\)](#), States may need to enact a law to authorize a national body to issue permits or to prohibit the import into the country of protected specimens without a license.

Each Multilateral Environmental Agreement (MEA) establishes an institutional structure to allow Parties to regularly meet to discuss the implementation of the MEA and assist with developing it further, for example by adopting non-legally binding decisions to provide guidance to Parties in implementation of their obligations.

To enable and encourage States to implement the commitments of MEAs, international funding agencies provide financial assistance, especially to developing countries.

International mechanisms to ensure compliance and enforcement

IEG also foresees the mechanisms to address compliance and enforcement of international environmental law. Compliance with and enforcement of MEA obligations raise a number of difficult issues.

The Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (UN Environment Programme) provide a useful distinction between the terms compliance and enforcement at international and national level. If a State persistently fails to implement its international obligations, there are only limited mechanisms for enforcing compliance at the international level.

Cases of noncompliance are frequently settled by negotiation and compromise among the Parties to a MEA. The most important fora for such negotiations are the regular meetings of the Parties, often referred to as the [Conference of the Parties \(COP\)](#). A COP offers an opportunity to discuss and resolve differences, provide guidance on interpretation as well as to adopt specific mechanisms to deal with compliance issues, such as compliance committees.

These approaches are a good mechanism to put pressure on State vis-à-vis their obligations and reputation within the international community.

Fundamental principles of good environmental governance

It is through good governance that sustainable development can be achieved in a fair and effective manner. Good governance includes:

- ➔ **Participation:** Good governance needs to be participatory. Participation can happen directly or through legitimate intermediate institutions or representatives. It includes the obligation of providing information. The rights of free association and freedom of expression are fundamental to participation.
- ➔ **Rule of law:** Good governance requires fair legal frameworks that are enforced impartially. The judiciary and executive powers need to be impartial and incorruptible.
- ➔ **Transparency:** Transparency means that the decision-making processes, as well as the enforcement of decisions, follow rules and regulations. In addition, information needs to be freely available and directly accessible to those who will be affected by such decisions and their enforcement. Information needs to be provided in an easily understandable form and through appropriate media that reaches the people concerned.
- ➔ **Responsiveness:** Good governance requires that institutions and processes try to respond to all stakeholders within a reasonable timeframe.
- ➔ **Consensus oriented:** Good governance requires that different interests within the society be taken into account and that decisions follow the objective of reaching a broad consensus on what is in the best interest of the whole community.
- ➔ **Equity and inclusiveness:** Good governance does not only serve the interests of the mainstream of society, but includes also its most vulnerable and minority groups.
- ➔ **Effectiveness and efficiency:** Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.
- ➔ **Accountability:** Accountability is a key requirement of good governance. Governmental institutions, but also the private sector and civil society organizations, must be accountable to those who will be affected by their decisions or actions.

Lesson Review:

International Environmental Governance describes the interplay of global and regional environmental agreements, decisions, policies, institutions and processes that regulate environmental protection.

Environmental issues have become increasingly important in the globalized and industrialized world which makes International Environmental Governance necessary.

States have an interest in cooperation, because: a) the international community's avail is guaranteed when environmental sustainability can be ensured; b) some issues concern the international community and can only be confronted in cooperation (e.g. ozone depletion, climate change); c) States often benefit directly from regulation.

The principal actors in IEG are
 a) States concluding treaties at the international level and implementing them at the national level;
 b) International Organizations derived from international treaties;
 c) Major Groups and other stakeholders.

International Organizations provide a forum for international cooperation, consultation and negotiations and have a considerable influence on the international policy-making agenda.

Non-governmental organizations are privately founded organizations with a special concern. This gives the civil society and private sector a possibility to be involved with international political processes.

The different steps of law-making and policy initiation are composed of a) defining an environmental issue; b) finding a forum on a regional/global level as appropriate; c) starting the negotiation process; d) adopting a text that is binding upon the States, once it has been ratified and comes into force.

Treaties relating to environmental protection are called Multilateral Environmental Agreements (MEAs).

For the implementation of a treaty it is indispensable to assure human and financial resources and set political priorities for complying with obligations. Regular discussions on guiding principles as well as international funding agencies support implementation attempts.

Fundamental maxims of good environmental governance imply the principles of good governance that include: a) Participation; b) Rule of Law; c) Transparency; d) Responsiveness; e) consensus oriented; f) equity and inclusiveness; g) effectiveness and efficiency; h) accountability.

Elements of International Environmental Governance

Lesson Objectives

At the end of this lesson you will be able to:

- ➔ Identify the role of the UN bodies, agencies, and programmes in international law and policy-making
- ➔ Identify the role of the Multilateral Environmental Agreements' (MEA) bodies in international law and policy-making
- ➔ Describe the role of Non-state actors in international law and policy-making
- ➔ Describe the role of UN bodies, agencies, and programmes in the implementation of international environmental law and policy
- ➔ List the main forums for settling international environmental disputes

Institutional processes for law and policy-making

Role of the United Nations in international law and policy-making

The United Nations (UN) is the most important institution for global cooperation. As such, it has played a major role in the development of international environmental law and policy. The UN provides the principal universal forum for international cooperation in all kinds of thematic fields, including environmental issues, through its organs, subsidiary bodies, programmes, and specialized agencies.

UN bodies and specialized agencies

The **UN General Assembly (UNGA)** may discuss any matter within the scope of the UN Charter and make recommendations to the member states or to the Security Council. As the principal policy-making organ of the UN it has played a major part in the development of IEG. The UNGA has identified environmental concerns as issues of peace and security, therefore allowing them to fall within the UN mandate



Major UN environmental conferences:



Convening of conferences:

- 1972 UN Conference on the Human Environment (UNCHE, Stockholm)
- 1992 UN Conference on Environment and Development (UNCED, Rio de Janeiro)
- 2002 World Summit on Sustainable Development (WSSD, Johannesburg)
- 2012 UN Conference on Sustainable Development ("Rio+20", Rio de Janeiro)

Major environmental bodies created:

- 1972 United Nations Environment Programme
- 1992 Commission on Sustainable Development (CSD, concluded 2013)
- 2012 High-level Political Forum on Sustainable Development



The **Security Council** has the primary responsibility for the maintenance of international peace and security. In 1992, the UN Security Council officially recognized the link between the environment and security, when it affirmed that 'non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security'.



The **Economic and Social Council (ECOSOC)** is the UN's principal organ to coordinate economic, social, and related work of the UN specialized agencies and functional commissions

The **specialized agencies of the UN** have developed and implemented programmes related to the environment in accordance with their mandates :



Food and Agriculture Organization of the UN (FAO)



International Fund for Agricultural Development (IFAD)



World Health Organization (WHO)



UN Educational, Scientific and Cultural Organization (UNESCO)



World Meteorological
Organisation

World Meteorological Organization (WMO)



Intergovernmental Panel on Climate Change (IPCC)



International Labor Organization (ILO)



International Maritime Organization (IMO)



International Civil Aviation Organization (ICAO)



UN Industrial Development Organization (UNIDO),
or International Atomic Energy Agency (IAEA)

International Atomic Energy Agency

The UN Environment Programme



The United Nations Environment Programme was established in 1972 by the UNGA as a subsidiary body of the UNGA, reporting through the ECOSOC, following a recommendation by the participants of the Stockholm Conference, as the 'environmental pillar' of the UN system.

It is the only UN body exclusively dedicated to international environmental matters and has played a significant catalytic role in the development of MEAs and soft law rules. The UN Environment Programme was established to address major and emerging environmental policy issues.

The governing body was then composed of 58 member Governing Council adopting political decisions on major global and regional environmental issues.

The 2012 UN Conference on Sustainable Development ("Rio+20") discussed intensively the strengthening of the architecture of international environmental governance, including the strengthening of the UN Environment Programme through making the membership of the Governing Council universal starting 2013 and then transforming it into the United Nations Environment Assembly.

Despite UN Environment's potentially limiting status as a UN Programme, rather than a specialized agency or body of the UN, it has made significant contributions to the development and application of both international environmental law and policy. In particular, it has had a catalytic role in developing many legally-binding treaties, as well as soft-law instruments, which makes it one of the most relevant players in International Environmental Governance.

UN Environment works in collaboration with many partners, such as other UN entities, national governments, IGOs and NGOs, business, industry, the media and civil society, to further the development of international environmental law and policy.

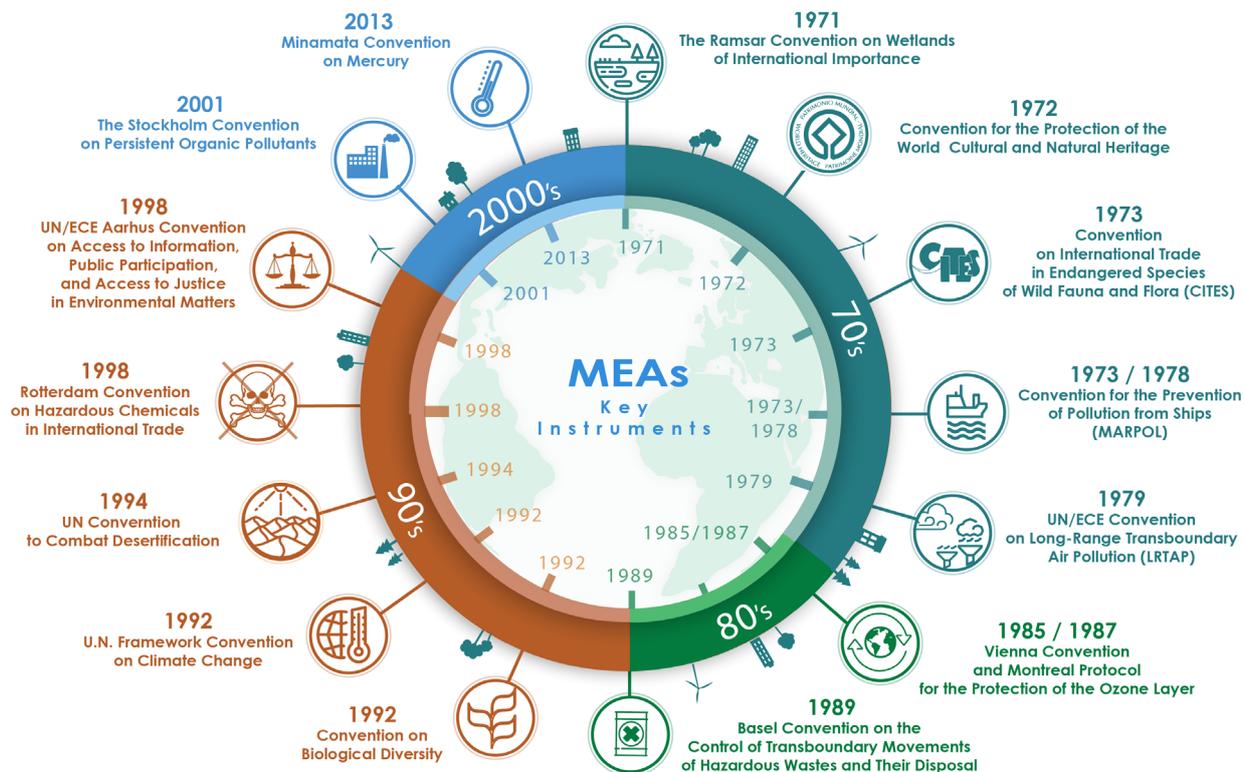
International Law Commission (ILC)



The ILC was established in 1948. Its mandate is the progressive development and codification of international law. It has contributed significantly not only to the development of general international law, such as to the law of treaties and of state responsibility, but also furthered international environmental law.

The role of MEA bodies in international law and policy-making

Since 1972, over 500 MEAs have been adopted. They generally have similar institutional structures comprising: a conference or meeting of the parties; a secretariat; subsidiary bodies; a clearing-house mechanism and sometimes a financial mechanism (.e.g. Multilateral Fund for the Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer).



COP

The **Conference of the Parties (COP)** is the supreme decision-making body regarding the overall implementation and development of the agreement.

The COP decides on the direction and evolution of the treaty concerned. It generally makes political (not legally binding) decisions, such as by adopting recommendations, or developing guidelines and programmes of work.

The Conference of the Parties/ COP may also establish subsidiary bodies charged with the development of new legally binding instruments, such as a Protocol. For example, the COP of the [Convention on Biological Diversity](#) established a process which resulted in the adoption of the [Cartagena Protocol on Biosafety to the Convention on Biological Diversity](#).

For some convention, e.g. Convention on Migratory Species, Conference of the Parties (COP) can decide to add (or remove) a species from the Appendices backed by reliable scientific evidence.

In general, the COP reviews progress made and challenges encountered during implementation, and decide on the priorities for the next intersessional period. Where applicable, they also review the instrument's finances and set a budget.

SECRETARIAT

The **Secretariat to an MEA** is established by the Parties to the agreement, with the objective of assisting the Parties in fulfilling the goals of the agreement. It is an international administrative entity whose functions depend on the mandate and resources given by the Parties.



Non-State actors

Various non-State actors can influence international law and policy processes.



NGOs provide a link for civil society to take part and influence decision-making in international law and policy. They may participate in COPs and other international meetings as observers (they usually have the right to participate, provide scientific advice; as well as publish their opinions and research on certain topics). Through campaigning and other means of public relations, they influence public opinion and raise public pressure on governments and IGOs.



The business sector can also play an important role in the development of international law and policy. Like the NGOs, members of this sector have increasingly attended international meetings to seek communication, cooperation and concerted action.



Science has often had an agenda-setting influence in IEG. The scientific community provides important input into meetings of COPs. The scientific community identifies new and/or pressing environmental concerns and brings them to the attention of policy-makers to consider political or legal responses.

Implementation of International Environmental Law and Policy

The role of the UN in the implementation of international environmental law and policy



The UN Environment Programme is not an “implementing agency” in its own right, but it does have some responsibilities in this field, as hosting secretariats and facilitating capacity building.

UN Environment assists countries in implementing environmentally sound policies and helps national governments to anticipate, respond to and manage disasters caused by environmental factors, or which have profound effects on the environment.

It also assesses the environmental consequences of armed conflict and provides post-conflict clean-up and mitigation guidance. The Law Division oversees the functions of UN Environment that involve the development and facilitation of international environmental law, governance and policy.



The **United Nations Development Programme (UNDP)** has helped countries take practical measures to implement international environmental obligations and policy decisions.

It is the UN’s principal channel for multilateral technical and investment assistance to developing countries. It is active in all economic and social sectors. UNDP addresses environmental issues since the early 1970s.



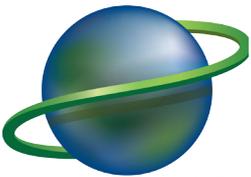
The **UN High-Level Political Forum on Sustainable Development (HLPF)** was established by the UNGA, following the outcome of the “Rio+20” Conference in 2012. Its tasks are: to follow up on sustainable development; and to coordinate action for sustainable development in the UN system.

The **2030 Agenda for Sustainable Development** adopted in 2015 has given the HLPF a major role in overseeing the implementation of the Agenda and especially the Sustainable Development Goals (SDGs).



The **World Bank** has significant impact on IEG, in particular through the volume of resources that it manages. It influences processes directly through its own environmental strategy and indirectly through the implications of its development activities for the environment.

Through its financing activities, the World Bank has enabled many developing countries to build the capacity to address environmental issues effectively. It has furthermore established requirements for Environmental Impact Assessments (EIAs) and other environmental ‘safeguard’ policies and guidelines.



As opposed to the more general funding system of the World Bank, the **Global Environment Facility (GEF)** was created with the specific objective of financing environmentally beneficial activities.

Established in 1991, it helps developing countries fund projects of global importance that protect the environment and promote sustainable livelihoods in local communities.

Role of MEA bodies in the implementation of international environmental law and policy

COPs

Conferences of the Parties (COPs) are responsible for monitoring the implementation efforts of the Parties to the MEAs.

The national governments generally provide the Secretariats of MEAs with regular national reports which the subsidiary bodies of MEAs and Secretariat analyses and summarizes for the Conference of the Parties.

National reporting is a critical part of implementation. It provides a snapshot of national implementation that identifies implementation deficits.

At COP, the Parties may discuss and investigate obstacles in the implementation and possible reasons for noncompliance with the treaty obligations.

To assist national governments in implementing the MEA, COPs may develop soft law guidelines which contain non-legally binding recommendations and possible solutions regarding common obstacles in treaty implementation.

SECRETARIATS

MEA secretariats fulfill various functions, depending on the mandate specified by their establishing convention. Most secretariats are responsible for the monitoring and evaluation of implementation, receiving and analyzing national reports, and providing the Conference of the Parties with the information contained in these reports.

CHMs

Several conventions and protocols have **clearing house mechanisms (CHM)**, generally operated by the secretariats.

These CHMs promote and facilitate technical and scientific cooperation or facilitate the exchange of scientific, technical, environmental and legal information and assist Parties in the implementation of the agreement.

Compliance and Enforcement

Application of international obligations in national courts

As a general rule, it is the national courts that decide legal disputes within countries. When they make their decision, they need to consider the entirety of law which is binding within their State, including obligations derived from MEAs.



International law generally and as a matter of principle binds States, not their citizens. According to the general principles of international law, it depends on each national legal system to decide when an international obligation becomes applicable, whether it is already after ratification/ acceptance of the convention, or only after national laws are adopted to implement the international obligations.

Dispute settlement at the international level



Many MEAs also contain specific provisions on settlement of disputes.

They frequently follow the same model of initially seeking solution by negotiation and/or mediation.

Only once those processes have been exhausted may recourse be made to the International Court of Justice (for State Parties that have accepted its jurisdiction) or to arbitration. An example of such procedure is set out in [Article 27 of the Convention on Biological Diversity](#).

Intergovernmental commissions and MEA COPs/MOPs may serve as fora for supervising compliance and bringing political pressure to bear on non-compliant Parties. These gatherings of high political government representatives can exercise community pressure on individual States, and work towards the resolution of conflicts of interest. They present a flexible and effective form of dispute settlement within the system of treaties and protocols, as well as in the area of soft law.

Many MEAs have also developed compliance mechanisms to address non-compliance in a largely non-adversarial and non-judicial way.

The jurisdiction of **international judicial and arbitral tribunals** depends on the consent of the parties to each dispute. No State can be subject the judgement of an international court without having consented to it in advance.



The **International Court of Justice (ICJ)** is the principal judicial organ of the United Nations.

The ICJ's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.

Many MEAs include the ICJ as a possible dispute resolution mechanism, but to date it is rarely been used. Despite its status as the principal judicial organ of the UN, the ICJ has no priority as a forum for dispute settlement.

In 1993 the ICJ created a Chamber for Environmental Matters, which was periodically reconstituted until 2006. However, in the Chamber's thirteen years of existence no State ever brought a case before it. In 2006, the Court decided not to hold elections for a Bench for the Chamber.



As regards IEG, the **Permanent Court of Arbitration (PCA)** has developed model clauses for the arbitration of disputes related to natural resources and optional rules for disputes relating to the environment and/or natural resources.



The **World Trade Organization (WTO)** has developed a tailor-made dispute settlement procedure for trade-related disputes which may involve environmental aspects. The decisions taken by the WTO bodies – the Dispute Settlement Body and the Appellate Body – are highly important in practice.

Compliance mechanisms under MEAs

Many MEAs, such as the **Montreal Protocol on Substances that Deplete the Ozone Layer**, the **Convention on International Trade in Endangered Species of Wild Fauna and Flora** or the **Basel Convention on the Control of Transboundary Movements of Wastes and their Disposal**, have developed compliance procedures. This was, in part, a response to the fact that the formal dispute settlement mechanisms under MEAs were not being used despite worrying levels of non-compliance. Compliance mechanisms vary from MEA to MEA as they are tailored to the specific circumstances of that agreement.

Lesson Review:

The United Nations Organization (UN) is the most important institution for global cooperation and plays a major role in the development of international environmental law and policy. Among its principal organs are the General Assembly, the Security Council and the **Economic and Social Council (ECOSOC)**.

The General Assembly has the power to adopt non legally-binding resolutions, convene law-making conferences and initiate codification projects.

ECOSOC convened in 1949 a scientific conference on the Conservation and Utilization of Resources (UNCCUR) which was the predecessor of the Conference on the Human Environment (Stockholm Conference, 1972), the UN Conference on Environment and Development (Earth Summit in Rio 1992) and the conferences that followed.

The **Food and Agriculture Organization (FAO)** has contributed significantly to guidelines on pesticides and genetic resources for food and agriculture. **The UN Education and Scientific Organization (UNESCO)** played a major role in the process of developing important MEAs in international environmental law.

The United Nations Environment Programme is the UN body with the mandate to set a global environmental agenda. Promoting partnership in caring for the environment, monitoring and analyzing the environmental situation, UN Environment has contributed to the emergence of global environmental treaties like for instance the **Vienna Convention for the Protection of the Ozone Layer** and the **Convention on Biological Diversity**.

Multilateral environmental agreements often designate bodies with a policy-making character. Those bodies like the Conference of the Parties (COPs) meet regularly, take political and sometimes legal decisions on how to understand and implement the agreed treaty. MEA secretariats monitor and assist in evaluating the implementation of the agreements by analyzing countries' reports on the implementation.

Compliance mechanisms included in MEAs provide for procedures and measures to be taken, in case compliance needs to be enforced.

Non-governmental organizations are important actors as they influence decision-making in international law and policy. They may participate in COPs and other international meetings as observers.

The **United Nations Development Program (UNDP)** complements UN Environment with an environmental strategy intended to improve environmental governance.

Important funding agencies are the **World Bank** as largest source of development assistance and the **Global Environmental Facility** financing environmentally beneficial activities.

Regional Environmental Governance

Lesson Objectives

At the end of this lesson you will be able to:

- ➔ **Identify the UN Regional Commissions that contribute to IEG**
- ➔ **Identify the Regional International Organizations that contribute to IEG**
- ➔ **Discuss the suitable levels (global or regional) to deal with a specific environmental issue.**

Regional Environmental Governance (Regional structures and institutions)

Regional organizations contribute to IEG both through their own programmes or legislation and through participation in global accords. The regional organizations can be divided between the UN Regional Commissions and other significant regional organizations.

UN Commissions in the Regions



The ECOSOC has established 5 UN Regional Commissions. The Regional Commissions have developed and implemented also environmental programmes for their respective regions, and assisted the Governments in the regions to promote relevant activities in the field of the environment. Each has made its own contribution to IEG. The following Commissions are in place:

- **UN Economic Commission for Africa (UNECA),**
- **UN Economic and Social Commission for Asia and the Pacific (UNESCAP),**
- **UN Regional Economic and Social Development Commission in Western Asia (UN-ESCWA),**
- **UN Economic Commission for Europe (UNECE),**
- **UN Economic Commission for Latin America and the Caribbean (UNECLAC),**

Other significant Intergovernmental Organizations that contribute to IEG



The European Union (EU),

Its objective is to develop a single economic market through a standardised system of laws that applies in all Member States.

These laws guarantee the freedom of movement of people, goods, services, and capital, and also maintain common trade, agricultural, fishery, and regional development policies.

By acceding to the EU, Member States pass over to the EU part of their jurisdiction and consequently, become bound by EU law which is supreme and either applies directly in the member states (“regulation”) or must be transposed into member state law (“directive”). As such the EU has become a “regional economic integration organization” which means that the EU has the authority to act on the international stage in its own right and may become a party to MEAs if and where they explicitly provide for ratification or accession by regional economic organizations.

Although the environment was not expressly mentioned in the 1957 Treaty of Rome, the EU started to address environmental concerns at an early stage. Its first regulatory measures were taken in the 1970s and included, for instance, the Wild Birds Directive adopted in 1979 and complemented later by the groundbreaking Directive on Fauna Flora Habitats.

Since 1986 when the Single European Act had been agreed on by the member states, the explicit competence for environmental policy is part of the EU primary law (today Articles 191-193 of the Treaty on the Functioning of the EU).

The EU has been active in developing new legislative and policy measures to protect the environment across a wide range of sectors, including air, water, biodiversity, waste management, chemicals, and horizontal legislation on areas such as environmental impact assessment, access to environmental information, participation in decision-making and integrated permitting.

Some of the EU’s legislation is derived from MEAs; for example its Regulation on the protection of endangered flora and fauna implements the [Convention on International Trade in Endangered Species](#) throughout the EU. Many other measures, such as the Water Framework Directive, are largely a result of the EU’s own initiative.

The Organization for Security and Co-operation in Europe (OSCE)



aims to secure regional stability by promoting democratic practices and improved governance. It has developed a range of activities in the environmental sphere aimed at addressing ecological threats to security in its participating States. The primary activity is the Environment and Security Initiative (ENVSEC), which aims to restore and maintain a sound ecological balance in the air, water, and soil.



The Organization for Economic Co-operation and Development (OECD)

provides governments with the analytical basis to develop environmental policies that are effective and economically efficient through performance reviews, data collection, policy analysis, and projections. OECD addresses environmental problems primarily through the work of its Environment Policy Committee, the Joint Working Parties on Agriculture, and the Joint Meetings of Tax and Environment Experts. Overall, these activities contribute to the cross-cutting work of the OECD on sustainable development.



The African Union (AU),

is an intergovernmental organization of over 50 African states. The main objectives of the AU are: to accelerate the political and socio-economic integration of the continent; to promote and defend African common positions on issues of interest to the continent and its peoples; to achieve peace and security in Africa; and to promote democratic institutions, good governance, and human rights. The primary AU accomplishment with regard to the environment is the [African Convention on the Conservation of Nature and Natural Resources](#). Adopted in 1968, this treaty was considered the most forward looking regional agreement of the time. It influenced significantly the development of environmental law in Africa. Two and a half decades of intense developments in international environmental law made it necessary to revise this treaty, update its provisions and enlarge its scope.



The Southern African Development Community (SADC),

is an inter-governmental organization that aims to further socio-economic cooperation and integration as well as political and security cooperation among various southern African states. It complements the role of the African Union. The economies of SADC Member States are mainly agro-based but the region continues to experience high levels of environmental degradation manifested in problems such as deforestation, loss of biodiversity, pollution, soil erosion, decreasing quality and quantity of water, poor sanitation services and poor urban conditions. The SADC has created several environmental programme areas to combat these problems.



The Economic Community of West African States (ECOWAS),

Its mission is to promote economic integration in all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters. Its projects include intra-community road construction and telecommunications; and agricultural, energy and water resources development.



The North American Agreement on Environmental Cooperation (NAAEC),

signed in 1994, is the environmental side agreement to the North American Free Trade Agreement (NAFTA).

NAAEC is a declaration of principles and objectives concerning conservation and the protection of the environment as well as concrete measures to further cooperation on these matters between the three countries.

The NAAEC established the North American Commission for Environmental Cooperation, a mechanism for addressing trade and environmental issues, the North American Development Bank (NADBank) for assisting and financing investments in pollution reduction, and the Border Environmental Cooperation Commission (BECC).

The Andean Community / Comunidad Andina (CAN),

is a trade bloc comprised of the South American countries of Bolivia, Colombia, Ecuador and Peru. Its Environmental Agenda contains both short and medium term sub-regional actions that add value to national efforts and help strengthen the capacities of the Member Countries with regard to environmental and sustainable development issues.

CAN Environmental Agenda Focus Areas are: Climate change, biodiversity, water resources, disaster prevention and relief.



The Mercado Común del Sur (Mercosur),

is a Regional Trade Agreement (RTA) among Argentina, Brazil, Paraguay and Uruguay founded in 1991. Venezuela and Bolivia have also joined. Its main objective is to foster a common space that will generate commercial and investment opportunities through the competitive integration of national economies into the international market.



The Caribbean Community (CARICOM),

is an organization of Caribbean states and some associate members that aims to: promote economic integration and cooperation among its members; ensure that the benefits of integration are equitably shared; and coordinate foreign policy.

Its major activities involve coordinating economic policies and development planning; it also devises and institutes special projects for the less-developed countries within its jurisdiction.



The Association of Southeast Asian Nations (ASEAN),

is a political and economic organization of countries located in Southeast Asia.

The ASEAN Declaration indicated the aims and purposes of the Association:

(1) to accelerate economic growth, social progress and cultural development in the region and (2) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.

ASEAN's environment and natural resources are unique and diverse.

Half a billion people in ASEAN depend primarily on these endowments for economic and social development and livelihood.

In many ASEAN countries, land resources and terrestrial ecosystems are under increasing stress due to growing population and extension of agricultural land into forest and other ecologically sensitive areas.

Consequently, the ASEAN leaders view the protection of the environment and the sustainable use and management of natural resources as essential to the long-term economic growth and social development of their countries and the region.

The ASEAN Vision 2020 calls for "a clean and green ASEAN with fully established mechanisms for sustainable development to ensure the protection of the region's environment, the sustainability of its natural resources and the high quality of life of its peoples."



The South Pacific Regional Environment Programme (SPREP) & Secretariat of the Pacific Community (SPC),

is a regional organization established by the governments and administrations of the Pacific region to look after its environment. It has grown from a small programme attached to the South Pacific Commission (SPC) in the 1980s into the Pacific region's major intergovernmental organization charged with protecting and managing the environment and natural resources.

SPREP's mandate is to promote cooperation in the Pacific islands region and to provide assistance in order to protect and improve the environment and to ensure sustainable development for present and future generations.

Specifically, the focus of SPREP is to sustain the integrity of the ecosystems of the Pacific islands region to support life and livelihoods.

Regional versus International Action

Actions at the regional level have obvious benefits:

- ➡ It allows a forum for States within a region to discuss regional issues and solve outstanding problems.
- ➡ It is a particularly effective mechanism for international co-operation.
- ➡ It can bring together States that have similar political, legal and cultural background and thus a shared understanding of the challenges that face them.
- ➡ It is a mechanism to share experiences and best practice as well as developing collaborative responses.

As such, regional organizations can be an effective mechanism for dealing with environmental challenges at the domestic and regional level.

There are a range of mechanisms for regional collaboration. Some regional organizations are tightly regulated with complex and strong institutional structures, such as the European Union. Other regional organizations are a looser gathering of States which facilitate discussion and exchange of views without any binding outputs.

The nature and mandate of the organization, as well as the available resources and political will of the States involved, will largely determine the effectiveness of regional action in combating environmental issues. While regional organizations can provide an important input into IEG, it should be recognized that the global effects of some environmental issues, such as climate change, will still require concerted and collaborative action at the global level.

As the world becomes more globalized and industrialized, the pressure on natural resources will increase. There will be a continuing need to develop global agreements, institutions and policies to effectively tackle environmental protection. All of which will contribute to an ever-developing web of International Environmental Governance.

Lesson Review:

-  Regional organizations contribute to International Environmental Governance (IEG) both through their own programs, policies and legislation, and their participation in global accords.
-  ECOSOC has established five Regional Commissions: UNECE, UNESCAP, UNECA, UNECLAC and the West Asia Commission. They have developed and implemented environmental programs for their regions and assist the governments in the regions to promote relevant activities in the field of the environment.
-  UNECA: The UN Economic Commission for Africa has a mandate to promote the economic and social development of its member States, foster intra-regional integration in support of the African Union vision and priorities.
-  UNESCAP: UN Economic and Social Commission for Asia and the Pacific encourages economic cooperation among its member states with a regional focus on promotion of cooperation with regard to energy, natural resources, the environment, agriculture and water management.
-  UNECE: The UN Economic Commission for Europe contributed to the emergence of important MEA's such as the Convention on Long-Range Transboundary Air Pollution (LRTAP), Espoo Convention on Environmental Impact Assessment and the Aarhus Convention on Access to Information, Public Participation and Access to Justice.
-  UNECLAC: UN Economic Commission for Latin America and the Caribbean intends to strengthen the economic development of Latin America, coordinates actions to promote regional social development and reinforces economic ties intra-regionally and internationally.
-  International Organizations contributing to IEG are the Organization for Security and Co-operation in Europe (OSCE), the Organization for Economic Co-operation and Development (OECD) and sub regional organizations on all continents.
-  The European Union (EU) has developed its environmental legislation since the early 1970ies, reinforced by the ruling of the EU Court of Justice with a progressive view in terms of ensuring the application EU law concerning environmental protection.
-  The Organization of African States (today: African Union, AU) developed the African Convention on the Conservation of Nature and Natural Resources in 1968 which impacted the development of environmental law in Africa.
-  The Southern African Development Community (SADC) experiencing high levels of environmental degradation has developed a Strategic Development Program addressing also environmental issues.
-  The Economic Community of West African States (ECOWAS) Commission and Bank for Investment pursue programs for the development of the region including agricultural, energy and water resources development.
-  Framed in the North American Free Trade Agreement (NAFTA), the North American Agreement on Environmental Cooperation (NAAEC) is a declaration of principles and objectives concerning conservation and the protection of the environment as well as concrete measures to further cooperation on these matters between the member countries.
-  Regional organizations can serve as effective mechanism for dealing with environmental challenges at the domestic and regional level and enforce the web of International Environmental Governance.

Reform of International Environmental Governance

Lesson Objectives

At the end of this lesson you will be able to:

- ➔ **Identify and list the challenges and the strengths of the current IEG regime**
- ➔ **Describe the different approaches for improving the current IEG regime**
- ➔ **Discuss the approaches for improving international environmental governance**



Challenges of the current IEG regime

The number of international organizations which deal with environmental matters has grown significantly, either by the establishment of new organizations at the local, regional or global level, or, more commonly, as already existing organizations were endowed with competence in the area of the environment. As a result of this historical ad hoc development, the current IEG regime has outgrown its original design and intent, generating a number of challenges.

Insufficient commitment of the States to MEAs

Some MEAs have not been ratified by a sufficient number of States to enter into force. Other MEAs have sufficient ratification, but are not fully implemented by the Parties.

This situation of non-compliance is partly due to the lack of capacity, especially in developing countries, which is exacerbated by the number of obligations and commitments that have been generated in a relatively short time span.

The almost continuous round of international meetings (COP or subsidiary bodies) creates a focus on negotiation without enough space for Parties to implement. This lack of compliance with existing MEAs, as well as a lack of a fully effective dispute settlement regime, presents a huge challenge to the IEG system.



Fragmentation of the regime

While the UN Environment Programme is the lead agency for policy co-ordination in the environmental field its mandate is common and at times overlaps with a dozen other UN agencies and MEAs and its authority and capacity to assume a truly leading role is reliant on adequate human and financial resources. There has been a proliferation of MEAs, which are now estimated to total over 500. These MEAs cover different geographic and thematic areas. The growth in MEAs has been matched by a proliferation of environmental institutions, some of which stand outside the administrative and political arrangement of the UN, and policy instruments.

MEA Secretariats are scattered across the globe, making interaction and co-ordination difficult. There has been little effort to date to ensure effective co-operation and co-ordination between the different organizations.

As each UN agency follows its own agenda and course, consultation, coordination and cooperation – though increasing – are not strong enough. The result is, for example, inconsistency and fragmentation of the international environmental legal regime and policy-making agenda.

This fragmentation leads to lack of coherence and to inefficiency. It also places a heavy burden on Parties, especially developing countries, in terms of attending relevant meetings, reporting and implementation. Co-operation and co-ordination are of key importance. The chemical and waste related MEAs have taken a lead by establishing a joint Secretariat under the Basel, Rotterdam and Stockholm Conventions.

Upgraded but still limited authority of the UN Environment Programme



UN Environment is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global environment.

At the historic 2012 United Nations Conference on Sustainable Development (Rio+20) in June 2012, world leaders called for the UN Environment Programme to be strengthened and upgraded. The result was a new governing body, the **United Nations Environment Assembly (UNEA)**, which enjoys the universal membership of all 193 UN Member States and the full involvement of major groups and stakeholders. With this wide reach into the legislative, financial and development arenas, UNEA provides a groundbreaking platform for leadership on global environmental policy.

However, the given mandate remains as do the limits of financial resources. In addition, its mandate still overlaps with that of other UN organizations. There remains a lack of clear and strong mandate and a lack of adequate, stable and predictable resources which weakens UN Environment's ability to act and plan its actions on the long-term perspective.

Structural imbalance between the environmental regime and other regimes



Compared with other international regimes, such as the trade regime or international financial institutions, the environmental regime is not equipped with the same amount of resources, effective structures, and political weight.

One of the main differences is that the environmental regime contains no effective dispute settlement mechanism. UN Environment still lacks equipment, staff and funds, which creates an imbalance in the interaction with other international institutions.

This structural imbalance weakens the position of environmental concerns when a conflict with another area such as trade arises.

Lack of funding



The 2012 Rio+20 Conference addressed the issue of funding of the UN Environment Programme and opened the avenue for funding from the regular budget of the UN.

It remains to be seen to which extent the financial situation of UN Environment can be improved. It will certainly continue to rely on contributions to the Environmental Fund on a voluntary basis. In the past there was a trend that contributions were declining, despite the fact that UN Environment's responsibilities were recognized to be increasing.

Thus, the funding basis for the UN Environment Programme may risk to remain uncertain, unstable and unpredictable. As a result, UN Environment's ability to take on a leading and strategic role in IEG may continue to be limited.

In order to have the capacity to plan and develop fully-funded strategies for medium- and long-term environmental management and protection there can be no question that the UN Environment Programme will require a larger and more predictable funding base.

Separate treatment of the environment in the policy-making process



Environmental concerns are not fully taken into consideration when issues such as trade or economic or agricultural interests are being negotiated, but rather treated separately as if they did not affect the environment and as if the state of the environment did not concern other issues.

The strengthening of strong inter-linkages and the mainstreaming of environmental issues within other sectors are critical and essential for sustainable development, which consists of three pillars seeking to achieve, in a balanced manner, economic development, social development and environmental protection.

Strengths of the current regime

In the discussion of potential reform of the IEG structure, the strengths of the existing system must not be overlooked. It is crucial that a reform takes these strengths into consideration and ensures their continuation in an improved system.

Some argue that the fragmentation allows for a certain degree of specialization in dealing with environmental issues. Also, the existing IEG structure provides for a certain level of autonomy of MEAs, which allows Parties to specifically address complex and often unique environmental issues. This provides for flexibility and innovation, which is crucial in the environmental field where scientific knowledge and technological capabilities are constantly evolving.

Criteria for strengthening IEG

The following are some of the important criteria to consider to reform and improve the IEG regime with success.

- ➔ **Coherence:** A reform of the IEG structure must eliminate inconsistencies and contradictions. Cooperation and coordination between all actors must be promoted, both at the national and international level.
- ➔ **Comprehensiveness:** Gaps in the IEG regime must be reduced, providing for a multi-sectorial, holistic and inter-linked regulation of environmental issues.
- ➔ **Efficiency:** The duplication of structures and uncoordinated dispersed decision-making processes must be avoided. Joining forces and collaboration is key in making this happen.
- ➔ **Effectiveness:** IEG must have a concrete and tangible positive impact on the environment. The monitoring and evaluation of impacts is highly crucial for effectiveness.



The Road to Reform

Various attempts to reform its structure have been brought forward in order to find solutions to the challenges facing the current IEG regime.

The idea of a strong environmental agency under the auspices of the UN has been brought up a number of times. Already in the context of the 1972 Stockholm Conference (UNCHE), the idea of establishing a stronger agency, instead of a mere environmental programme, was mentioned.

In the context of the 1992 Rio Conference, proponents of a strong environmental UN-agency became more audible again. The discussion on strengthening the IEG regime has gained momentum again in the context of the 2002 World Summit on Sustainable Development (WSSD).

One of the focus areas of the 2012 Rio+20 conference was the institutional strengthening of international environmental governance, and some small steps were made. At the 2016 second session of the United Nations Environment Assembly, States called out for the reinforcement, enhancement and step-up of UN Environment's role in various areas of environmental protection and IEG, in collaboration between relevant UN bodies and other relevant stakeholders.

Various proposals and approaches are on the table about how the structure of IEG could be further improved, all of which have in common the conviction that better IEG is the most efficient way to a more effective conservation of our natural environment.

Mainstreaming approach

One of the proposals for reform suggests 'mainstreaming' environmental concerns within decision-making at all levels. To enhance the implementation of environmental needs, ecological considerations need to be integrated into the deliberations and decisions of already existing powerful international institutions, such as the WTO, IMF and World Bank.

Environmental concerns would be incorporated into judicial, educational, social, health, financial, trade and security-related institutions. The level of consideration given to environmental issues within other institutions of national and international governance would be elevated. Such an approach could be seen as "greening other bodies".

This approach carries various attractive elements:

- ✓ It would allow maximum benefit to be derived from the existing strengths of each of the international and national institutions.
- ✓ It could be combined with other reform proposals and support the strengthening of the IEG regime.

Upgrading approach

Proponents of the upgrading approach call for further strengthening of the UN Environment Programme.

It is argued that UN Environment needs an extended mandate and enhanced financial support, in addition to the universal membership that it enjoys since 2012.

Opinions differ on how to achieve such goal. There has been, and continues to be, an ongoing debate at international level as to how the UN Environment Programme should be reformed.

The rich debate over the past 30 years about reforming International Environmental Governance shows that despite the progress made by the COPs and the UNEA many more steps will be needed and many more are possible to achieve an architecture of international governance that ensures the protection of the environment and natural resources in a sustainable manner for current and future generations.

Synergies

The concept of synergies within an IEG context refers to cooperation and coordination between different IEG players at international, regional and national level.

While respecting the autonomy of MEAs, there has been a push at the international level to improve synergies between MEAs in order to enhance efficiency, avoid overlap and duplication to make IEG more cost-effective.

This need for greater coherence between IEG actors, including a more integrated structure building on existing institutions and international instruments, has been widely recognized.

Three conventions have taken the lead in this process. In 2012, the Secretariats of the Basel and Stockholm conventions, as well as the UN Environment-part of the Rotterdam Convention Secretariat, moved from three separate secretariats with a programmatic structure to a single Secretariat with a **matrix structure** serving the three conventions.

The cooperation and coordination between the three conventions is recognized to be working and constitute a good example to be followed by other conventions

Lesson Review:

The Challenges for IEG lie in a) the different level of institutional structures; b) nature and mandate of an organization; c) available resources; d) political will. All these factors determine the effectiveness of action in combating environmental issues.

Due to the ad hoc development of the IEG regime, further difficulties are observed:

- a) some MEA's have not achieved required number of ratifications and are not in force;
- b) some MEA's are not fully implemented;
- c) non-compliance can be a result of lacking capacity;
- d) effective dispute settlement regimes are needed;
- e) inconsistency;
- f) fragmentation of the system.

The UN Environment Programme is the central pillar of international environmental policy-making but still does not hold the resources necessary to fulfill this task.

Some crucial criteria relevant for strengthening IEG imply to strive for coherence (eliminate inconsistencies of policies), comprehensiveness (choose a holistic approach in IEG), efficiency (avoid duplication of structures) and effectiveness (outcome).

Roads to reform imply different strategies, for instance:

- a) Mainstreaming: integrate environmental considerations in existing institutions with national and international governance impact;
- b) Upgrading: strengthen UN Environment through extending its mandate and resources;
- c) synergies: co-operation and co-ordination between different IEG players at international, regional and national level in order to enhance efficiency, and enhance cooperation.