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DOCTORAL THESIS
Doctor of Philosophy (PhD)

THE ROLE OF COMPLIANCE IN EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL REGIMES: A CASE OF THE MEDITERRANEAN SEA REGIME

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DECLARATION

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ABSTRACT

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Although in the foreign literature, compliance and regime effectiveness studies are among the main topics of International Relations and International Law, there are limited studies in the Turkish literature. This study is analyzed the importance of compliance for effective environmental regimes. This study argues that regime effectiveness has three dimensions: Legal effectiveness; behavioral effectiveness and problem-solving effectiveness. Compliance is only one dimension of effectiveness which is called legal effectiveness. The high rate of compliance is crucial but not enough for regime effectiveness. If, legal effectiveness which means compliance of states parties with regime is tried to pursue only; and, if there would not be a change in states parties' behaviors nor the problem regime is trying to solve could be overcame; it is not possible to regard an environmental regime as effective, despite of high rates of compliance, since dimensions of effectiveness are missing.

This study analyzes the mechanisms to promote compliance. The analyses are showed that dynamics within the regimes requires different compliance mechanisms. Only well-designed mechanisms which are arranged according to the structure of problem, states parties' internal conditions and international structure could promote compliance. This study concludes that, neither the Managerial Approach and nor the Enforcement Approach could promote compliance by itself.

The Mediterranean Action Plan was chosen as the case study of this thesis. After theoretical examination of compliance and effectiveness of environmental regimes, these subjects are examined in the example of the Mediterranean Action Plan according to their practical applications. It is concluded that, behavioral and problem-solving effectiveness of the Mediterranean Action Plan are low, while compliance rate is high. It is argued that this indicates a shallow cooperation in the regime. That is why environmental condition of the Mediterranean Sea cannot be improved.

Keywords: Compliance, Compliance Mechanisms, Regime Effectiveness, Legal Effectiveness, Behavioral Effectiveness, Problem-Solving Effectiveness, Mediterranean Action Plan.

ÖZET

Doktora Tezi

Uluslararası Çevre Antlaşmalarının Etkinliğinde Uyumun Rolü: Akdeniz Rejimi Örneği

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Uyum ve rejim etkinliği konuları, yabancı literatürde, Uluslararası İlişkiler ve Uluslararası Hukuk alanında çalışan akademisyenlerin başlıca araştırma konularından biridir, fakat Türkiye'de bu konuya yeteri kadar önem verilmemiştir. Bu çalışma, uyumun etkin çevre rejimleri için önemini analiz etmektedir. Bu çalışmada rejim etkinliğinin üç boyutu olduğu iddia edilmektedir: Hukuki etkinlik, davranışsal etkinlik, problem çözücü etkinlik. 'Hukuksal etkinlik' de denilen uyum, rejim etkinliğinin boyutlarından biridir. Bu yüzden yüksek uyum oranı rejim etkinliği için son derece önemlidir, ancak tek başına yeterli değildir. Sadece hukuksal etkinliğin sağlanmasına yani tarafların rejimin kurallarına ve yapısına uymasına çalışılırsa, ancak kurulan rejimin tarafların davranışlarında bir değişiklik yapması sağlanmazsa veya rejimin konusunu oluşturan sorunda bir iyileştirme yapılmazsa, etkinliği oluşturan boyutlar eksik kalacağından, yüksek uyum oranlarına rağmen bir çevre rejiminin etkin olduğundan bahsetmek mümkün olmayacaktır.

Çalışmada uyum arttırıcı mekanizmalar da incelenmiştir. İncelemeler göstermiştir ki, rejim içi dinamikler, farklı uyum mekanizmalarını

gerektirmektedir. Çözülmesi hedeflenen sorunun yapısına, taraf devletlerin içsel koşullarına ve uluslararası sistemin mevcut yapısına uygun bir şekilde iyi tasarlanmış mekanizmalar ile uyum arttırabilir. Bu incelemeler sonucunda rejime uyumun sağlanmasında Yönetsel Yaklaşım'ın veya Zorlayıcı Yaklaşım'ın tek başına başarılı olamayacağı sonucuna varılmıştır.

Çalışmanın vaka çalışması olarak Akdeniz Eylem Planı seçilmiştir. Teorik incelemelerin ardından, uyum ve rejim etkinliği konularının Akdeniz Eylem Planı kapsamında pratik olarak nasıl uygulandığı incelenmiştir. Araştırmalar sonucunda Akdeniz Eylem Planı'na uyum, yani rejimin hukuki etkinliği yüksek olsa da, davranışsal ve problem çözücü etkinliğinin az olduğu sonucuna varılmıştır. Bu durumun rejimdeki yüzeysel işbirliğine işaret ettiği ve bu sebeple Akdeniz'in çevresel koşullarında rejime rağmen bir iyileşme sağlanamadığı düşünülmektedir.

Anahtar Kelimeler: Uyum, Uyum Mekanizmaları, Rejim Etkinliği, Hukuki Etkinlik, Davranışsal Etkinlik, Problem Çözücü Etkinlik, Akdeniz Eylem Planı.

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CHAPTER TWO

COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL REGIMES

CHAPTER THREE

CASE STUDY: THE MEDITERRANEAN SEA REGIME

ABBREVIATIONS

ABMT	Anti-Ballistic Missile Treaty (1972)
AOSIS	Association of Small Island States
BD	Bio-Diversity
BP	Blue Plan
BWC	Chemical Weapons Conventions
CBD	Convention on Biological Diversity (1992)
cfc	chlorofluorocarbons
CIEL	Centre for International Environmental Law
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
CoP	Conference of Parties
CSBMS	Conference on Confidence- and Security-Building Measures (1986)
CWC	Chemical Weapons Conventions
ECOSOC	Economic and Social Council
EEC	The European Economic Community
EPM	The Environmental Program for the Mediterranean
ERS-RAC	The Regional Activity Centre on Environment Remote Sensing
EU	European Union
FAO	Food and Agriculture Organisation
GEF	Global Environment Facility
gmo	genetically modified organisms
IAEA	International Atomic Energy Agency

ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICRC	International Committee of Red Cross
ICSID	International Centre for Settlement of Investment Disputes
ICZM	Integrated Coastal Zone Management in the Mediterranean
IGO	Inter-Governmental Organization
IL	International Law
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INFO-RAC	The Regional Activity Centre for Information and Communication
IOC	International Oceanographic Commissions
IOS	International Observer Scheme
IPCC	Intergovernmental Panel on Climate Change
IR	International Relations
ISO	International Standardization Organization
IUCN	International Union for the Conservation of Nature
IWC	International Whaling Commission
LBS	Land-Based Sources
LRTAP	Geneva Convention on Long-Range Transboundary Air Pollution (1979)
MAP	Mediterranean Action Plan

MARPOL	The International Convention for the Prevention of Pollution from Ships (1973)
MCSD	The Mediterranean Commission on Sustainable Development
MEA	Multinational environmental treaty
MED POL	The Programme for the Assessment and Control of Marine Pollution in the Mediterranean Region
MEDU	MAP Coordinating Unit
METAP	Mediterranean Technical Assistance Programme
MNC	Multi-National Company
MoP	Meeting of (Contracting) Parties
NAAEC	North American Agreement on Environmental Cooperation
NAP	National Action Plan
NGO	Non-Governmental Organization
NPT	Nuclear Non-Proliferation Treaty
NTM	National Technical Means
PAP	Priority Actions Programme
PETA	People for the Ethical Treatment of Animals
R&D	Research & Development
RAC	Regional Activity Centres
Ramsar	The Convention on Wetlands of International Importance (1971)
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
ROCC	Regional Oil Combating Centre

SAP	Strategic Action Programme
SCAR	Scientific Committee on Antarctic Research
SCP/RAC	The Regional Activity Centre for Sustainable Consumption and Production
SME	Small and Medium Size Enterprises
SOLAS	The International Convention for the Safety of Life at Sea (1974)
SPA	Specially Protected Area
UN	United Nations
UNCED	United Nations Conference on Environment and Development (1992)
UNCHE	United Nations Conference on the Human Environment (1972)
UNCSD	United Nations Commission on Sustainable Development
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
USA	United States of America
USSR	The Union of Soviet Socialist Republics
WB	World Bank
WEO	World Environment Organization
WHO	World Health Organization
WMO	World Meteorological Organization
WTO	World Trade Organization
WWF	World Wildlife Fund

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INTRODUCTION

The environment continues to degrade, in spite of thousands of scientific researches and books on environmental problems, as well as efforts of scientific community, academicians, politicians and environmentalists, and hundreds of international treaties signed. 2 million tons of wastewater are mixing in underground waters every year; 90% of undeveloped states' sewage water is discharging into seas and rivers without basic treatments. An area of forest about a football stadium field is lost in every two seconds which is equal to 375 km^2 every day. In every decade, 5 to 10% of tropical forest species are becoming extinct because of deforestation. 27.000 species in worldwide has been becoming extinct each year. Half of the fish species of the Black Sea has already become extinct. Only 400 Mediterranean monk seals have left in the Mediterranean Sea. Melting race in the Antarctica has tripled in the last decade; sea level has been raising 3,2 mm each year.[1] These figures show that international environmental regimes are not successful. Furthermore, their success is not related with the number of signed environment treaties or not the number of the states who sign those, rather the success depends on how effective the environmental regimes are.[2]

International environmental law tries to diminish negative effects of human activities on environment, to change actors' behaviors into an environmental friendly manner and to enhance environmental quality. Multinational environmental treaties (MEAs) are the tools of international environmental law in creating environmental regimes. However, environmental treaties do not necessarily build an environmental regime. Set of norms and procedures, converged expectations, explicit or implicit

[1] Greenpeace, "Forests-Threats", http://www.greenpeace.org/international/en/campaigns/forests/threats/, (01.12.2014); UNEP, "Global Environmental Outlook 3", http://www.unep.org/geo/geo3/english/pdfs/prelims.pdf, (01.12.2014)); UNCCD, "Some Global Facts & Figures", http://www.unccd.int/Lists/SiteDocumentLibrary/WDCD/DLDD%20Facts.pdf, (01.12.2014); The World Counts, "Environmental Degradation Facts", http://www.theworldcounts.com/stories/environmental-degradation-facts, (01.12.2014); NASA, "Vital Signs of the Planet", http://climate.nasa.gov/news/, (01.12.2014); TURMEPA, "Genel İstatistikler", http://www.turmepa.org.tr/icerik.aspx?id=249, (01.12.2014).

[2] Lawrence Susskind and Connie Ozawa, "Negotiating More Effective International Environmental Agreements" in **The International Politics of the Environment**, (Eds. Andrew Hurrell and Benedict Kingsbury), Clarendon Press, Oxford, 1992, p.155.

institutional structures and compliance mechanisms are needed to be able to build a regime. Some international treaties may come short of creating these institutions. To be able to create a regime, comprehensive efforts require rather than just signing a treaty. Moreover, these institutions need mechanisms that will lead states to comply with the regime. By using these instruments and mechanisms in different combinations, ineffective regimes may be built as well as effective ones. Different problems require different mechanisms. The character of a problem which a regime deals with is also an important factor in regime effectiveness, besides the institutions and mechanisms which are used in a regime. Dimension and complexity of the problem may limit a regime's effectiveness even if it was built wisely. This is why there are some examples of good initiatives which fail at the end, despite of their promising start.

This thesis highlights that compliance with international law and regimes is an important factor and a necessity for regime effectiveness. Compliance requires duly implementation of provisions and makes states fulfill their commitments by changing their behaviors, in order for the expectations in creating a regime could be met. For achieving a high rate of compliance, it is important to analyze states' motivations to comply with international law in general. Interests, fear of sanction, reputation and norm internalization are important motivations for states to comply. Realists neither accept regimes as promising institutions nor do they consider international law as a strong guide for states in international relations. On the contrary, Liberals underline how regimes may promote collective interests. In a regime, states cohere their interests so they may increase the collective interests. This is drawn in the analogy as follows; in Realism, states try to get the biggest slice of the cake, whereas in Liberalism, states try to make a bigger cake so every state could get bigger slices. Realists insist on relative gains, while Liberals pay attention to absolute gains. Thus, according to Liberalism, as long as the states understand that cooperation and collaboration with others is more beneficial for their interests, they become parties of regimes and comply with it. Similarly, functionalist theories argue that interests which regimes ensure, are higher -even its relatively- than the costs of not being in a regime and not to comply with it.

Liberalism and Functionalism are particularly important for environmental regimes, because the environment is a common good and a better environment is a collective interest. Furthermore, the features of environmental degradation require cooperation since states cannot solve environmental problems by their own. Finally, Normative theories accentuate compliance with regimes and regime effectiveness are possible through making norms ruling the international relations.[3]

The issue of compliance has been accepted as a central concept for studies related with International Law and International Relations[4] in the foreign academic literature since the 1990s[5]. Nevertheless, this trend could not find its reflections in the Turkish literature, neither in International Law (IL) nor in International Relations (IR). This study aims to reflect these studies into the Turkish discipline though it is nearly two decades behind the foreign studies. This does not mean that the issues of compliance and effectiveness have already lost their importance. On the contrary, the efforts of academic and political groups show that these subjects are becoming even more important.

This study attempts to introduce compliance and regime effectiveness issues into the Turkish academic studies. This thesis attempts to make a considerable contribution as being one of the first academic studies in Turkish academic literature that focuses on compliance with and effectiveness of international regimes by combining the International Law and International Relations disciplines.[6] The previous studies on regime effectiveness and compliance studied the subject either from the aspect of compliance or of effectiveness. In doing this, they choose to use either IL elements or IR theories' arguments separately. So, one of the prongs always comes short.

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[3] Faruk Sönmezoğlu and Özgün Erler Bayır, "Çevre Sorunlarına İlişkin Uluslararası Rejimler", **İ.Ü. Siyasal Bilgiler Fakültesi Dergisi**, Volume.47, 2012, p.248.

[4] When international law and international relations are reffered as academic disciplines the initials are given capital letters. Otherwise they refer concepts and/or events.

[5] Benedict Kingsbury, "The Concept of Compliance as a Function of Competing Conceptions of International Law" in **International Compliance with Nonbinding Accords**, (Ed. Edith Brown Weiss), The American Society of International Law, Washington DC, 1997, p.49.

[6] For precursor studies see Deniz Kızılsümer Özer, **Çok Taraflı Çevre Sözleşmeleri**, USAK Yayınları, Ankara, 2009; Yasemin Kaya, **Uluslararası Çevre Anlaşmalarına Uyum Sorunu**, Ezgi Kitabevi Yayınları, Bursa, 2012; Sönmezoğlu and Erler Bayır. Kaya's book is revised text of her PhD thesis; "Çok Taraflı Çevre Anlaşmalarının Uygulanabilirliği: Basel Sözleşmesi, Türkiye Örneği". Uludağ Üniversitesi Sosyal Bilimler Enstitüsü Kamu Yönetimi Anabilim Dalı, Bursa, 2010.

According to IR scholars, the way IL scholars' approaches to international relations are "insufficiently rigorous or methodologically flawed".[7] On the other hand, IL scholars and legalists find IR approaches too theoretical for real life. IR produces hypotheses and then tests them on international relations, while IL first observes international relations and then produces hypotheses from practices.[8] The difference in perspectives of IR and IL could be easily seen at compliance mechanisms. IR theories focus on theoretical background of regimes to determine under what conditions and how international law may affect states' behaviors. IL rather focuses on more practical conditions of international law such as how to promote compliance. It may be said that IR mostly examines theoretical infra-structure of compliance while IL examines construction of superstructure as compliance processes. In sum with rough edges, IR deals with understanding of compliance IL deals with promoting compliance. This thesis tries to combine these two together.

a. Main Questions and Hypotheses of the Thesis

There are two main research questions of the thesis:

- How important is compliance issue for effective environmental regimes?
- How can a high rate of compliance be reached?

To be able to answer these questions comprehensively, there are also supportive questions as follows:

- How can effectiveness be defined and evaluated?
- What is the linkage between compliance and effectiveness? Is high rate of compliance enough for effectiveness of environmental regimes? Are there any further requirements for effectiveness?

[7] Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance" in **The Handbook of International Relations**, (Eds. Walter Carlness, Thomas Risse and Beth Simmons), Sage Publications, LA, 2002, p.544.
[8] Raustiala and Slaughter, pp.544-545.

- What are the conditions of compliance? If the external conditions such as structure of international relations, polarity and anarchical structure are put aside, can internal conditions of regimes and states which disrupt compliance be overcome?
- What are the mechanisms to promote compliance? How are these mechanisms designated in environmental regimes? What are their roles in promoting compliance?

The hypotheses developed in line with the above-mentioned research questions are:

h1. *Although it is not the only dimension, compliance is a necessity for the effectiveness of environmental regimes.*

h2. *Obstacles for compliance with environmental regimes may be overcome by using compliance mechanisms, but only in a certain degree since there are also different conditions for compliance.*

h3. *Since environmental regimes are highly scientific, technical and high costly regimes; a high rate of compliance with environmental regimes depends on the states parties' internal economic and technical conditions, socio-political character and environmental awareness, as well as on chosen appropriate compliance mechanisms to enhance states' capabilities*.

Since the best way to affirm assumptions is to test them on real cases, the Mediterranean Action Plan (MAP) is chosen to test the hypotheses.

b. Methodology

With respect to methodology, the thesis employs a qualitative research of academic literature on compliance with international law, particularly with international environmental law. Knowledge about theories on compliance, on compliance mechanisms and on the MAP is collected from academic journals and books, as well as official documents of the MAP and the United Nations Environment Programme (UNEP) as primary sources.

It could be thought that a comparative analysis of two regimes would reach a more comprehensive result since it is more meaningful for inductive inferences. However, as it is explained within the study, each regime has its own characteristic features and requires different designation of mechanisms because each problem requires its own solution. This is also the reason of why UNEP launched the Regional Seas Programmes rather than a global marine protection program, and why regional marine protection regimes were built even though there were already signed global marine protection treaties such as MARPOL and London Conventions. Additionally, even in a regime, each states parties has special circumstances which affect her motivation to become a party of the regime and also her capability and intention to comply with regime. While some states parties may be voluntarily and enthusiastically ready, and have the capacity to comply however high the burden of compliance is, while some states parties may need to be supported and even some may need to be pushed to comply. Thus, as well as each regime, each states parties requires different mechanisms of compliance to launch. Hence, a comparative analysis of two states parties of a regime may not be a meaningful way for assessing compliance in general. Furthermore, every regime imposes different obligations, some of which are easy to comply while some are hard or undesired to comply. These kinds of obligations also require different compliance mechanisms. Some obligations demand capacity-building while norm-internalization is enough for some, and some of them require even enforcement mechanisms. This does not mean that it is epistemologically impossible to reach any knowledge on compliance by comparative analysis. Nevertheless, it requires a different kind of approach -may be a more positivist methodology- which must focus on correlations of internal factors of regimes, states of parties and regime's norms rather than a general analysis of compliance theories and mechanisms which is aimed to employ in this thesis.

c. Scope and Limitations

It is an overwhelming task in a title's limitations to find the answer of why some regimes are more successful than others. So instead of analyzing the bulk of IR literature, which also focus on whether regimes are reachable and effective in international relations, only most commonly accepted arguments of regime theories have been examined for a better understanding of regime design and compliance correlation. Besides, because of the variety of international treaties that build regimes, the scope of this study is limited with environmental regimes.

In the study, states are treated as unitary actors even though there are many in-state actors such as companies, individuals and research centers for implementation of and compliance with international environmental law. It is also accepted that states are rational actors, and in international relations interests as well as power are the important determinants. However, it is also accepted that states conduct their international relations in international society -even it is anarchic- and like every society there are constructed rules, norms and knowledge. Besides, states are not sole actors, international organizations, non-governmental organizations, multi-national companies, epistemic communities and individuals affect their decisions and behaviors. States need approval, support or guidance of these non-state actors more or less. So, roles of these non-state actors in compliance and effectiveness of regime in the global world are regarded in this thesis.

It is intentionally avoided to be a part of the debates on whether environmental degradation is triggered by capitalist production processes, despite the failure to recognize obvious relationship between socio-economic activities and environmental degradation[9] which is emphasized as a reason for ineffectiveness of the MAP in the

[9] For detailed information see Sing C. Chew, "Nature and the Bronze Age World System: Accumulation, Ecological Degradation, and Civilization Collapse 2500 BC – 1200 BC", Paper, **Panel on the State System vs the Environment, International Studies Association**, Minneapolis, 17-21 March 1998; Robyn Eckersley, **Environmentalism And Political Theory: Toward An Ecocentric Approach**, Fourth Edition, Princeton University Press, New Jersey, 1997; Andrew Dobson, **Green Political Thought**, Third Edition, Routledge, London, 2000.

study. For a more effective MAP, missing connections between environmental degradation and current socio-economic order in the Mediterranean Sea basin countries should be examined. These connections which the MAP also ignores can be a subject of further studies in the field.

The Mediterranean Action Plan has been chosen as case study of the thesis. The MAP is the first Regional Seas Programmes of the UNEP, which started in 1975. It was thought and designated as a model for further Regional Seas Programmes. In 1995, during its twentieth anniversary, revaluations showed that the MAP was getting better to achieve its targets, and the Barcelona Convention as a framework convention had fulfilled its aim by leading new protocols. The performances of MED POL, Blue Plan and Priority Actions Plans were evaluated positively. It was expected that the MAP would be more successful in the coming decades. There were also critics about quality of frame, against the need of re-vised text of the Barcelona Convention which was negotiated and signed in 1995.[10] The year 2015 is the fortieth anniversary of the MAP. It has been thought that it is time to re-examine it after four decades of its establishment and two decades after its first general assessment of performance which indicated a hope that it would be more effective in future.

However, confidentiality of states' annual compliance reports limited this study during evaluation of compliance with the MAP. In the chapter that compliance with the

[10] Gerald Blake, "Combating Pollution in the Mediterranean Sea: An Evaluation of Coastal State Cooperation" in **International Boundaries and Environmental Security Frameworks for Regional Cooperation**, (Gerald Blake et al.), Kluwer Law International, London, 1997, pp.67-80; Jon Birger Skjærseth, "The 20th Anniversary of the Mediterranean Action Plan: Reason to Celebrate?" in **Green Globe Yearbook 1996**, (Eds. H.O. Bergesen and G. Parmann), Oxford University Press, Oxford, 1996, pp.47-53; Jon Birger Skjærseth, "The Effectiveness of the Mediterranean Action Plan" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles, Arild Underdal, Steinar Andresen, Jørgen Wettestad, Jon Birger Skjærseth and Elaine M. Carlin), MIT Press, Massachusetts, 2002, pp.311-330; Gabriela Kütting, "Distinguishing Between Institutional and Environmental Effectiveness in International Environmental Agreements: The Case of the Mediterranean Action Plan", **The International Journal of Peace Studies**, Volume.5, No.1, 2000, pp.15-33; Gabriela Kütting, "The Consequences of Ignoring Environmental Effectiveness (I): The Mediterranean Action Plan" in **Environment, Society and International Relations**, (Gabriela Kütting), Routledge, London, 2000, pp.62-82; Sofia Frantzi, "What Determines the Institutional Performance of Environmental Regimes? A Case Study of the Mediterranean Action Plan", **Marine Policy**, Volume.32, 2008, pp.618-629; Joseph F.C. DiMento and Alexis Jaclyn Hickman, **Environmental Governance of the Great Seas**, Edward Elgar Publishing, Cheltenham, 2012. These critics are examined in detail in related chapter.

MAP has been examined, it has been important to analyze states parties' compliance reports which they submit annually to the Compliance Committee, and Compliance Committee's general assessment reports. However, as it is criticized in the related title, states' reports are not published and only an overall assessment of compliance with the regime is made by the Committee. This circumstance has been a shortcoming for detailed analysis of compliance with the MAP. Nevertheless, to a fair extent, relevant information was obtained from overall assessments of the Committee and of the Secretariat.

d. Structure of the Thesis

The first chapter of the thesis aims to introduce key concepts about compliance in environmental regimes. For this purpose, first, the linkage between regime, international law and international treaties has been identified. Even though there are differences between these concepts, in this study, compliance with both international law regulations and regime as a whole is referred, unless explicitly stated otherwise. In this section, the instruments of regimes which are important for compliance as well as effectiveness have been explored. A comparison of soft law and hard law instruments, and their roles in building an effective regime have been one of the major queries of this section. The section also makes an introduction to debates on regime creation and its significance in relation to compliance. Then the actors in compliance with international law have been introduced. The difference between the concept of actor in IR studies and legal person in IL has been emphasized, and then the actors who have roles in promoting compliance have been introduced. Lastly in this chapter, frequently mis-used concepts -implementation and compliance- have been identified, and how they affect effectiveness of regimes has been determined. Besides, three different definitions of effectiveness have been given, and it has been clarified that compliance is in fact the legal effectiveness of regimes. This section concludes with an examination of how effectiveness could be evaluated. By this design, this chapter makes an introduction to compliance theories and compliance mechanisms.

The second chapter includes a critical overview of literature on theories on compliance and suggested mechanisms for compliance with international environmental regimes. To make clear why states do or do not comply with their international commitments is urgency so that the mechanisms of compliance could be adjusted accordingly. These theories provide essential guidance for designation of mechanisms and constitute a philosophical background for compliance approaches. Thus, before proceeding with compliance mechanisms, compliance theories that investigate the reasons of states' compliance and non-compliance have been examined. There are limited theories on states' compliance with international environmental law in particular, though, the general logic in compliance with international law in whole are same. Hence, in this section the general theories of compliance with international law are examined. If there is a special circumstance for international environmental law, it has been particularly underlined. In the second section of the chapter, the mechanisms that are widely used in international regimes to promote compliance have been circumstantiated. In doing this, theoretical and practical frames have been separately analyzed. First, conditions for a high compliance offered by IR theories have been analyzed. Then, practical conditions which regimes currently apply to promote compliance have been explored. At the last section of the chapter, two major approaches for compliance have been discussed to determine the best option for a high rate of compliance with environmental regimes: the Managerial Approach and the Enforcement Approach.

The third and the last chapter of the thesis is a case study analysis, in which all arguments identified in previous chapters have been tested through the Mediterranean Action Plan. The MAP is the first regional sea program of the UNEP and has a long history, so, it is expected that all of these mechanisms and approaches had already been implied and the best option should have been determined so that it is one of the highly complied and the most effective regimes. But first, the historical background of the MAP's establishment and the legal documents which founded the regime have been introduced for a better understanding of the regime.

In the Conclusion section, main findings of the thesis and the results of the hypotheses are presented. Outcomes of analysis of compliance theories, mechanisms and approaches, and their practical implementation within the MAP have been discussed. The questions of the thesis have been answered based on the discussions and the analysis within the framework of former chapters. The thesis ends with suggestions for further studies.

CHAPTER ONE

KEY CONCEPTS ABOUT COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL REGIMES AND REGIME EFFECTIVENESS

Environmental degradation has global effects. It could be prevented only by taking worldwide actions, since you cannot limit the movement of air, water and species between states' borders. For example, scientific discoveries showed that usage of chemical fertilizer used in coastal areas of the Mediterranean Sea affects the fishing in the Atlantic Ocean through near-shore currents and that hazardous industrial smoke may lead to un-productivity in corps and also cause various diseases in another state. Despite these discoveries, a global act for environmental protection has begun only half a century ago. Until then, states tried to solve environmental problems through bilateral solutions. A turning point for globalized environmental regulations was a step taken by the United Nations by rendering international cooperation and international regulations possible on environment.[11]

International environmental law, trying to protect environment from human effects and to cure world's natural balance, is one of the latest emerging discipline of international law. International environmental law started effectively conducting in 1972 United Nations Conference on the Human Environment (UNCHE) aka Stockholm Conference. This sub discipline has an experience of only half a century, so it is understandable that it involves some controversies and gaps.

In this chapter, principles, norms, rules and procedural methods of global environmental law are explained. The effects of globalization on international environmental law and actors of international environmental law are given. Secondly in this chapter, the concept of compliance and its role in effectiveness of a regime are introduced.

[11] The UN's efforts for global cooperation of environmental protection started in 1972 with the UN Conference on Human Environment with the participation of 113 states and establishment of UN Environmental Programme as a specialized agency of the UN. Since then, in every decade a global conference on environment has been held by UN beside of special issue-based conferences such as ozone depletion and climate change.

Before proceeding to the chapter, the difference between public international law and transnational law should be clarified. As accepted in general, public international law refers to international treaties and international customary law[12] made by states and international organizations. On the other hand, transnational law refers to a broader concept of international law including a set of principles in a specific issue which requires both state and non-state actors involving so that it could regulate the relationships in cross-border levels which means its "effects extend far beyond the nations responsible for adopting them".[13] In a globalizing world, international law is getting closer to transnational law with more and different actors' participation. In this sense, global environmental law means a complex system consisting of transnational environmental law, public international law and national laws and also set of principles and procedural methods related to governance and protection of environment.[14]

1.1. LINKAGE BETWEEN INTERNATIONAL REGIME AND INTERNATIONAL LAW

Overlapping of IR and IL studies in certain issues is neither a coincidence nor a new phenomena. References to and citations from IL were frequently seen at the arguments of Oran Young and John Ruggie in frame of the Regime Theory and at Hedley Bull's English Scholl in the 1970s. Importance of international law was started

[12] Contrary to domestic laws, customs are important sources of international law. International customary law emerges from practices of states. Customary law reflects what states actually do instead of international treaties which show what states commit to do. If states behave in a consistent manner in a particular period of time, this behavior becomes a rule of customary law. There are two distinctive factors which distinguish an ordinary behavior from a customary rule: First, states have to behave consistently with each other in a significant period of time. Secondly, this behavior is shown in recognition as a legal form must be, which is called *opinio juris sive necessitatis*. Malcolm Shaw, **International Law**, 5th Edition, Cambridge University Press, Cambridge, 2003, pp.36, 70-71; Hugh Thirlway, "The Sources of International Law" in **International Law**, (Ed. Malcolm D. Evans), Third Edition, Oxford University Press, New York, 2010, pp.102-104.

[13] Tseming Yang and Robert V. Percival, "The Emergence of Global Environmental Law", **Ecology Law Querterly**, Volume.36, 2009, p.624-625; Oran R. Young, **Governance in World Affairs**, Cornell University Press, Ithaca, 1999, (World Affairs), p.11.

[14] Yang and Percival, p.617; O.Young, World Affairs, p.12.

to be increasingly emphasized in the 1980s. Nevertheless both the IL and the Regime Theory have been in the shadow of the Realism because of the Cold War. The focus of studies in these years was to prove that international law matters as Richard Falk said.[15] The IL and the Regime Theory secured their positions in the IR after the Cold War at the end of the 1980s. So, with beginning of the 1990s, the IL and the Regime Theory have started to examine how international law could matter more which indicates how compliance could be promoted.[16]

However, regime theorists afraid of "the L-word", according to international law scholars, even though the Regime Theories are actually "reinventing international law in rational-choice language".[17] Despite both "'regime theorists' and international lawyers agree that 'legal rules and decision-making procedures can be used to structure international politics' and the functions they ascribe to international regimes are remarkably similar", they rather *reinvent* or *rediscover* what the others already saw and said.[18] According to regime theorists, regime-governed behaviors are not based on short-term interests or on temporary alliances. These narrow calculations may only determine conventional and immediate activities while regime-governed behaviors are determined by principles and norms of international society[19] which are created by international law.

Regime itself, in its general use, is not a legal word and not necessarily based on a legal regulation, nor does an international treaty always create a regime by its own.[20] But, IL and IR disciplines still have many overlapping points about regimes and

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[15]Raustiala and Slaughter, p.540 cited from Richard A. Falk, "The Relevance of Political Context to the Nature and Functioning of International Law: An Intermadiate View" in **The Relevance of International Law: Essays in Honor of Leo Gross**, (Eds. Karl W. Deutsch and Stanley Hoffman), Schenkman Cambridge, 1968.

[16] Raustiala and Slaughter, pp.539-540.

[17] Anne-Marie Slaughter Burley, "International Law and International Relations Theory: A Dual Agenda", **AJIL**, Volume.87, 1993, p.220.

[18] Slaughter Burley, pp.220-221.

[19] Stephen D. Krasner, "Structural Cases and Regime Consequences: Regimes as Intervening Variables" in **International Regimes**, (Ed. Stephen D. Krasner) 4th Ed., Cornell University Press, Ithaca, 1986, (Structural Cases), p.3.

[20] Nele Matz-Lück, "Norm Interpretation across International Regimes: Competences and Legitimacy" in **Regime Interaction in International Law**, (Ed. Margaret A. Young), Cambridge University Press, New York, 2012, p.203.

international treaties. For example, International Court of Justice (ICJ) describes the diplomatic law as self-contained regime and International Law Commission of the UN (ILC) describes the law of the sea, the humanitarian law, the environmental law and the trade law as special regimes. While regime in IR is defined as a set of principles, norms, rules and decision-making procedures in a subject matter, according to the ILC Study Group, regime in international law is "groups of rules and principles concerned with a particular subject matter".[21] In the narrow sense, regimes are limited with a set of rules and in breaching of them trigger secondary set of rules within the regime, and in the broad sense, there are rights and obligations beside set of rules in regimes which regulates a certain problem.[22]

Beside coherence of definitions, there are four other overlaps, basically with actors, institutions, stages and practices, in regime conceptualizations of IL and IR. The main actors, both according to IL and IR, are states, even though both accept the gradually increasing role of non-state actors in regimes, especially in transnational regimes. Both IL and IR promulgate the role of institutions, especially regimes and international organizations being in the first place, in global governance of international relations. Three stages; making, implementing and enforcing of regimes are considered by both IL and IR, though they are not necessarily formal and sequenced, and even sometimes interpenetrating. The possibility of systems-based or emergent practices in regimes is accepted by both IL and IR, despite of risk of multiplicity, conflicts and imprudent perspectives.[23]

Both regimes and international treaties are tools and results of international cooperation and coordination between states. Be it regime or international treaty, the first step for creation is mutual understanding of problem and its shared definition by states parties, and an agreed way to solve it through. Common perceptions of states

[21] Margaret A. Young, "Introduction: The Productive Friction Between Regimes" in **Regime Interaction in International Law**, (Ed. Margaret A. Young), Cambridge University Press, New York, 2012, (Productive Friction), p.11.
[22] M. Young, Productive Friction, p.11.
[23] M. Young, Productive Friction, pp.5-10.

about way and strategies are accepted as fair and equal. States merge in a common purpose within a regime or through an international treaty in a cohesive and sustained manner.

Since 1972, the first international conference on environment, hundreds of international environmental treaties have been signed[24] and through them dozens of environmental regimes have been created. The ozone regime[25], the marine pollution regime[26], the hazardous waste regime[27], the Rhine River regime[28], the North Sea regime[29], the Antarctic regime[30], the Baltic Sea Regime[31] are accepted as the most

[24] According to the Ecolex database, information service on environmental law, 323 bilateral and multilateral environmental treaties have been signed since 1972, while it was only 8 until 1972. http://www.ecolex.org/, (01.03.2014).

[25] 1985 Vienna Convention for the Protection of the Ozone Layer (in force 22 September 1988) and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (in force 1 January 1989).

[26] 1972 The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters 'London Dumping Convention' (in force 30 August 1975), 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) (in force 1983) and two protocols and 6 amendments; 1969 International Convention on Civil Liability for Oil Pollution Damage (in force 19 June 1975) and 3 protocols and 1 amendment; 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (in force 16 October 1978) and 5 protocols and 1 amendment; 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (in force 6 May 1975); 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (in force 13 May 1995); 2001 International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS) (in force 17 September 2008); 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM) (not in force yet); 2009 The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (not yet in force). This regime functions under the IMO. "List of IMO Conventions", http://www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx, (01.07.2014).

[27] 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (in force 24 May 1992) and 1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal (not yet in force).

[28] 1963 Treaty of Bern; 1976 the Chemical Convention; 1999 The Convention on the Protection of the Rhine (in force 01 January 2003).

[29] IMO regime plus (supra 26); 1991 The Agreement on the Convention of Small Cetaceans of the Baltic and North Sea 'ASCOBANS' (in force 29 March 1994); 1992 the Convention for the Protection of the Marine Environment of the North-East Atlantic 'the OSPAR Convention' (in force 25 March 1998); and regulations of the International Conferences of Protection of the North Sea.

[30] 1959 Antarctic Treaty (in force 23 June 1961); 1972 Convention for the Conservation of Antarctic Seals 'CCAS' (in force 11 March 1978); 1980 Convention on the Conservation of Antarctic Marine Living Resources 'CCAMLR' (in force 7 April 1982); 1988 Wellington Convention on the Regulation of Antarctic Mineral Resource Activities (not entered into force and replaced by the Madrid Protocol); 1991 Protocol on Environmental Protection to the Antarctic Treaty 'Madrid Protocol' (in force 14 January 1998).

[31] IMO regime plus (supra 26); The Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt ' Gdansk Convention' (in force 28 July 1974); 1991 The Agreement on the

successful treaty-based environmental regimes. The climate change regime[32], the RAMSAR regime[33], the biodiversity regime[34], the CITES regime[35], the CLRTAP[36] are usually accepted as successful ones even though there are harsh criticisms about them, too.[37] The common feature of all environmental regimes is to be based on at least one international environmental treaty. Because subject of this study is compliance with international environmental regimes and all environmental regimes are created by at least one multinational environmental treaty and also when overlapping points of regimes in IL and IR are considered together, treaties and regimes are not distinguished in this study. So, when regime is referred, it is meant that "regimes [which are] constituted by international [treaty] norms and institutions."[38] Consequently, by referring compliance with regime it is also meant that compliance with treaty (or treaties) and unwritten norms and principles which create that regime.

Convention of Small Cetaceans of the Baltic and North Sea 'ASCOBANS' (in force 29 March 1994); 1992 The Convention on the Protection of the Marine Environment of the Baltic Sea Area 'Helsinki Convention' (in force 17 January 2000);

[32] 1992 UN Framework Convention on Climate Change (UNFCCC) (in force 21 March 1994) and the 1997 Kyoto Protocol (in force 16 February 2005).

[33] 1971 The Convention on Wetlands of International Importance 'the Ramsar' (in force 21 December 1975); 1982 The Paris Protocol (in force 1 October 1986); 1987 Regina Amendments (in force 1 May 1994).

[34] 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals 'Bonn Convention' (in force 1 November 1983); 1992 Convention on Biological Diversity 'CBD' (in force 29 December 1993); 1995 The Agreement on the Conservation of African-Eurasian Migratory Species 'AEWA' (in force 1 November 1999); 2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity (in force 11 September 2003).

[35] 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora 'CITES' (into force 1 July 1975) and three Appendices.

[36] 1979 Geneva Convention on Long-Range Transboundary Air Pollution 'LRAP' (into force 16 March 1983), 1984 Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe 'EMEP' (into force 28 January 1988); 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent 'Sulfur Protocol' (into force 2 September 1987); 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes 'Nitrogen Oxides Protocol' (into force 14 February 1991); 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (into force 29 September 1997); 1994 Protocol on Further Reduction of Sulphur Emissions (into force 5 August 1998); 1998 Protocol on Heavy Metals (into force 29 December 2003) and Amendment (not into force yet); 1998 Protocol on Persistent Organic Pollutants 'POP's Protocol' (into force 23 November 2010) and three Amendments in 2009 (not into force yet); 1999 The Protocol to Abate Acidification, Eutrophication and Ground-level Ozone 'Gothenburg Protocol' (into force 17 May 2005).

[37] Helmut Breitmeier, Oran R. Young and Michael Zürn, **Analyzing International Environmental Regimes: from Case Study to Database**, MIT Press, Cambridge, 2006, pp.68-69.

[38] Matz-Lück, p.203.

Yet it should be remembered that there are also MEAs which do not create an environmental regime and there are many other international regimes which are not based on any international treaty. Moreover, it is known that there are differences between regimes and international treaties which are put aside. Regimes are more comprehensive structures than international treaties. Although a legal text is useful and more legitimate method to create a regime, a legal text is not a requirement for creation of a regime. And, regimes are not restricted only with legal texts. There are unwritten and non-binding norms, principles and rules within regimes which shape and guide state behaviors, secondary instruments and norms. International treaties are also not limited with written words of that legal text. Every international treaty is a part of more comprehensive cognition of international law in general. There are pre-existent norms, principles and rules and customary law behind a signed treaty which guide and shape further treaties. Furthermore, regimes are sustainable, evolving and managed institutions and they improve autogenously, while treaties are static and stable. Obviously, it does not mean that international treaties do not change or do not improve in progress of time, but since they are written texts, to change and to improve them is harder than to change non-treaty-based-regimes and require new process of negotiation, signing and ratification process -except annexes and amendment negotiation approaches. Making a treaty have more restricted rules, procedures and constrains than creation of a regime which is more elastic and tacit. Negotiation and bargaining of treaties are more formal; on the other hand, regimes may be spontaneous convergence, even sometimes imposition.[39] In this study, compliance refers to compliance of states parties with a regime's all written-unwritten norms (treaties and customary law in IL), legal-non-legal rules[40] (hard law and soft law in IL), standards, behaviors and institutions, accordingly to IR regime definition.

[39] Oran R. Young, "Regime Dynamics: The Rise and Fall of International Regimes" in **International Regimes**, (Ed. Stephen D. Krasner), 4th Ed., Cornell University Press, Ithaca, 1986, (Regime Dynamics), pp.98-100; Matz-Lück, pp.203-204.

[40] IL makes a difference between hard law and soft law even at examining of compliance with them since the procedures of creation, implementation and binding roles of soft law and hard law instruments are different. IL emphasisingly interests in compliance with hard law. Raustiala and Slaughter, p.539.

1.1.1. Soft Law vs Hard Law in Building a Regime

It is easy to make a distinction between soft law and hard law by defining soft law as a non-binding rule-like policies while hard law is strictly binding. In fact, there is no widely accepted definition of soft law. According to Ronald Dworkin's legal theory, even though soft law corresponds to policies, and is not legally binding, it has a normative power.[41] It is accepted that soft law is legally non-binding so that it has more elastic and obscure rules of international law. Even soft law does not have a binding power; they certainly have influence on states' behaviors. Though they are not strictly legally binding, states make commitments by signing or declaring soft law instruments which actually bind them and which have legal consequences. Every commitment states make create an obligation -even if it is minor- and require a behavioral change for party, by reason of, even they are soft law, "because obligations depend on the perceptions of other states, non-binding promises by states may create expectations about what constitutes appropriate behavior."[42] In this sense defining soft law instruments as non-binding is neither actually right, nor wrong.[43] They are, Guzman and Meyer say, "binding; in effect, they can be law as conventionally understood. But they can also be nonbinding; that is, they have legal effect only because they shape states' understanding of what constitutes compliant behavior with the underlying binding rule".[44] Furthermore, concentration of soft law in a particular field provides a base for hard law.[45] Consequently, rather than defining soft law as non-binding law, it is more correct to say

[41] Ronald Dworkin, **Taking Rights Seriously**, Duckworth, London, 1977, p.22.
[42] Andrew T. Guzman and Timothy L. Meyer, "International Soft Law", **Journal of Legal Analysis**, Volume.2, 2010, p.176.
[43] Albeit some scholars' definition of soft law as only politics, for legal scholars soft law must be accepted, at least, as law-like.
[44] Guzman and Meyer, p.176.
[45] Stephen J. Toope, "Formality and Informality" in **The Oxford Handbook of International Environmental Law**, (Eds. Daniel Bodansky, Jutta Brunnée and Ellen Hey), The Oxford University Press, New York, 2007, p.125.

that it is less obligatory law[46] as it is regarded in this thesis. And it is said that "soft law tends to blur the line between the law and the non-law".[47]

Hard law instruments are described as the sources of international law in the Article 38 of the Statute of the International Court of Justice.[48] Thus, it could be argued that the forms which are not included in this list are soft law instruments.[49]

Soft law instruments may have the form of declarations, resolutions, statements of principles, diplomatic correspondences and gentlemen's agreements or even the discourses of individual actors could have a degree of authority in international community.[50] Soft law instruments show an intention for further regulations on the matter in question; hence they are encouraging tools for states to make further hard law instruments.[51] The important point of soft law instruments is the content they have rather than the form they were structured. Free from having a specific form, they have a content in which articulations frame the ideal behaviors which will be shared not only by a state but by the relevant community.[52] They define some target-setting principles which are to evolve into hard law in future.[53]

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[46]There is a long-lasting debate over definition and concept of soft law which cannot be solved in this study. For detailed arguments about the debate, see related references. Kenneth W. Abbot and Duncan Snidal, "Hard and Soft Law in International Governance", **International Organization**, Volume.54, No.3, Summer 2000, pp. 421-456. For more about 'soft law', see Karel Wellens and Gustaaf Borchardt, "Soft Law in European Community Law", **European Law Review**, Volume.14, 1989, pp.267-321; Günther Handl *et al*., "A Hard Look at Soft Law", **Proceedings of the American Society of International Law**, Volume.82, 1988, pp.372-395; Tadeusz Gruchalla-Wesierski, "A Framework for Understanding 'Soft Law'", **McGill Law Journal**, Volume.30, 1984, pp.37-88.

[47]Andrew T. Guzman, "The Design of International Agreements", **The European Journal of International Law**, Volume.16, No.4, 2005, (The Design), p.584; Handl et al., p.371.

[48] According to the Article 38 of the ICJ Statute, the primary sources of international law are: international conventions; international custom; and the general principles of law recognized by civilized nations. And, the secondary sources of international law are judicial decisions and teachings (doctrines). ICJ, "Statute of the International Court of Justice", http://www.icj-cij.org/documents/?p1=4&p2=2, (01.03.2014). The primary sources create rule of law, while the secondary sources have subsidiary means for determination, implementation and comment the law. Shaw, p.103; Thirlway, p.110.

[49] Toope, p.109.

[50] Toope, p.125.

[51] For example; the Universal Declaration of Human Rights; the Agenda 21 adopted by the 1972 Rio Conference on Environment and Development; the Arctic Environmental Protection Strategy; the Helsinki Final Act; the Basel Accord on Capital Adequacy.

[52] Toope, pp.124-125.

[53] For instance; the Universal Declaration of Human Rights is a soft law instrument which would evolve into the International Covenant on Economic, Social and Cultural Rights and International Covenant on

So the question is that, how or why states make a choice on whether to sign a treaty as hard law or make a soft law instrument. Making a choice between soft and hard law instruments is actually a cost-benefit analysis for states. If states hesitate about commitments, or if a treaty would lay a burden on themselves, or if conditions blur too much to make strict decisions, or if there appear hopes to sign a different treaty with better conditions for future; states avoid from making a treaty and prefer to make a soft law instrument so that they may "respond to unexpected future events".[54]

However, elasticity of soft law instruments weakens power of the instrument as much as the commitments of parties which all would cause to reduce credibility of the instrument.[55] Despite of its weakness, states prefer instruments which allow them more action in broader elbowroom so that they are not afraid of losing their control completely. Even though credibility is low in soft law instruments, states actually seek to reach target through minimum commitment as much as it is possible. The flexibility of soft law instruments gives all parties an opportunity to change provisions when conditions change and positions get clearer. On the other hand, if the interests that will be guaranteed are vital to put at risk, states prefer signing a treaty which is a binding, hard law instrument to ensure that other states fulfill their obligations. By means of hard law, it is ensured that every state will act in a desired and regulated way, if they will not; they would be enforced to do so or would be made to pay for non-compliance. Contrary, if the interests are not that important, states prefer soft law instruments so that they have options to act freely.[56]

Because soft law instruments do not have any compliance and enforcement mechanisms as hard law instruments have, states could easily choose not to comply with soft law when compared with hard law. In the same manner, as there is no definite path to follow for accomplishing defined objective, soft law is more convenient for deceit.

Civil and Political Rights. Similary, the Rio Declaration on Environment and Development, even though it is non-binding, is the source of many binding rules of environmental law.

[54] Guzman, The Design, p.592.

[55] Guzman, The Design, p.580.

[56] Guzman and Meyer, pp.176-177; Guzman, The Design, p.591.

Lastly, main advantages of soft law could be summarized as, the soft law instruments are easier and faster to conclude. There are fewer delays in negotiations of soft law instruments. Compared with hard law instruments, compliance is higher in soft law because there are more appropriate options for parties to choose for their own political, economic and social preferences. Similarly, as there are more ways than one to achieve the target, there are more rooms for negotiation and bargaining between parties, particularly for the North and South dialogue. The need for taking further steps encourages parties to continue dialogue and to cooperate to open a way for hard law instruments' signing.[57] Finally, soft law instruments allow non-state actors to participate more actively in processes.[58]

This distinction of characteristics between hard and soft law leads to two important questions: How would a choice between making a hard law and soft law instrument affect the regime building process and whether this choice affect the compliance with regimes or not? For the regime building process, soft law is one of the first steps providing general principles and behavior codes for further developments. Due to its easiness and reliance, a broader participation could be ensured through soft law. Both for regime theorists and legal scholars, a declaration followed first by a framework convention and then by detailed protocols are more useful for international cooperation. In this aspect, soft law makes a base on which regime would be built. Nevertheless, for compliance, soft law is not a useful tool for regime building. As it was

[57] And also these dialogues and cooperation have domino effect on cooperation that will ensure the cooperation spread into different issue areas. In regime theory this is called 'ramification' and 'spill over effect'. Nilüfer Karacasulu, "Avrupa Entegrasyon Kuramları ve Sosyal İnşaacı Yaklaşım", **Uluslararası Hukuk ve Politika**, Volume.3, No.9, 2007, pp.82-100. For ramification see David Mitrany, **The Functional Theory of Politics**, St. Martin's Press, New York, 1975; and for spill over effect see Ernst Haas, **The Uniting of Europe: Political, Social and Economic Forces 1950-1957**, University of Notre Dame Press, Notre Dame, 2004; Arne Niemann and Philippe Schmitter, "Neofunctionalism" in **European Integration Theory**, (Eds. Antje Wiener and Thomas Diez), Second Edition, Oxford University Press, New York, 2009, pp.45-66.

[58] Alexandra Kiss and Dinah Shelton, **Guide to International Environmental Law**, Martinus Nijhoff Publishers, Boston, 2007, pp.9-10; Guzman, The Design, pp.588-594; Ivana Zovko, "International Law-Making for the Environment: A Question of Effectiveness" in **International Environmental Law-making and Diplomacy Review 2005**, (Ed. Marko Berglund), University of Joensuu, UNEP Course Series 2, Finland, 2006, p.119.

explained above, soft law defines targets but sets states free on how to reach those targets. Furthermore, generally the desired target is defined within a non-strict frame. Due to the flexibility of soft law, it is suitable neither for compliance mechanisms and monitoring organs nor for enforcement procedures and sanctions.

1.1.2. Principles, Standards, Rules and Norms in International Law and Regime

At this point to explain the differences between particular concepts used both in regime theories and in international law will be useful. As it was seen at the term 'actor' mentioned below, also terms principles, standards, rules and norms may differ in two different study fields.

In a nutshell, soft law leads the way for emerging principles; principles generate standards; principles and standards are put into practice with rules; widely accepted rules become norms[59], and norms in whole create system of law.

In the normative hierarchy of international law, *jus cogens*, general principles of international law and right after them *erga omnes* obligations are at the top. Going up to down, comes first hard law rules and at the bottom soft law rules appear. However, some scholars say that there is a grey area between hard law and soft law and that is place of the principles.[60]

Even though the power of principles in law controversial, "(p)rinciples can indicate the essential characteristics of legal institutions, designate fundamental legal norms, or fill gaps in positive law" and so they are known as "rules of indeterminate

[59] In the older doctrine, the term *standard* had been used instead of *norm.* Despite of their still interchangeably usage today, the fact is that standard is a subtype of norm and less precise than rules. Daniel Bodansky, "Rules versus Standards in International Environmental Law" in **Proceedings of the Ninety-Eighth Annual Meeting**, American Society of International Law, Washington DC, 2004, (Rules vs Standards), p.275.

[60] Ulrich Beyerlin, "Different Types of Norms in International Environmental Law Policies, Principles, and Rules" in **The Oxford Handbook of International Environmental Law**, (Eds. Daniel Bodansky, Jutta Brunnée and Ellen Hey), The Oxford University Press, New York, 2007, p.426.

content". Written or not, principles lead proper action.[61] "International environmental law relies on a number of general principles that provide guidelines for relevant state action, determine the interpretation and application of existing international environmental norms, and lay the foundations for the further development of international environmental law".[62] In international environmental law, principles are more important than any other field of international law, because the complexity and criticality of issues obligate states to leave many gaps or ambiguity provisions in environmental law. In spite of these gaps, principles of environmental law orient and steer states to right actions confirmed by law. Principles also "embody legal standards, but the standards they contain are more general than commitments and do not specify particular actions".[63]

Similar to aforementioned hard law-soft law distinction, a distinction between rules and principles results from the clearance of target and path to reach it.[64] In a legal perspective, the distinction between rules and principles are actually a matter of formulation. "Sometimes a rule and a principle can play much the same role, and the difference between them is almost a matter of form alone… Principles have a dimension that rules do not -the dimension of weight or importance."[65] Principles "… 'expresses a general truth, which guides our action, serves as a theoretical basis for the various acts of our life, and the application of which to reality produces a given consequence'…" while the rules are "…'practical formulation of the principles' and the 'application of the

[61] Kiss and Shelton, p.89.
[62] Beyerlin, p.431 cited from A. Epiney and M. Scheyli, Umweltvölkerrecht, Stämpfli Verlag, Bern, 2000, p.76.
[63] Phillipe Sands, **Principles of International Environmental Law**, 2nd Ed., Cambridge University Press, Cambridge, 2003, p.231.
[64] "This method of compromising in cases where states cannot agree upon more stringent rules facilitates the dynamic development of modern international environmental law. It allows states with heterogeneous interests and needs to enter into rudimentary agreements in which, at least initially, they commit themselves only to relatively indefinite objectives, concepts, or principles rather than to clear-cut legal obligations that might immediately infringe on their sovereignty. However, the price to be paid for making such agreements is high since vague norms tend to deprive agreements of any strength, unless an explicit agreement provides for dispute settlement, which might allow vague treaty norms to be given a more precise meaning through adjudication." Beyerlin, p.427.
[65] Dworkin, pp.25, 26.

principle to the infinitely varying circumstances of practical life aims at bringing about substantive justice in every case'".[66] Principles have determinant role in future of environmental law. Even if there is an uncertainty about rules, principles draw the framework of expected behaviors. All states have to act according to these principles both in their international relations and in exploitation of nature.[67]

Rules are usually clear statements in a treaty article aiming to achieve a clearly defined result.[68] Each rule defines its triggering conditions on which a determinated action will be taken. There is no -or very little if there is any- room for discretion which states could abuse. If a triggering non-compliance comes to happen, the determinated legal action is to be taken in, too.

On the other hand, in standards neither triggers nor actions are precise. States dissent whether facts become real or not and which legal act is to be taken in relevant circumstances. States consider the triggering facts, circumstances and consequences of different actions in each case and decide related principle. Daniel Bodansky clarifies the distinction between the rules and standards as *ex ante* and *ex post* decision-making with

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[66] Sands, p.233 cited from B. Cheng, **General Principles of Law as Applied by International Courts and Tribunals**, 1953, p.376.

[67] Principles of international environmental law are: The Principle of Prevention of Harm or Not To Cause Transboundary Environmental Damage; The Precautionary Principle; The Polluter Pays Principle; Sustainable Development Principle; Principle of Common but Differentiated Responsibilities; Duty to Know or Environmental Impact Assessment; Duty to Inform and Consult; Public Participation. These principles have also been regulated as a rule in a number of environmental law treaties. On the other hand there are still some controversions on features of some of these principles. For example American scholars and legists more inclined to call it 'precautionary approach' rather than admitting it as a principle. There are debates on accepting these concepts either as various principles or dimensions of sustainable development. Sands and Bodansky et al argue that considering these in the sustainable development principle make it more controversial than it already is. To be able to increase the credibility of sustainable development as an established principle, it is required to exclude these concepts from sustainable development, so that debates on both sustainable development and on these concepts can be kept in a more healthy way. Principle of common but differentiated responsibilities is one of the most controversial principles of environmental law, so it is hard to say that it has become a customary law. Especially USA can be accepted as persistent objector of this principle. The related clause is one of the reasons why USA did not sign the Kyoto Protocol. On the other hand, this principle is formulated as a rule in Montreal Protocol on Substances That Deplete the Ozone Layer and the Kyoto Protocol. For detailed information about principles of international environmental law and debates on those see: Kiss and Shelton, pp.91, 94-100, 107-108; Sands, pp.231-290; Daniel Bodansky, Jutta Brunnée and Ellen Hey, (Eds.), **The Oxford Handbook of International Environmental Law**, The Oxford University Press, New York, 2007, pp.598-703.

[68] Beyerlin, p.427.

saying "to a considerable extent we do not know what the law is until the particular cases arise".[69] Therefore, while EU's trade ban on the genetically modified organisms (gmo) is a lawful preference according to the precautionary principle, ban on using the chlorofluorocarbons (cfcs) is a required action according to 1986 Montreal Protocol on Substances that Deplete the Ozone Layer.

Even though rules are practical and principles are theoretical, the line between principles and rules are blurred to make a clear categorization. It may be put forward that the basic differences are, first, rules are stated in a more detailed formulation and they leave no open door or blank points for initiatives of state to maneuver; and secondly, because of their abstract and indeterminate structure, the morality in principles' character is higher than the rules' character.[70]

There are three ways of inter-connection between law and norms: "Law can create, weaken, or strengthen a norm". Many theorists accept the norms as "precursor to rules of law" that "law seeks to realize that which begins conceptually" while some accept "rules as norms" and the others as "informal social regularities that individuals feel obligated to follow because of an internal sense of duty, because of fear of external nonlegal sanctions, or both".[71] In this context, norms are admitted same as formal rules but only if they are clearly expressed in a community and the parties agree on their meanings.[72] "The common core of the concept of 'norm' is that the desideratum contained in the norm is intended to influence human conduct." The core of the norm is not its determination power on action but influence on it. Norms do not dictate a specific behavior but they influence the behavior.[73]

According to Beyerlin, to be able to define a concept as principle, two questions should be asked. "First, is the disputed concept structured in such a way that it may have normative quality ('normativity')—that is, the capacity to directly or indirectly steer the

[69] Bodansky, Rules vs Standards, p.275.
[70] Beyerlin, p.432.
[71] Joseph F.C. DiMento, **The Global Environment and International Law**, University of Texas Press, Austin, 2003, (Global Environment), p.43.
[72] DiMento, Global Environment, p.43.
[73] Toope, p.109.

behaviour of its addressees? And, second, is it designed, and accordingly established, in such a way that it constitutes a legally binding norm? If both questions are answered in the affirmative, the concept in question constitutes either a legal rule or a legal principle. If only the first question is positively answered, the concept concerned is a norm that remains within the realm of 'soft law' (that is, the normative subtype of policies). If neither of the questions is answered positively, the concept is a non-normative policy."[74] When it is returned to debates of which principles of international environmental law are really principle, making an elaboration becomes easier on the light of Beyerlin's arguments. For the principle of prevention of harm; the precautionary principle; the polluter pays principle; the sustainable development principle; the principle of common but differentiated responsibilities, it is correct to answer both questions as 'yes'. All of these principles either have been regulated in an international treaty or become a customary law, so that they have the normative quality and they constitute a legally binding norm.[75] But they are still confusing from the content point of view. The other principles defined as twilight are either included in the mainstream principles as their components, or defined as new emerging principles or placed in different normative hierarchic level.

1.2. LINKAGE BETWEEN COMPLIANCE AND EFFECTIVENESS

The regimes are comprehensive structures built on a specific subject. To determine the success of a regime and how it could be measured are important because they give us chance to determine whether the regime is effective or not. But first, it is

[74] Beyerlin, p.428.

[75] Nevertheless, there are still some writers who accept these as 'potential principles'. For three different categories of principles (the principles of existing environmental law, of emerging environmental law and potential principles) see: Winfried Lang, "UN Principles and International Environmental Law", **Max Planck Year Book of United Nations Law**, Volume.3, 1999, pp.170-171. Furthermore, when one of these principles is regarded as a clause of a specific treaty, then it should be thought as a rule for relevant case. But when it is considered in a broader context, then it can be thought as a principle or customary law if it has the required conditions which is very hard to prove.

helpful to make some clear definitions about the terms which will be frequently used in this study. To be able to make a clear conceptual framework, and to determine importance of this subject; the terms *implementation*, *compliance* and *enforcement* which are sometimes used interchangeably by mistake or accidentally, will be examined.

1.2.1. Implementation, Compliance and Effectiveness

There is a chain of steps for effectiveness, starting with negotiations of a treaty and stretching out to compliance. Negotiation process is mentioned as a compliance mechanism but to be able to analyze compliance, first implementation, the preliminary step of compliance and effectiveness, and second effectiveness, the result, should be clarified.

After signing a treaty, to assure effectiveness, first steps are ratification -which varies according to each state's national legal system- and entering into force -which varies according to each treaty's provision. A treaty which duly entered into force both nationally and internationally should be implemented by states parties.[76] Effectiveness is the conclusion which starts with implementation and compliance. However, being able to promote maximum effectiveness also depends on the creation of a treaty and a regime, which is examined in the next section.

1.2.1.1. Implementation

Despite implementation and compliance are sometimes used interchangeable, they are quite different from each other. Until the 1980s, the term implementation was preferred to be used for explanation of the accomplishments of states, their duties and their behavioral changes. But with the book of Oran Young, compliance was coined into

[76] For detailed information about procedural stages of making MEAs, see: Kızılsümer Özer, pp.89-139; UNEP, **Multilateral Environmental Agreement Negotiator's Handbook**, 2nd Ed., UNEP Course Series 5, University of Joensuu, Joensuu, 2007.

the literature as changing of "… actual behavior of a given subject conforms to prescribed behavior, and non-compliance or violation occurs when actual behavior departs significantly from prescribed behavior".[77] Since then, there is a distinguished conceptualization between them, but still, sometimes, it may be practically confusing to determine this distinction.

Implementation is an initial and critical step taken to obtain the compliance and effectiveness. In the simplest, the term implementation is "the process of putting international commitments into practice".[78] Literal meaning of implementation is "to give practical effect to and ensure actual fulfillment by concrete measures".[79] In international law, "inter alia, all relevant laws, regulations, policies, and other measures and initiatives, that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement and its amendments, if any" are accepted as implementation of that treaty.[80] Therefore, implementation is translation and transfer of an international rule into internal rule and this way, regulated international rule becomes a part of national policy as a base of national legislation.[81] Since the international law is usually not directly executive in national law systems, states have to make this transfer.[82] Thus, the connection between international law and national law is ensured through implementation. In the strict sense, implementation is to be able to perform a task, to take necessary precautions and to make required regulations in national laws.[83] In this sense, harmonization of national laws with international law and entering into

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[77] Oran R. Young, **Compliance and Public Authority**, Johns Hopkins University Press, Baltimore, 1979, (Public Authority), p.104.

[78] Kal Raustiala, "Compliance and Effectiveness in International Regulatory Cooperation", **Case Western Reserve Journal of International Law**, Volume.32, 2000, p.392.

[79] Daniel Bodansky, **The Art and Craft of International Environmental Law**, Harvard University Press, Massachusetts, 2010, (Art and Craft), p.321.

[80] UNEP Governing Council, SS.VII/4, 2001, **Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements**, C/Art.9, Paragraph.b, (Guidelines on Compliance), http://www.unep.org/delc/Portals/119/UNEP.Guidelines.on.Compliance.MEA.pdf, (01.07.2014).

[81] Bodansky, Art and Craft, pp.205-206.

[82] Especially in international environmental law, provisions of MEAs are not self-implemented and has to be transferred to national laws. Edith Brown Weiss, "Understanding Compliance with International Environmental Agreements: The Baker's Dozen Myths", **University of Richmond Law Review**, Volume.32, 1999, (Understanding Compliance), p.1562.

[83] Kızılsümer Özer, p.202.

force of international regulations by transferring them into national legislation are the implementation of international law in states parties. In a broader sense, all measures taken within a state to render an international treaty effective in its legislation system are implementations.[84] All necessary executive, legislative and judicial measurements taken accordingly to international law, required national policy changes, regular reviews of national laws and policies accordingly to international regulations are the implementation of international law.[85] The wideness of the chosen definition of implementation and overlaps with compliance bring on a confusion which sometimes cause to indetermination of the line between faulty and/or lacking implementation and non-compliance. Implementation problems are beyond the scope of this study. But it is sufficient to say here that, as hard as complying with a treaty for a state, no matter how developed the state is, implementing international commitments in national law and policies is hard as well.[86]

1.2.1.2. Compliance

Compliance is "the state of conformity with obligations, imposed by a State, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements in permits, licenses and authorizations, in implementing multilateral environmental agreements".[87] This means "an actor's behavior

[84] Harold K. Jacobson and Edith Brown Weiss, "A Framework for Analysis" in **Engaging Countries Strengthening Compliance with International Environmental Accords**, (Eds. Edith Brown Weiss and Harold K. Jacobson), MIT Press, Cambridge, 1998, (Framework), p.4.
[85] Kızılsümer Özer, p.202.
[86] In 1990, the Environmental Protection Agency, official environmental authority of the USA, succeeded to implement only 14% of international commitments on time. In the same year, European Community Commissioner of environmental protection was complaining about the unsatisfactory implementation rate of member states. David Vogel and Timothy Kessler, "How Compliance Happens and Doesn't Happen Domestically" in **Engaging Countries: Strengthening Compliance with International Environmental Accords**, Edith Brown Weiss and Harold K. Jacobson (Eds.), MIT Press, Cambridge, 1998, pp.19-20.
[87] UNEP Governing Council, SS.VII/4, 2001, **Guidelines For National Enforcement, and International Cooperation In Combating Violations, of Laws Implementing Multilateral Environmental Agreements**, C/Art.38, Par.a, (Guidelines for National Enforcement). UNEP accepts two different compliance definitions in order to be more comprehensive for two different chapters. The other one is "the

that conforms to a treaty's explicit rules".[88] Complying with a treaty proves real adherence of state to its commitments.[89] The change in national policies and laws of states varies from education of people in order to live up to desired alterations, to monitoring compliance of national units, and so on. Compliance with a treaty is not only to act according to provisions but also to fulfill the spirit of the treaty both in national and international levels[90], so that on the final stage either on national or on international level, behaviors of all relevant actors should be changed.[91]

Especially after 2000, instead of signing new treaties, deepening of former MEAs or increasing their compliance have taken priority. After the declaration made by environment ministers of UNEP countries in which warns that there is a warning about "alarming discrepancy between commitments and action"[92], the Governing Council of UNEP adopted the 'Guidelines Compliance with and Enforcement of Multilateral Environmental Agreements' in 2001.[93] Similarly, in 2002, the Fifth Ministerial Conference of Environment for Europe accepted 'the Guidelines for Strengthening Compliance with and Implementation of MEAs in the UNECE Region'.[94] These efforts

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fulfilment by the contracting parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement". UNEP, Guidelines for National Enforcement, C/Art.9, Par.a.

[88] Roger Fisher, **Improving Compliance with International Law**, University Press of Virginia, Charlottesville, 1981, p.20. As Mitchell emphasizes, it is truer to speak of compliance with treaty rules rather than compliance with a treaty, because states can and do comply with some of the rules of a treaty while cannot or do not comply with others. Ronald B. Mitchell, "Regime Design Matters: Intentional Oil Pollution and Treaty Compliance", **International Organization**, Volume.48, Issue.3, Summer 1994, (Regime Design), p.429.

[89] Harold K. Jacobson and Edith Brown Weiss, "Strengthening Compliance with International Environmental Accords: Preliminary Observations from a Collaborative Project", **Global Governance**, Volume.1, 1995, (Strengthening Compliance), p.123.

[90] Jacobson and Brown Weiss, Framework, p.10.

[91] Brown Weiss, Understanding Compliance, p.1563.

[92] Geir Ulfstein, "The Proposed GEO and Its Relationship to Existing MEAs", **The International Conference on Synergies and Coordination between Multilateral Environmental Agreements**, United Nations University, Tokyo, 14-16 July 1999, p.116. Malmö Ministerial Declaration, 31.May.2000, http://www.unep.org/malmo/malmo_ministerial.htm, (01.07.2014).

[93] UNEP Governing Council, SS.VII/4, 2001, Guidelines on Compliance. For detail information see title 2.3.4. Practical Dimensions at page.182.

[94] Fifth Ministerial Conference of Environment for Europe, 21-23.May.2003, **The Guidelines for Strengthening Compliance with and Implementation of MEAs in the UNECE Region**, http://www.unece.org/?id=8264&type=11, (01.06.2014).

show the need and the importance of compliance with MEAs. On the other hand, in these documents, by compliance, not only legal behavioral change is referred. The concept of compliance is much broader when a regime is the concern.

Compliance and effectiveness are akin but still differ from each other. Effectiveness which is dealt in detail under the next title is an eventual target of any action. Every treaty is compromised with a purpose to be effective on a behavior, on a system, on a problem or on a crime. The success of a treaty or of a regime can be summarized as its effectiveness. A treaty and regime are effective ones, which also means that they are successfully formed if they achieve their targets by making a change in the behaviors of a target group, whether it is people or state[95], or by solving a problem it focuses.

1.2.1.3. Effectiveness

Thinking that the environment is now under protection and all degradation which human actions caused have repaired could be misleading if only number of signed and ratified treaties are considered. Even though number of MEAs shows concerns and efforts on environment, unless they are effective, they cannot assure an improvement in environment.[96] Furthermore, according to some critics, growing number of MEAs creates an illusion that there is an improvement in environment, and worse, this illusion may reduce the need for further regulations which in fact should not be delayed.[97] An extension of this thought shows itself in recent developments on international environmental law. Rather than signing new MEAs, deepening of present MEAs and increasing their compliance and effectiveness have taken priority after the 2000s.[98]

[95] Mitchell, Regime Design, p.425.
[96] Bodansky, Art and Craft, p.205.
[97] Bodansky, Art and Craft, p.252.
[98] UNEP took a decision for this aim in 2001 and made a manual to guide states on their compliance with MEAs in 2006. See; UNEP, Guidelines on Compliance; UNEP, **Manual on Compliance with and Enforcement of Multilateral Environment Agreements**, UNEP Publishes, Nairobi, 2006.

Effectiveness and compliance are usually thought together in a meaning that comprehensive and supportive to each other. When compliance is required to promote, effectiveness of regime is also desired to increase.[99] "Compliance can provide a valuable proxy for effectiveness".[100] However, a reverse situation is not always possible. The effectiveness of regime or just a treaty cannot be increased only by promoting compliance. Even if full compliance is achieved, if there are problems in structure of regime or treaty, regime is fated to be ineffective. Because effectiveness is function of interaction between the problem and the structure built to solve it.[101] The debates about regime building in order to achieve maximum effectiveness will be analyzed in the next chapter as a compliance mechanism.

Evaluating effectiveness depends on the chosen meaning. Oran Young distinguishes three different definitions of effectiveness.[102] First and the simplest approach in defining effectiveness is *legal effectiveness,* the one actually means compliance in which legal scholars are usually interested in. Legal effectiveness is an issue of compliance, as this study focuses on. Legal effectiveness regards state behaviors to conform to regime's requirements. These requirements could be both as spirit of regime in general and as provisions in particular.[103] Implementation is essential for legal compliance. In this manner, the scope of this thesis is about legal effectiveness but it shall be clear that it is not possible to achieve environmental protection only by dealing with legal effectiveness. The Moon Treaty[104] which prohibits armament in space and on

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[99] Bodansky, Art and Craft, p.233.

[100] Teall Crossen, "Multilateral Environmental Agreements and the Compliance Continuum", **Georgetown International Environmental Law Review**, Volume.16, 2003, p.479; Ronald B. Mitchell, "Compliance Theory: An Overview" in **Improving Compliance with International Environmental Law**, (Eds. James Cameron, Jacob Werksman and Peter Roderick), Earthscan Publications, London, 1996, pp.3, 5.

[101] Arild Underdal, "One Question, Two Answers" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles et all), MIT Press, Massachusetts, 2002, (One Question), p.13; Oran R. Young and Marc A. Levy, "The Effectiveness of International Environmental Regimes" in **The Effectiveness of International Environmental Regimes**, (Ed. Oran R.Young) MIT Press, Cambridge, 1999, pp.1-32.

[102] Oran R. Young, **International Governance: Protecting the Environment in a Stateless Society**, Cornell University Press, Ithaca, 1994, (International Governance), pp.140-160.

[103] Bodansky, Art and Craft, p.253.

[104] 1979 the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.

the Moon, seems very legally effective, since there is not any weapon in space. There is a perfect compliance with the treaties of space law, but neither due to treaties nor the norm of peaceful using of space, but because almost none of the states have technology or it is not economic to place weapon on the Moon or in the space. However, also, even the highest rate of legal compliance does not always mean that regime is successful as it will be emphasized in this study when the related occasion will be subject.

Second and more normative definition of effectiveness is *behavioral effectiveness* on which both legal and political scholars work. The treaty is effective only if induces a behavioral change into right direction which is called "treaty-induced compliance".[105] This feature of effectiveness may be regarded as 'norm internalization'. Regardless of level of compliance or whether this change is enough to solve the problems a treaty addresses, as long as the treaty causes a different behavior, it is successful.[106] The ozone regime is successful not because the ozone layer depletion was repaired, but because states and people stopped using ozone depleting gases thanks to understanding of importance of the ozone layer protection due to the ozone regime.

To identify legal effectiveness, it is not enough to ask a "before-versus-after question", but the one which is more accurate being "with-versus-without question" to determine the behavioral change.[107] The problem here is that determining whether the behavioral change happened as a result of the treaty or it would happen anyway even regardless of the treaty. The behavioral change should be a consequence of the treaty. The example about the protection of the Moon and the space, as given above, is also a good example to distinguish the legal and behavioral effectiveness. Would it be still behaviorally effective if states had enough financial resources and technology to use the space and the Moon? The norm of protection of the Moon and the space is legally

[105] Mitchell, Regime Design, p.429; Raustiala, p.394.
[106] The Whaling Treaty is legally effective since compliance rate is very high; it is effective to solve the problem since whale stocks are largely recovered, but still, in this manner, it is not an effective treaty, because it could not induce a behavioral change in whaling states. Raustiala, pp.391, 392-394. Kyoto Protocol is effective in spite of the actual reduction rates are below desired levels; states parties and even the non-party states try to reduce the carbon emissions to stop climate change.
[107] Bodansky, Art and Craft, p.255.

effective according to compliance with non-armament regulation but even current complaints about space debris, contamination from satellites and spaceships and scraped satellites show that as soon as technology progresses, this regulation may be non-complied with in future. It means that the norm of protection of the space has not behaviorally affected the states. From a different perspective, given that the UNFCCC cannot achieve the target of reducing carbon emissions, and emission is still growing in total, does the claim that 'the UNFCCC is ineffectiveness' still stand valid? The UNFCCC may be unsuccessful in achieving its target, but in the sense of behavioral change, it may be regarded as highly effective.[108] To evaluate treaty effectiveness in total, both legal effectiveness and treaty-induced behavioral change should be considered.

Third and more result-based definition of effectiveness is *problem-solving effectiveness* which Raustiala names as "common-sense notion".[109] Every treaty has an aim and it is effective only if it could achieve this aim. Especially, effectiveness of an environmental regime is described as "a solution of the environmental problem that brought together the law-makers".[110] Environmental treaties have very clear targets such as stopping the global warming, preventing endangered species and reparation of the ozone layer. If this aim is achieved and if environmental problem could be solved, that means that treaty is effective.[111] However, environmental problems may be detected late, it may take a long time to solve the detected problems and also longer time to determine whether it is really solved or not. Even if all greenhouse gas emissions were given up today, the global warming would keep continuing for a more couple of years, may be decades. Only then it will be possible to evaluate the problem-solving effectiveness of the UNFCCC. "How can success be determined when studying effects that may take

[108] W. Bradnee Chambers, **Interlinkages and the Effectiveness of Multilateral Environmental Agreements**, United Nations University Press, Hong Kong, 2008, p.124.
[109] Raustiala, pp.393-394.
[110] DiMento, Global Environment, p.139.
[111] Finishing line is not necessary always. How far regime has come is an also a measurement for problem-solving regime effectiveness. Bodansky, Art and Craft, pp.257-258.

decades to manifest themselves…?"[112] Furthermore, ecosystems are so interdependent that even though all legal measures are taken and complied to cover only one environmental subject; regimes may still remain ineffective unless effectiveness of regulations for other related ecosystems are also improved. Even if trade and hunting of endangered species and intervention in their habitats were forbidden and a perfect compliance was achieved, some species would still be in danger, because the global warming affects their habitats. Nevertheless, the most crucial effectiveness for international environmental law is problem-solving for improvement of environment. However, for an entirely effective regime, all three of these must be attained. Focusing on only one and ignoring the others cause imperfective regimes.

Through one example, three distinguished effectiveness may be clarified. The UNFCCC regime aims to stop the climate change by reducing carbon dioxide emissions which has greenhouse gas effect. The climate change regime is; legally effective, if states reduce the greenhouse gas emissions to determined percentage; behaviorally effective, if states stop using and producing all the actions that have greenhouse gas effect and replace them with green energy consumptions rather than just exporting their emissions through the carbon emission trade or export their environmentally dangerous activities to the developing states which do not have any reduction obligations yet;[113] and it is effective in problem-solving if implementation of the UNFCCC and related protocols halts global warming.

The problem about the definition of regime effectiveness based on behavioral change causes various problems. If a desired behavioral change is accomplished but still legal and/or problem-solving effectiveness falls short, can this regime still be accepted as a successful one? For a comprehensive consideration of total effectiveness, these three pillars of effectiveness must be thought as complement to each other in a well-organized regime. For a better evaluation, other determiners are also important. Financial, technical or political, all available opportunities and potentials for cooperation

[112] DiMento, Global Environment, p.9.
[113] Bodansky, Art and Craft, p.257.

should be used to exploit all possibilities to make regime effective. In regime structure, there should not be "left money on the table" as Bodansky says.[114] The "collective optimum" which is possible perfect cooperation should be achieved for effective regime. In addition, it must be considered that regimes are not static institutions but dynamic and evolving processes. As well as behavioral change of actors, the knowledge and values which regimes create and widen should be considered.[115]

Parallel to definitions of effectiveness given above, it is better to think that effectiveness of a regime actually have three dimensions: legal effectiveness, behavioral effectiveness and problem-solving effectiveness. Conceptualizing of these definitions as three dimensions of effectiveness is more appropriate for a better understanding of subject. It is confusing to give three definitions for one concept. So it is suggested that these definitions to be called as dimensions. From here it is concluded that compliance is in fact one of three dimensions of effectiveness which is called legal effectiveness.

1.2.2. Evaluating Compliance and Effectiveness

After conceptualizing implementation, compliance and effectiveness and making clear the linkage between them, now it is time to try to understand how compliance and effectiveness could be evaluated.

1.2.2.1. Evaluating Compliance

Before scrutinizing the tools for promotion the compliance, finding out current level of compliance should be defined which is not an easy task as well. If effectiveness of a treaty as a whole is of question, effectiveness may not always overlap with compliance[116], so regarding different aspects of effectiveness, which were explained

[114] Bodansky, Art and Craft, p.258.
[115] Bodansky, Art and Craft, p.258.
[116] Brown Weiss, Understanding Compliance, p.1556.

above, is not explanatory. Moreover, measuring implementation is usually easier than measuring compliance, because evaluating a state's behaviors is actually "a matter of judgment".[117] The compliance with specific regulations like reducing the CFCs consumption 50% is easy to evaluate, but how could compliance with a normative rule like sustainable development be evaluated?

Consequent to measurement of compliance, what is the scale for grading compliance levels? In a rough order, compliance level could be graded as "magnitude-substantial compliance, moderate compliance, weak compliance" or no compliance at all.[118] Which of them is suffice to satisfy regime and which one is unacceptable? What is the low compliance, which would be defined as non-compliance? What is the line between compliance and non-compliance determining the acceptable level of compliance?

Not only international law scholars but also economists ask the same question. An economic analysis of determining acceptable level of compliance focus on cost analysis of enforcement of compliance. "[I]nvest additional resources in enforcement … up to the point at which the value of the incremental benefit from an additional unit of compliance exactly equals the cost of the last unit of additional enforcement resource". Nevertheless, this approach is also not valid for every treaty, because it is not always possible to calculate neither the cost of the enforcement, nor the benefit of the compliance financially. [119]

To a very abstinent approach, if regime could pursue itself, it means that an acceptable level of compliance has been established. On the other hand, if necessary steps are not taken to promote compliance, the established level will gradually decrease eventually and in the end, regime will collapse. Additionally, if major actors of the regime give up complying or enforcing compliance, again regime cannot accomplish

[117] Jacobson and Brown Weiss, Framework, p.4.
[118] Jacobson and Brown Weiss, Framework, p.5.
[119] Abram Chayes and Antonia Handler Chayes, "On Compliance", **International Organization**, Volume.47, Issue.2, Spring 1993, (On Compliance), pp.201-202 cited from Gary Becker, "Crime and Punishment: An Economic Approach," **Journal of Political Economy**, Volume.76, March/April 1968, pp.169-217.

itself.[120] So, as much as the acceptable level of compliance, compliance with core of treaty and also compliance of major powers should be obtained for perpetuity of a treaty. Compliance with core of a treaty is essential. Just as each treaty is different, each rule of a treaty is different, too. Non-compliance with some rules which are core of a treaty is not acceptable while some may be tolerated to a degree.[121]

The political approach says that continuation of compliance with a treaty in despite of low level of compliance of other parties is a political preference. Additionally, enforcing or not enforcing non-compliers, determination of level of enforcement mechanisms and sanctions are political decisions, too.[122] This political approach for evaluating acceptable level of compliance seems more meaningful in a world where interests affect choices. When a closer look is taken at functions of international relations, it can be said that despite development of international law, even application of legal rules can depend on political decisions sometimes, not on law itself.

There is neither a standard method to evaluate compliance nor a minimum level of compliance that when it is satisfied, parties will settle for, valid for all treaties. Each treaty should be evaluated in their own context and each context has its own dynamics. In all treaties, parties have different perspectives, expectations and interests, all of which determine their tolerance to non-compliance.[123] Additionally, compliance with a treaty may change and progress in time. In early history of treaties, non-compliances are wider and ignorable while compliance gradually improves and becomes a preferred attitude. Early times of treaties are accepted as the "legislation stages" when the states are getting used to rules. During this period, low-compliance does not seem as a problem. In the

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[120] Chayes and Chayes, On Compliance, p.201.

[121] Abram Chayes, Antonia Handler Chayes and Ronald B. Mitchell, "Managing Compliance: A Comparative Perspective" in **Engaging Countries: Strengthening Compliance with International Environmental Accords**, (Eds. Edith Brown Weiss and Harold K. Jacobson), MIT Press, Cambridge, 1998, pp.40, 51.

[122] Chayes and Chayes, On Compliance, p.202 cited from Charles E. Lindblom, **Politics and Markets**, Basic Books, New York, 1977, pp.254-255.

[123] Chayes and Chayes, On Compliance, p.202.

"implementation stages", when the rules become standards, states start to pressure non-compliers to act properly.[124]

Every treaty has a tolerance degree of non-compliance and free riders.[125] The more vital the subject of a treaty is, the lower level of tolerance it has. Unfortunately, environmental law is still seen as low politics -especially in the developing countries- and number of free riders of common goods created thanks to environmental law is very high. On the other hand, despite non-compliers, the cognition of importance of environmental protection and internalization of environmental standards help majority of states to maintain compliance.[126]

It should be remembered that compliance is an active process which changes state to state, case by case, rule by rule and even time to time within the same state for the same rules since political, economic, social, cultural and even environmental conditions change in time. Albeit perfect implementation is achieved once, if possible, it is almost impossible to keep it as long as the treaty is in force.

1.2.2.2. Evaluating Effectiveness

Above, it was mentioned that there are three different definitions of the concept of effectiveness. Consequently, evaluation of effectiveness and methods for evaluation depend on the chosen definition. Legal effectiveness, also known as compliance, is relatively easy to evaluate as it was mentioned. In international law, scholars usually focus on compliance issue as it was emphasized and as it is done in this study. Besides, in general evaluation of effectiveness, it is agreed that "effectiveness requires compliance".[127] Solution of addressed problem is possible through compliance of parties

[124] Chayes, Chayes and Mitchell, pp.40,51.
[125] Chayes and Chayes, On Compliance, pp.200-201.
[126] Chayes and Chayes, On Compliance, p.201 cited from Mancur Olson, **The Logic of Collective Action**, Harvard University Press, Cambridge, 1971, pp.33-36.
[127] O. Young, World Affairs, p.80.

with required norms and rules.[128] Hence, compliance and effectiveness are highly correlated and compliance rate may be a measurement for evaluating effectiveness. However, neither the highest rate of compliance necessarily means that problem is solved nor the highest rate of effectiveness means that compliance is also high, especially if there is a mistake with coding of rules, if the aim of regime is ill-defined, linkages between cause-and-effects are misunderstood, etc.

Contrary to legal effectiveness, evaluation of the second definition of effectiveness, which is that behavioral change effectiveness that the regime theorists emphasize as the most important consequent of regimes, is hard to evaluate and sometimes may be misinterpreted. The arguments about what would be behaviors of states in absence of a current regime are only predictions, and there is no way to test and verify these predictions. Therefore, this evaluation could give only assumptions about how states would behave in case of absence of regime and so just shows a hypothetical effectiveness of regime. [129]

The third definition of effectiveness, the problem-solving effectiveness, is the most used and the most useful one to evaluate effectiveness of a regime. Thus almost all studies which focus on effectiveness of a regime, particularly regime theories and institutionalism, deal with effectiveness of a regime in order to see whether it is successful for to what extent regime could solve the problem as it was initially designed to solve.[130] On the other hand, even though the problem-solving effectiveness is the easiest one to evaluate, it is still complicated. Determination of a direct linkage of cause and effect between regime and solution of problem is not always possible, nor it is always possible to determine whether there is a real improvement, except some regimes like environmental ones of which improvements are more clear to observe. Nevertheless, even though it is easier to evaluate problem-solving regime effectiveness of an environmental regime, it is only relatively easy. Ecological improvement or reversing

[128] O. Young, World Affairs, p.80.
[129] Underdal, One Question, pp.9-11.
[130] Arild Underdal, "Methods of Analysis" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles et all), MIT Press, Massachusetts, 2002, p.52.

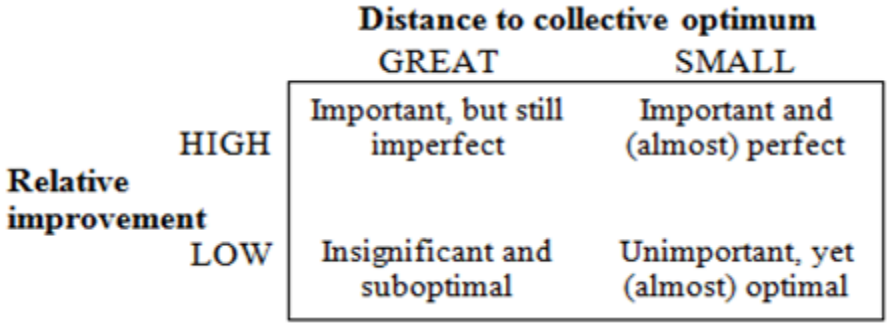
degradation may be scientifically determined and be evaluated clearly but political effectiveness cannot. Like in any other regime evaluations, environmental regimes too are politically fragmented rather than being unitary concepts and they cannot be absolute but relatively evaluated. This is why only 'cognitive evaluation' of regime effectiveness is possible.[131] Furthermore, even though regime is ineffective or less effective in problem-solving, it may still be effective for other aspects of effectiveness, such as the climate change regime. The climate change regime is mostly recognized as an effective one not because it could solve the climate change problem, but because it could make a difference in behaviors of states (even though partially) and of compliance rate is generally high. To be able to overcome this, two different points of reference could be considered in evaluation. The first is hypothetical situation which is what would be in absence of regime and the second is how much it is achieved to reach to an ideal solution or can solve the problem so that regime should be obtained as collective optimum.[132]

It is accepted that there are two different ways to evaluate regime effectiveness: Distance to collective optimum and relative improvement. *Distance to collective optimum* is the extent that regime covers to solve the problem that it was designed to do. Rather than to solve completely or incompletely, this method focuses on to what extent it did since its creation. Even in some cases it is hard to determine recovery in collective problems. It is usually easy to determine by help of experts, if there is any. The second way is the *relative improvement* which focuses on states' affairs and tries to compare the obtained after-regime state affairs with the hypothetical *if no regime* situation. Thus, the evaluation is done based on the difference in state affairs made by regime.[133] It is easy to determine after-regime situation but it is highly challenging to determine what would be otherwise if regime was not created. There may many variables and factors which could

[131] Martin List and Volker Rittberger, "Regime Theory and International Environmental Management" in **The International Politics of the Environment**, (Eds. Andrew Hurrell and Benedict Kingsbury), Clarendon Press, Oxford, 1992, pp.106-107.
[132] Underdal, One Question, pp.9-11.
[133] Arild Underdal, "The Concept of Regime 'Effectiveness'", **Cooperation and Conflict**, Volume.27, Issue.3, 1992, p.231.

affect states' behaviors beside of regime. The best option is to use these two ways together and, consequently, the results give us 4 scaled effectiveness.

Figure 1: Dimensions of Regime Effectiveness



Resource: Underdal, Regime Effectiveness, p.231.

Despite of these two mostly accepted ways, there is not a standard way to measure the chosen regime effectiveness type. There is also a general handicap of social science which is highly open to subjective assessments and it is hard and consequently rare to use a standardized metric scale for effectiveness evaluation.[134] Therefore, in a scale in which one used, a regime may be graded as very effective while the same regime may be classified as mediocre in another scale. Since there is not a standard approach to evaluate a regime, there is not a standard base to compare regimes, one with another. Even if a standardized positive and objective approach could be developed, it is not correct to compare effectiveness of different regimes. First, nature of problem affects evaluation of effectiveness. Complexity and urgency of problem, number of parties involved in regime, wideness or importance of action which needs to be altered, are all different paradigms for measuring of regime effectiveness. Each problem requires a different approach, different techniques and different instruments which all have different effectiveness capacity.[135] And secondly, as it is explained below, even the

[134] Underdal, One Question, pp.10-11.
[135] Patricia Birnie and Alan Boyle, **International Law and the Environment**, 2nd Ed., Oxford University Press, Oxford, 2002, p.10; Jacobson and Brown Weiss, Strengthening Compliance, pp.124-125.

evaluation of a single regime may give different results according to different assessments, then there is not a common base to compare shaky evaluations.

The time-line, for example, is an important determiner of effectiveness. Evaluation in different times of the same regime gives different results about its effectiveness score. In its lifetime, effectiveness of regime may change over time and usually it gradually increases. The creation and infancy periods are the testing and settling times of regimes. Consequently, evaluation of effectiveness of recently created regime does not give an accurate result about its success. Just as states learn from regime[136], regime itself also learns and develops.[137] Through cultivation by practicing and learning, regimes start to grow stronger and more effective. However, surviving in this period is not easy.[138] Moreover, effect of regime on particular parties may be low, while on others be high, so general assessment of regime may be different from state by state evaluation.[139] Similar to compliance, in a regime, too, there are core norms and principles and secondary rules. While some of them are effective, others may be ineffective.

Since the 2000s, instead of leveling effectiveness, more positivist methods started to be used. Even though mostly more qualitative but in-depth analyzing has been done to measure effectiveness of regime, quantity analyzes of regime effectiveness have been done, too. Especially by help of multi-disciplinary studies, effectiveness is given points according to different scales and parameters[140], such as the Oslo-Seattle Project and the International Regimes Database Project.[141] However, because of general

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[136] When international communities' learning process of regime creation is thought, it is expected that new generation regimes must be more effective than predecessor regimes. Underdal, One Question, p.36.
[137] O.Young, World Affairs, pp.115, 196; Underdal, One Question, p.13.
[138] Edward L. Miles et all, "Epilogue" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles et all), MIT Press, Massachusetts, 2002, (Epilogue), p.468
[139] O.Young, World Affairs, p.196.
[140] Jørgen Wettestad, "The Effectiveness of Environmental Policies" in **International Environmental Politics**, (Eds. Michele M. Betsill, Kathryn Hochstetler and Dimitris Stevis), Palgrave Macmillan, New York, 2005, p.313.
[141] For reports of projects see: Edward L. Miles, Arild Underdal, Steinar Andresen, Jørgen Wettestad, Jon Birger Skjærseth and Elaine M. Carlin, **Environmental Regime Effectiveness: Confronting Theory with Evidence**, MIT Press, Massachusetts, 2002 and Breitmeier, Young and Zürn, respectively and for a comparison of two projects see Helmut Breitmeier, Arild Underdal and Oran R. Young, "The

methodological biases of social sciences and of empirical challenges, quantitative researches of regime effectiveness have remained limited.[142]

1.3. ACTORS OF COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL REGIMES

The content and context of international relations are quite different in this century from the previous one. Because problems have been changing, relations between actors and the actors' interests on problems have also changed. To be able to explain these changes, the concept of globalization is used. The globalization, one of the most used concepts in politics of the last twenty years, is hard to define but obvious to recognize. As Crister Jönsson says, if you try to define it, it becomes meaningless, but on the other hand, trying to explain the twentieth century international relations without using it, again makes it appear meaningless.[143]

Globalization of world politics[144] shows an inclination towards a globally governed world. Contrary to state-centered system of classic international relations understanding, globalization requires both multi-layered, multi-actor and also informal and asymmetric relations. Beginning with the twentieth century, international relations has turned to global governance in which states are still main actors, but nature of international relations is neither anarchic nor hierarchic. In this multi-layered and multi-actor scene, there are various kinds of actors which negotiate and affect each other in different ways. Without being involved in debates whether 'world government' is

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Effectiveness of International Environmental Regimes: Comparing and Contrasting Findings from Quantitative Research", **International Studies Review**, Volume.13, 2011, pp.579-605.

[142] For challenges of making quantitative analyzes on regime effectiveness, see Ronald B. Mitchell, "A Quantitative Approach to Evaluating International Environmental Regimes" in **Regime Consequences: Methodological Challenges and Research Strategies**, (Eds. Arild Underdal and Oran Young,), Kluwer Academic Publishers, 2004, pp.121-149.

[143] Christer Jönsson, "Global Governance: Challenges to Diplomatic Communication, Representation, and Recognition" in **Global Governance and Diplomacy Worlds Apart?**, (Eds. Andrew F.Cooper, Brian Hocking and William Maley), Palgrave Macmillian, New York, 2008, pp.29-30.

[144] For a analyses of globalization of environmental law see Robert V. Percival, "The Globalization of Environmental Law", **Pace Environmental Law Review,** Volume.26, 2009, pp.451-464.

possible, it is assumed that a global governance of environment is possible, and at least attempts to govern environmental politics between states attest to do so. Beside of international governance of trade, environmental governance is one of the arenas in which global governance, "the combined efforts of international and transnational regimes", is possible.[145] This possibility results from impossibility of taking effective protective measurements on national basis. Global problems need global solutions and in a sense require global governance. Because, while knowledge and technology rendered the world smaller, grift and connected; endangered species, toxic chemicals, hazardous waste, consumption of fossil oils, deforestation, desertation, pollution of potable water, polluted air, ozone hole put it in danger.[146]

In environmental law, as much as in human rights, states are not the sole actors. In line with historical development, the actors in international environmental law have been changed, and as time went by both their numbers and capacities have increased. The role of non-state actors on environmental law is gaining more importance, and to claim that the role of states in environmental law has been shifting from regulating to coordinating is not an exaggeration. Policy-makers of states function "within very rigid and narrow administrative structures" that limits their flexibility to adjust their selves into new emerging concepts and necessities. Also, their need to be specialization may cause not to represent all subject-issues in policy-making level. Moreover, government-biased policy-making may cause unidirectional approach to environmental necessities, hence ignorance of social, economic and more importantly environmental needs. These features of policy-making limit full consideration of environmental issues in policy

[145] O.Young, World Affairs, p.11.

[146] Besides, there are some writers who argue that the real problem which cause to degradation is globalization itself. This dilemma is argued by post-modernist and anti-capitalist writers since nature is recognized as a source for a human to consume for a better life by capitalism and modernization. See; Robyn Eckersley, **Environmentalism And Political Theory: Toward An Ecocentric Approach**, Fourth Edition, Princeton University Press, New Jersey, 1997; Tim Hayward, **Political Theory and Ecological Values**, Palgrave Macmillan, New York, 1998.

decisions and create a need of more actors' involvement for comprehensive consideration of environmental problems.[147]

Commercial interest groups, non-profit interest groups, epistemic communities and individuals are gaining more and more influence on law-making process and monitoring of creation, implementation and compliance of law. Sometimes distribution of roles of different actors in international law is instantiated with example of a train. States and international organizations are at "Track I", while non-state actors are at "Track II".[148] Global governance of environment requires discussion groups, collective bargaining, interrogation procedures and concerted action of these tracks. Besides, in a decision-making process in which states, IGOs, NGOs, MNCs, research institutes and public are involved and participants find the chance to reflect their interests, effects and contributions on environmental protection, these parties be more enthusiastic to revise their 'bad-attitude' so that more effective environmental regulations are promoted.[149]

At this point, it should be digressed from subject to clarify how the concept of being an actor in politics differs from the concept of personality in law. According to international legal order, personality means to be "capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims'.[150] In this sense, only states and international organizations have legal personalities in international law. Furthermore, personality of international organizations is different from the states'.[151] It is obvious that in this study, the concept of being an

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[147] Gabriela Kütting, "Distinguishing Between Institutional and Environmental Effectiveness in International Environmental Agreements: The Case of the Mediterranean Action Plan", **The International Journall of Peace Studies**, Volume.5, No.1, 2000, (Case of MAP), p.16.

[148] Shankari Sundararaman, "Research Institutes as Diplomatic Actors" in **Global Governance and Diplomacy Worlds Apart?**, (Eds. Andrew F.Cooper, Brian Hocking and William Maley), Palgrave Macmillian, New York, 2008, p.118.

[149] This is called 'reflexive law theory'. Peter Swan, "Democratic Environmental Governance and Environmental Justice" in **Law, Regulation, and Governance**, (Eds. Michael MacNeil, Neil Sargent and Peter Swan), Oxford University Press, Ontario, 2002, p.125.

[150] Advisory opinion of ICJ on 'Reparation for Injuries Suffered in the Service of the United Nations' at 11 April 1949, p.9. ICJ, "Reparation for Injuries Suffered in the Service of the United Nations", http://www.icj-cij.org/docket/files/4/1835.pdf, (14.01.2014).

[151] In this subject, it is contented with this brief explanation about international legal personality and the readers will be directed towards related literatures, for example: Janne Elisabeth Nijman, **The Concept of**

actor is used to refer a party who has roles in decision-making process of and/or in conduct of international environmental politics as it is definition of actor in politics. In addition to this, international environmental regimes are results of bargains and implementations of these actors all of whom have different interests. For shaping a regime, each of these actors has different and important roles. States are conductors of policy and producers of hard norms while non-state actors are networks of transfer and diffusion of soft norms and agenda setters.[152]

To be able to evaluate and explain rapid progress which has occurred in the last three decades in international environmental law, a closer look has to be taken at actors which involved within this process. Each category has different capabilities and different effects within the progress. Furthermore, even taking part in the same group, their roles and effects may change according to their interests. Below, these actors and their roles are introduced.

1.3.1. States

Being primary legal person in international law, states play a central role in environmental law from its early stages. Sovereignty, which means "exclusive jurisdiction over a territory and a permanent population living there"[153], belongs only to states in international legal order. Therefore, classical understanding of sovereignty allows each state to use, exploit and control their own natural resources as they wish and intervention to a state's internal affairs is forbidden even in conditions of spoliation and

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International Legal Personality: An Inquiry into the History and Theory of International Law, T.M.C. Asser Press, The Hague, 2004.

[152] Kersten Tews, "The Diffusion of Environmental Policy Innovations: Cornerstones of an Analytical Framework" in **Environmental Governance in Global Perspective**, (Eds. Martin Jänicke and Klaus Jacob) Freie Universtät, Berlin, 2006, p.105

[153] James Crawford, **Brownlie's Principles of Public International Law**, 8th Ed., Oxford University Press, Oxford, 2012, p.447.

plunder.[154] But, beginning with the second half of the twentieth century, a turning point on understanding of sovereignty happened and an erosion has started.[155]

International law and international relations are driven and conducted by states. Even though it is same in international environmental law, a state, rather than being implementer directly, is mostly a conductor, a director of in-state actors' behaviors accordingly to international environmental law which it transfers to its national legal system. Role of state after creation of international environmental law is to regulate, to monitor and to force in-state actors' actions accordingly to rules of international environmental law. This is not a problem for units and places under jurisdictional authority of the state. However, there are some problems at actions of units/at areas that beyond jurisdiction of the state. Although environmental problems are trans-national problems by its core, international environmental law is constitutionally an inter-national law. This means that, it is created by states and implemented through states. If international environmental law were a really transnational law, which means directly and first-handed binding on non-state actors, multinational cooperations, non-governmental organizations, financial institutions, natural and legal persons, firms etc. of whom actions directly affect environment, both more effective consequences would be obtained and it could be implemented at areas that beyond jurisdiction of states.[156]

Jurisdiction of state is the power "to affect people, property and circumstance" and it is a consequence of its sovereignty. States exercise their sovereignty by

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[154] Of course every state is bound with the international law rules, "sovereignty is not freedom from regulation by international law". Hans J.Morgenthau, **Politics Among Nations: The Struggle for Power and Peace**, 5th Reviewed Edition, Alfred A. Knopf, New York, 1973, p.311.

[155] For deeper analyses about changing role of states, see: Daniel Compagnon, Sander Chan and Ayşem Mert, "The Changing Role of the State" in **Global Environmental Governance Reconsidered**, (Eds. Frank Biermann and Philipp Pattberg), The MIT Press, Cambridge, 2012, pp.237-263. For the debates on different aspects on the concept of sovereignty and environmental law, see: Alan E. Boyle, "Globalising Environmental Liability: The Interplay of National and International Law", **Journal of Environmental Law**, Volume.17, No.1, 2005, pp.3-26; Duncan A. French, "A Reappraisal of Sovereignty in the Light of Global Environmental Concerns", **Legal Studies**, Volume.21, Issue.3, September 2001, pp.376-399; Tuomas Kuokkanen, "Background and Evolution of the Principle of Permanent Sovereignty over Natural Resources" in **International Environmental Law-making and Diplomacy Review 2005**, (Ed. Marko Berglund), University of Joensuu, UNEP Course Series 2, Finland, 2006, pp.97-108.

[156] Kızılsümer Özer, pp.25-26.

jurisdictional authority.[157] The linkages between subjects and jurisdiction are defined according to nationality and territory which connect subjects into state spatially and legally. Lands, properties and actions within the territory of a state as well as legal and natural all persons and the property registered to state's records are under authority of that state's jurisdiction. The issue of state sovereignty from the aspect of jurisdictional authority is a positive concept for international environmental law. State, as a consequence of its sovereignty, is regulator, executor, mandatory and retributive for all the units (actors and places) and actions under its jurisdictional authority. This jurisdictional authority ensures regulations of all actions accordingly to and implementation general regulations of international environmental law and provisions of MEAs through a state. Problem for environmental protection comes into view in the areas that beyond jurisdictional authority of states, for example, high seas, sea-bed and subsoil of high seas, space, atmosphere, Antarctic and no man's land –if there is any.[158]

Beside of sovereignty, international treaties give certain jurisdictional authorities to its states parties. Sometimes jurisdiction area could be defined over states' inherent jurisdiction area, such as prevention to piracy and rescue operation at collisions at high seas. Defining of jurisdiction area of an international treaty is important since the states parties have authority to implement that treaty in this area. The bigger and the clearer of jurisdiction area is, the more effective regime is. This is particularly important for environmental regimes. Many environmental regimes give jurisdictional authority to states beyond their national jurisdiction area to be able to create more comprehensive regimes. For example intervention to oil discharges at the high sea via London and MARPOL Conventions, protection and peaceful usage of the Antarctic resources via 1959 the Antarctic Treaty given to every states parties of these conventions even though these places are beyond their national territorial jurisdiction areas.

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[157] Shaw, pp.572-573.

[158] Kızılsümer Özer, pp.21-22. Since environmental protection requires a comprehensive considereation and regulation of environment, these areas, even they are under any state's jurisdiction authority, under protection of relevant MEAs and international law in general too, even though it ensures only a partial protection.

1.3.2. International Organizations

International organizations have *secondary* or *functional* personalities in international law; secondary, because they are shaped by states; and functional, since their authority and hence their personalities are limited by their rights and duties regulated by their constitutive treaty. Constituent states, so "its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged".[159] Nevertheless, international organizations, accepted as legal persons in international law, are only inter-governmental organizations (IGOs). Non-governmental organizations as it is seen below are not accepted as legal persons by international law.

IGOs are not only main forums that states find a place to produce general world politics. Depending on its function and structure, IGOs either "use the lever of asymmetric power relations to impose policies" such as UN Security Council or "engage in the 'idea game', which is about 'formulating, transferring, selling and teaching not formal regulation, but principled or causal beliefs helping to constrain or enable certain types of social behavior'"[160] such as UNEP.[161]

Bauer et al. identify a distinct category in international organizations and call it "international bureaucracies". They define the roles of international bureaucracies as "shaping global agendas in the environmental realm through synthesizing scientific findings and distributing knowledge and information to all kinds of stakeholders from national and local governments to scientists, citizens, environmental advocates, and the business sector".[162]

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[159] Advisory opinion of ICJ on 'Reperations For Injuries Suffered in the Services of the United Nations', 11 April 1949. ICJ, "Reperations For Injuries Suffered in the Services of the United Nations", http://www.icj-cij.org/docket/files/4/1835.pdf, (21.01.2014).

[160] Tews, pp.104-105.

[161] UNEP is actually not an independent IGO but a subsidiary programme of the UN which have independent secratariat and inter-agency coordinating bodies.

[162] Steffen Bauer, Steiner Andresen and Frank Biermann, "International Bureaucracies" in **Global Environmental Governance Reconsidered**, (Eds. Frank Biermann and Philipp Pattberg), The MIT Press, Cambridge, 2012, p.39.

The international organizations which have a major role in international environmental law are the United Nations and its subsidiary programmes, specialized agencies and organs such as UNEP, UN Educational, Scientific and Cultural Organization (UNESCO), UN Food and Agriculture Organization (FAO), UN Economic Commission for Europe (UNECE) and Economic and Social Council (ECOSOC), and International Standardization Organization (ISO), The Global Environment Facility[163] (GEF), International Maritime Organization (IMO). Even though almost all IGOs have special environmental departments in their structure, the counter-focuses of economic organizations, such as World Trade Organization (WTO), World Bank (WB), International Monetary Fund (IMF), are on one side and environmental organizations are on the other side is sometimes hard to be matched[164] and these contradictions between development and environmental protection make difficult to create and spread the norms and rules.

Among all environmental organizations, the United Nations Environmental Programme-UNEP[165] has an important position. As a "mandate of assisting in the development and implementation of environmental regimes",[166] the UNEP was established at the Stockholm Conference in 1972, as "the voice for the environment".[167] When it was first established, structurally it was nothing more than "a small secretariat". In this process, it has become an agenda-setter of international environmental law and

[163] For a detailed information about the GEF, see: Matti Nummelin, "The Global Environmental Facility" in **International Environmental Law-making and Diplomacy Review 2006**, (Eds. Ed Couens and Tuula Kolari), University of Joensuu, UNEP Course Series 4, Finland, 2007, pp.281-284; Ahmed Djoghlaf, "Financing for Sustainable Development: The Global Environment Facility" in **International Environmental Law-making and Diplomacy Review 2005**, (Ed. Marko Berglund), University of Joensuu, UNEP Course Series 2, Finland, 2006, pp.43-62.

[164] Frank and Philipp Pattberg, "Conclusion" in **Global Environmental Governance Reconsidered**, (Eds. Frank Biermann and Philipp Pattberg), The MIT Press, Cambridge, 2012, p.270.

[165] For a detailed information about the UNEP, see: Donald Kaniaru, "The Stockholm Conference and the Birth Of United Nations Environment Programme", pp.3-22 and Shafqat Kakakhel, "The Role of the United Nations Environment Programme in Promoting International Environmental Governance", pp.23-42 both in **International Environmental Law-making and Diplomacy Review 2005**, (Ed. Marko Berglund), University of Joensuu, UNEP Course Series 2, Finland, 2006.

[166] Fred L. Morrison and Rüdiger Wolfrum (Eds.), **International, Regional and National Environmental Law**, Kluwer Law International, The Hague, 2000, p.98.

[167] UNEP, "About UNEP", http://unep.org/About/, (14.01.2014).

now it is the "trademark … (of) policy-relevant knowledge about the global environmental and institutional dimensions of environmental policy making".[168] The mission of the UNEP is "to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations".[169] Increasing number and variety of both environmental problems and international environmental treaties, acquisition and dissemination of information, need of efficient use of limited financial resources require coordination and a regulation of power in international environmental law. The UNEP does not have an authority to take direct binding decisions but its regulative powers arise from governing the environmental programs, organizing international conferences, initiative on making international treaties[170] etc.

The UNEP could be regarded as the main international organization, which works on harmonizing individual state activities. Successes of the UNEP since the very first day of its establishment cannot be denied even though it is still troubled with some deficiencies. A recommendation for more effective global environmental organization is to strengthen the UNEP through an increased budget, enhanced legal powers and a new organizational structure modeled on the World Health Organization (WHO) and the International Labour Organization[171] (ILO) in which both states and non-state stakeholders are involved in the governmental body. This structure could be adjusted to smaller scale organizations such as MAP too, so a more participative, more transparent, more globally governed and consequently more effective organization could be created. Some scholars carry this recommendation one step further and offer establishment of the "World Environment Organization" (WEO) under which all other environmental

[168] Bauer, Andresen and Biermann, p.33.
[169] UNEP, "About UNEP", http://unep.org/About/, (14.01.2014).
[170] For example; 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992 Convention on Biological Diversity, 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1979 Convention on the Conservation of Migratory Species of Wild Animals, 1985 Vienna Convention for the Protection of the Ozone Layer, 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. UNEP, "UNEP Structure", http://www.unep.org/about/Structure/tabid/129623/Default.aspx, (14.01.2014).
[171] Biermann and Pattberg, p.270.

organizations and MEAs work. This way, coordination between states could be assured as well as between different MEAs and principles of international environmental law could become more widespread.[172]

The most arguable subject in compliance for promoting regime effectiveness is whether an exclusive international organization is essential or role of organizations in regime effectiveness is exaggerated. "[I]t is no coincidence that the regimes with the most impressive compliance experiences -ILO, IMF, OECD, GATT- depend upon substantial, well-staffed, and well-functioning international organizations."[173] International organizations are not just a forum but also a roof for transactions of interdependent interests. A regime functioning under a roof of an international organization has several advantages. Rather than Meeting of Contracting Parties (MoPs) or governing bodies, which comes together once or twice in a year, a continuous and permanent institution seems more beneficial for regime. Secretariat connects states parties, as well as outsiders, to each other. Additionally, interactions between international organizations create synergy in a given topic. Especially in single-issue organizations, since they have only one issue to work on, the issue always remains in agenda and there is plenty of time, feasibility, staff, experts, working groups and budget to review it comprehensively. Focusing on urgent topics is easier and mobilization of financial resources is fairer under a professional management. Even states parties of a treaty drift politically and financially; an organization could work independently, apolitical and result-oriented since it has its own budget and decision-making organ. Centralized training, verifying reports and monitoring are also more effective within international organizations. Furthermore, instead of equal powers, more or less, a hierarchical structure affects behaviors of its members more directly. Legitimacy of

[172] For detailed information about offered organization and the potential benefits of it, see: Chambers, pp.84-89; Geoffrey Palmer, "New Ways to Make International Environmental Law", **AJIL**, Volume.86, 1992, pp.261-262; Frank Biermann, "The Case for a World Environment Organization", **Environment: Science and Policy for Sustainable Development**, Volume.42, Issue.9, 2000, pp.22-31; Frank Biermann and Udo E. Simonis, "A World Environment and Development Organization", **SEF Policy Paper 9**, Development and Peace Foundation, Bonn, 1998; Ulfstein.

[173] Chayes, Chayes and Mitchell, p.58.

regulations is higher and internalization of norms is easier in international organizations. In an organizational structure, inclinations of states to cheat may diminish, reputational concerns rise. International organizations have more channels for monitoring, reviewing and sanctioning.[174] Creation of such a *sui generis* supra-national organization like the European Union is almost impossible but at least an institutional structure which has a regulative power -even it is limited- on states parties like *primus inter pares* could be created.

1.3.3. Transnational Actors

International environmental law is a transnational law which seems to be led by states, but actually many other actors are also involved in officially or unofficially either as decision makers or as conductors. Naturally, states are essential actors but not the only ones, anymore.[175] Especially non-governmental organizations and multinational cooperations are becoming essential participators even it is usually informal. Only few international environmental institutions allow formal participation of non-state actors.

International environmental law is an accumulation of hierarchical regulations. Regulations are agreed in MEAs by states and descend down to national units; from governments to individuals, via national legislation procedures. Therefore, each stakeholder has a role in compliance and non-compliance. Enhancing compliance is possible especially with MEAs if all these actors participate in all processes. [176] The roles actors play, treaties and obligations and their roles in compliance differ state to

[174] Burley, p.219. For a detailed analyze of what kind of international organizations are needed in regime creation see Burley, pp.220-222.
[175] Edith Brown Weiss, "Strengthening National Compliance with International Environmental Agreements", **Environmental Policy and Law**, Volume.27, 1997, (Strengthening National Compliance), p.297.
[176] Brown Weiss, Understanding Compliance, p.1578.

state. Rate of international regulation acceptance and will to comply with it depend on consensus on urgency and importance of a problem.[177]

Actually, how the broadness of actors participating in international law processes generates compliance is a compliance theory and called "transnational legal process". The actors who are the "agents of internalization" -either national and international levels, or public and private- interpret and internalize international regulations and so enforce compliance. The roles of transnational actors in compliance are to emerge and to internalize the behavioral patterns of international law and to transfer them into domestic legal systems.[178] Transnational participation and epistemic communities share a shouldered burden with states and treaty organs. Reporting, verifying, data collecting, assessment and dissemination are administrative and procedural responsibilities burdened upon state officials and on treaty organs and requiring proficiency, time and resources of which usually states and treaty organs are in lack of, especially in undeveloped and developing states. Transnational participation not only cross checks but completes and promotes these. They provide independent, neutral and regular data, agenda and point of view for regime management.[179]

As well as decision-making process, in compliance mechanisms the roles and participation of transnational actors of globally governed world are gradually improving. Since actors and stakeholders involved in international environmental law differ from traditional international law, actors participate in compliance mechanisms also differ. Different mechanisms appropriate for different actors should be considered in order to improve compliance with treaty respectively. Below, the roles and effects of *non-state actors* or *transnational actors* in international environmental law and compliance have been examined.

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[177] Abram Chayes and Antonia Handler Chayes. **The New Sovereignty: Compliance with International Regulatory Agreements**, Harvard University Press, Cambridge, 1995, (The New Sovereignty), p.185.
[178] Harold H. Koh, "Transnational Legal Process", **Nebraska Law Review**, Volume.75, 1996, (Legal Process), pp.183-184. The claim that participation of transnational actors in international law process promote compliance is correct, as many other scholars argue. But, reducing the compliance improvement efforts to transnational participation only is oversimplifying, again as many other scholars criticize.
[179] Chayes, Chayes and Mitchell, p.48.

1.3.3.1. International Non-Governmental Organizations

Non-governmental organizations (NGOs) in the broadest manner "communicate ideas, norms or the 'intellectual matter that underpins policies' and sometimes use international norms as a lever to put pressure on their domestic governments".[180] However, there are debates over definition of NGOs and so how to determine organizations as NGOs.[181] According to UN, any organizations that governments are not represented in are NGOs.[182]

As it was mentioned, NGOs are not one of the legal persons of international law but certainly one of the participants of globally governed world. NGOs directly or indirectly, more or less, affect decision-making processes. NGOs are the organizations that governments or states are not represented in while states are represented in IGOs. This means that NGOs' aims and actions are independent from states and governments even in which they are acting, while in IGOs states' policies and interests are pursued. NGOs have not any actions for profit, so they are different from business companies.[183] They are established by ordinary people or groups voluntarily, but may be supported by governments or companies.[184] Some of the NGOs have limited targets with local structures while some stake out global targets with world-wide organized structures. NGOs are usually single-issue organizations. They only work on a determined issue for common good and their role and power in international law derive from their success to affect public opinion. However, NGOs are usually rich in legitimacy but poor in

[180] Tews, p.105.
[181] In the widest sense, the concept of NGOs encompass non-profit organizations, also known as civil society organizations.
[182] Sönmezoğlu and Erler Bayır, p.260.
[183] According to some widest though defective arguments, multinational corporations (MNCs) are also accepted as NGOs. In this study, as it is clear, NGOs used as a form referring only to non-profit organizations.
[184] This is also a debateful issue since financial supporting especially by governments can affect the neutrality of NGOs. Sönmezoğlu and Erler Bayır, p.260.

capital[185], because they do not receive funds from governments; their budgets are based on donations and their activists who work as volunteers.

Power of NGOs arises from their success in *knowledge management*.[186] Even though a number of NGOs have their own research centers, they usually use independent research institutes' works since research needs much more finance and technology than they have. The knowledge management NGOs operates means to gather information to produce knowledge, to use it to promote ideas, and to spread it in public. In this sense, NGOs could be referred as bridges of knowledge between its source and audience.

NGOs are important as they ensure transparency in both governments' and MNCs' performances. NGOs are pressure groups which have considerable importance on monitoring, evaluating and criticizing of national and international regulations and implementations.[187] Governments and MNCs which know effects of NGOs on public opinion, usually try to interact[188] with them and take advices from them at least to be able to avoid harsh critics. NGOs have different perspectives, different knowledge,

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[185] Russel Lawrence Barsh and Nadia Khattak, "Non-Governmental Organizations in Global Governance: Great Expectations, Inconclusive Results" in **Justice Pending: Indigeneous Peoples and Other Good Causes**, (Eds. Gudmundur Alfredsson and Maria Stavropoulou), Martinus Nijhoff Publishers, The Hague, p.3.

[186] This concept was inspired from Ines Smyth, "Slaying the Serpent: Knowledge Management in Development NGOs" in **Development and The Challenge of Globalization**, (Eds. Peter Newell, Shirin M.Rai and Andrew Scott), ITDG Publishing, London, 2002, pp.102-114.

[187] Raymond Saner and Lichia Yiu, "Business-Government-NGO Relations: Their Impact on Global Economic Governance" in **Global Governance and Diplomacy Worlds Apart?**, (Eds. Andrew F.Cooper, Brian Hocking and William Maley), Palgrave Macmillian, New York, 2008, p.87.

[188] The *Occupy Wall Street* protests which "fight back against the corrosive power of major banks and multinational corporations over the democratic process, and the role of Wall Street in creating an economic collapse that has caused the greatest recession in generations" started at 2011 and made tremendous impacts in the whole world about the power of organized social movements. Occupy Wall Street, "About", http://occupywallst.org/about/, (10.02.2014).

Former USA Deputy Secretary of State Strobe Talbott recognized that the Dayton Accords would not be implemented as necessary without cooperation of 13 NGOs working with coalition of governments in Bosnia after war. Edward Finn, "International Relations in a Changing World: A New Diplomacy?", **Perceptions**, Volume.5, Issue.2, 2000, p.144.

In World Summit for Information Society (WSIS), ended in 2005 as a part of UN summit series on information and communication technologies, NGOs with business gained not only the chance to be observes but also seats in the governing body. Furthermore "Civil Society Declaration", which was confirmed by WSIS, was declared by NGOs as an alternative to the official WSIS Declaration. Jovan Kurbalija, "The World Summit on Information Society and the Development of Internet Diplomacy" in **Global Governance and Diplomacy Worlds Apart?**, (Eds. Andrew F.Cooper, Brian Hocking and William Maley), Palgrave Macmillian, New York, 2008, pp.180, 188.

different concerns and different though public interests from governments and MNCs usually have. Harsh protests and/or critics of NGOs are too valuable to ignore in a world wherein public opinion is a matter. The decisions and implementations which NGOs protest and oppose may arouse suspicion in public opinion and may cause legitimate concerns.[189] NGOs' intervention to both states' and MNCs' decision-making process is defined as "world civic politics" or "civil regulation".[190] A well-organized environmental NGO movement against dirty MNCs, such as protests, boycotts, and their success in information dissemination into public could force the MNCs to behave environment-friendly.[191]

NGOs like the Amnesty International and the International Committee of Red Cross (ICRC) have major roles in shaping and monitoring human rights law. In international environmental law, the main and the most successful NGOs are International Union for the Conservation of Nature (formerly, the World Conservation Union-IUCN), the Greenpeace International, the World Wildlife Fund (WWF), the People for the Ethical Treatment of Animals (PETA), the Friends of Earth, which unfortunately, are not welcomed sometimes due to they regard as too activist.[192] Even so, collaboration with NGOs gradually gains importance and their voice becomes heard. In 1992, 1500 NGOs were officially registered as observers to the UN Conference on Environment and Development (UNCED) and their contributions were conferred on for shaping the drafts and the critical role of NGOs for future in favor of environmental movement was underlined.[193] In this context, the Convention on Wetlands of

[189] Saner and Yiu, p.97.
[190] Kyla Tienhaar, Amandine Orsini and Robert Falkner, "Global Corporations" in **Global Environmental Governance Reconsidered**, (Eds. Frank Biermann and Philipp Pattberg), The MIT Press, Cambridge, 2012, p.47; Peter Newell, "Managing Multinationals: The Governance of Investment for the Environment", **Journal of International Development**, Volume.13, 2001, p.172.
[191] For the success of Greenpeace, one of the best organized NGOs on environment, see: Greenpeace, "The Victories Timeline", http://www.greenpeace.org/international/en/about/history/Victories-timeline/, (08.02.2014).
[192] Beside of their negative effects on policies and interests of governments, NGOs and as well as MNCs are sometimes considered as tools of developed states by developing states. Biermann and Pattberg, p.268.
[193] Dianne Otto, "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society", **Human Rights Quarterly**, Volume.18, 1996, p.118.

International Importance gave secretariat function to the International Union for the Conservation of Nature and Natural Resources until a government would assume.[194]

Some of NGOs have even more financial, technical and legal sources than developing countries. This gives an opportunity to developing states in their contentions with developed states. NGOs support to developing states could ensure a fairer ground for their efforts for protection of their interests against interests of developed states. Developing states usually accuse the developed states with chasing their own interests and ignoring essential needs of developing states. If developing states' essential needs could merge with interests of environmental NGOs, who try to protect the environment, developed states may be pushed to act in desired way. The most productive exemplar of coalition between NGOs and developing states is the cooperation of the Association of Small Island State (AOSIS), the Centre for International Environmental Law (CIEL) and the Greenpeace. More than forty small island states, which will terribly be affected from the rise of sea levels as a result of global warming, had legal and tactical advises from the CIEL and technical and scientific information from Greenpeace during the climate change conferences. The first two conferences almost resulted as small island states and NGOs desired.[195]

Gradually, environmental NGOs become more involved in environmental regulation negotiations. DiMento explains the roles of environmental NGOs in negotiations as to "(1) advise representatives to treaty making in written and verbal forms, (2) introduce scientific background materials, and (3) engage dispute resolution processes by bringing actions against parties or entities within parties for failure to meet the objectives of a treaty".[196] Even though they do not have a right to vote, participating in negotiations gives NGOs opportunity to observe, affect and lobby at meetings even if

[194] The Convention on Wetlands of International Importance, 12 October 1972, Article 8.
[195] Chayes and Chayes, The New Sovereignty, pp.261-262.
[196] DiMento, Global Environment, p.169.

it be only in the corridors. Today NGOs –and MNCs–[197] organize side-events, contact meetings, one to one interviews with key actors.

The role and effectiveness of NGOs in public awareness gradually increases thanks to greater access to information, international communication and technology which make easy to create and raise public awareness to social, political and economic issues. The information they collect is useful both in creating and re-shaping regime. From the very first step of regime creation, they accelerate agenda to create a regime on a given issue scope by generating public concern which pushes states into act.[198] They develop transparency and accountability of regime.[199] NGOs could submit information about regime functioning and compliance to secretariats as in the Montreal regime and the Aarhus Convention, or to states parties as in the Basel Convention. In a case of non-compliance they could trigger non-compliance mechanism as in the Aarhus Convention and the Protocol on Water and Health.[200] The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for example allow complaints by non-governmental organizations and individuals as triggers of the non-compliance mechanism. Furthermore, the North American Agreement on Environmental Cooperation (NAAEC) makes investigations on individual claims against states.[201] NGOs are also the main actors in regime insurance. First of all, NGOs participation in a

[197] For better organized operations, MNCs created 'The World Business Council for Sustainable Development' and 'International Chamber of Commerce' that both function like NGO.

[198] In 1993, Greenpeace revealed hundreds of tons of nuclear waste dumping from Russia into Sea of Japan just a couple of days after Russian President Boris Yeltsin's visit to Japan. Dumping was not a violation of the London Convention then, because radioactivity of the waste was lower than the Convention's prohibition limits. However it was on contrary to the spirit of the treaty. The Greenpeace publicize the dumping, Russia got reaction from Japan as well as other states of parties to London Convention. Because of adversaries, Russia had to call of next dumping. Just in one month, all nuclear waste dumping into seas was permanently prohibited. Chayes and Chayes, The New Sovereignty, p.259.

[199] Friends of the Earth's inquiry about failure of reporting system of IMO and suggestions about a more effective reporting system and its beneficiaries for promoting compliance brought back the reporting issue on IMO agenda again. With the recommendations of Friends of the Earth, IMO prepared a comprehensive reporting form, standardized and verifiable. Immediately after, both compliance with IMO regimes and regime effectiveness promoted. Ronald B. Mitchell, **Intentional Oil Pollution at Sea: Environmental Policy and Treaty Compliance**, MIT Press, Cambridge, 1994, (Intentional Oil Pollution), pp.132-136.

[200] Alessandro Fodella, "Structural and Institutional Aspects of Non-Compliance Mechanisms" in **Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements**, (Tullio Treves et all), T.M.C. Asser Press, The Hague, 2009, p.369.

[201] Bodansky, Art and Craft, pp.234-235.

regime makes it independent from state interests since "NGOs [does] not follow states' agendas".[202] They criticize and try to change states' policies. When state policies lock in negotiations or implementation, NGOs present different approaches and different expectations. Even states suspend issue or remove it from their agenda; NGOs keep it in agenda and molding public opinion to push governments.[203] In a regime, they monitor and report regime implementation and compliance by states, verify state reports on compliance neutrally and independently. This is particularly important if there is any loop in report verification in regime. Similarly, when organizational or political structure of regime is not strong enough to make pressure on states for enforcement consequent to non-compliance, NGOs publicize non-compliers and mobilize public response.[204] Their roles and their effects on states to push them increase if they are allowed to participate in regime process implicitly or explicitly.

1.3.3.2. Multi-National Companies

The role of multi-national companies (MNCs) in environmental law should be examined in two different dimensions. Some of MNCs have greater economic capacity that many developing states have; their incomes are much above many developing countries' gross domestic product and number of their employees all over the world is much above population of small-scale states. This way, they have a great influence on decision-making process of international and national environmental regulations as pushers and pullers. Apart from this widely-known dimension, their second role is that they are the main implementers of environmental regulations. Their willingness to obey

[202] Fodella, p.368.
[203] Sönmezoğlu and Erler Bayır, p.261.
[204] The boycott call by the Greenpeace to Iceland's fishery products cost $50 million to Iceland who non-complied with whaling regime and Iceland had to cancel its whaling researches which was actually a cover for whaling as Japan did. Chayes and Chayes, The New Sovereignty, p.264. In the next years, the boycott call and adversaries for whaling expanded to Norway and Japan.

or not to obey regulations is determinant of states' compliance on both national and international levels.[205]

MNCs' role that they act in international environmental law comes from their economic interests. Even though the ones who negotiate and sign treaties are states; results and regulations of these treaties legally and financially affect MNCs directly. In accordance with treaties, they have to change their equipment, infrastructures, waste management which all mean cost. Furthermore, they have enormous pecuniary resource to spend on research and development activities and they could invent new technologies supposed to be used for environmental protection. Such these corporations could shape negotiations to ensure the usage -and consequently sell- of these technologies. Having an opposite situation, a corporation afraid of cost and losing market dominance could put a spanner in works.[206]

Especially since the last quarter of the twentieth century "MNCs are increasingly central to environmental decision making and resource use behavior".[207] On the other hand, image of MNCs in public is generally bad. They are usually seen as polluters who ignore environment in cause of profit. On the one hand, this bad image is true because MNCs are the biggest energy users in a world where the energy production structure is mostly based on fossil oils. In addition to this, as a result of production process, high amount of chemical waste and toxic gases come out while natural resources are used and

[205] In 2000, the UN asks companies to commit their selves in their operations into ten principles about human rights, labour, environment and anti-corruption by signing the 'Global Compact'. Global Compact is a non-binding declaration and about 12.000 companies from 145 states have signed it voluntarily. Three of ten principles are related with environment: "Businesses should; support a precautionary approach to environmental challenges (Principle 7); undertake initiatives to promote greater environmental responsibility (Principle 8); encourage the development and diffusion of environmentally friendly technologies (Principle 9). The Global Compact, "Overview of the UN Global Compact", https://www.unglobalcompact.org/AboutTheGC/index.html, (17.05.2014).

[206] The Exxon Mobil, oil company, in addition to submit its research results to the USA State Department, which also would use the official report by the White House for anti-climate change campaign, that shows there is not any scientific evidence proving the climate change is real, the company donated a quarter million dollars to George W.Bush's presidency election campaign who would give up to sign Kyoto Protocol that stress the relation between oil consumption and climate change. Julian Borger and Terry Macalister, "The Good Oil for Exxon is having a Buddy in the White House", **Sydney Morning Herald**, 18 April 2001.

[207] Newell, p.173.

consumed as main production inputs. Furthermore, the capitalist market system promotes this system by encouraging consumers to consume more and more.[208] Even more, MNCs are accepted as and accused with undermining environmental protection processes. In this point of view, NGOs and MNCs are usually the *competitors* in the simplest term and the *enemies* in an aggressive speech. While NGOs fight for common good of public interest, MNCs seek profit maximization. Protection of environment, consumer awareness, animal rights, green labeling that NGOs fight for are regarded by MNCs as new investments and increasing costs.[209] On the other hand, some MNCs have become symbols of environmental protection in sense of green management. In these aspects, the role of MNCs in environmental law could be identified as 'pusher or puller'.[210] Which role each MNC would act usually depends on beneficial calculations according to their economic prospection.

The key factors determining position of an MNC are whether and how new regulations will affect production costs, market-share loss and comparative advantages.[211] General attitudes of MNCs to new environmental regulations could be classified in two general ways. On the one hand, "dirty industries", as it was mentioned above, will be the puller as being opposite to new green regulations, which will financially affect them badly, cause to lose competitive advantages, and will put them on line of economic risks.[212] These dirty companies try to maintain vested environmental system and challenge to new regulations as much as they could.[213] On the other hand, in case they assume to be leader in sector as a "green company" which serves advantages to

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[208] At the Rio Conference, on the debate about over-consumption "President George Bush warned that the American life style was not negotiable". DiMento, Global Environment, p.78.

[209] On the other hand, there are rare but promising examples, too. For example, the Rio Tinto, a mining company, operates as it should be in Madagascar, where there is a unique environment. Philipp Mulligan, "Globalization and Environmental Change in Madagascar: The Opportunities and Challenges Faced by Rio Tinto" in **Development and The Challenge of Globalization**, (Eds. Peter Newell, Shirin M.Rai and Andrew Scott), ITDG Publishing, London, 2002, pp.159-172.

[210] Tienhaar et al, defines the roles of MNCs as 'supporter, acceptor and challenger'. The other roles of MNCs in a word 'innovator, communicator, regulator'. Tienhaar, Orsini and Falkner, p.49.

[211] For detailed analysis on the choices of MNCs, see: DiMento, Global Environment, pp.59-66.

[212] Martin Jänicke, "Ecological Modernisation: New Perspectives" in **Environmental Governance in Global Perspective**, (Eds. Martin Jänicke and Klaus Jacob), Freie Universtät, Berlin, 2006, p.20.

[213] At it can be seen in the Exxon-Mobile example for climate change regulations.

them, they choose to support or at least to be in favor of environmental protection.[214] A green company, which particularly tries to be leader in its sector, could direct innovative technologies, green investment and clean energy usage.[215] The companies, which calculate the gains of long-term profits instead of short-term profits, usually try to keep step with green production.

After examining the role of MNCs as actors in environmental law, the role of national companies should have been shortly examined, too. Even though small and medium-sized enterprises are generally ignored in national environmental regulations, in real, they have mammoth effects compared with their size. Although they usually do not have an important role in decision-making processes as MNCs have, their major function is to be the addressees of national environmental regulations. Despite they are thought that they rarely cause environmental degradation as harmful as MNCs cause, their gross number in a state, their percentage in a state's economic activity, lack of environmental awareness, low-importance of environment compared with profit and lack of supervision and monitoring may cause more harm than MNCs do in total.[216] In the aspect of international environmental law, the importance of national companies is that, their adherence to national environmental regulations directly affects state's compliance with international environmental law.

MNCs and big size companies are always before public eye more than small and medium size enterprises (SMEs) when the issue is environment. Comparatively, number of MNCs and large companies is less than SMEs but their economic activities and incomes in total are much greater than SMEs. However, a research shows that 95% of economic activities are produced by SMEs in developing states.[217] And even in the USA, it is estimated that more than half of highly hazardous waste is being disposed

[214] DuPont Company, which was controlling 50% of USA and 25% of world CFCs market in the 1980s, suprisingly became the major supporter of the Montreal Protocol which banned CFCs. After implementation of innovative technologies, DuPont has become the market leader of substitudes of CFCs. DiMento, Global Environment, p.69 and Tienhaar, Orsini and Falkner, pp.50-52.
[215] Tienhaar, Orsini and Falkner, pp.59-60.
[216] DiMento, Global Environment, pp.72-73.
[217] DiMento, Global Environment, p.73.

from small companies and also toxic-waste producers are covering up their illegal disposes.[218] A small number of MNCs and big size companies in a state make it easier to monitor and inspect them.[219] But these inspections usually remark positive reports, because these companies have a sacrificial budget for environment, financial sources to implement high technology, their own research-development (R&D) departments to discover the environment friendly technology with low costs, and also legal departments which works on legal consequences of non-compliance that these departments either insist on appropriate implementation of the environmental regulation or use legal gaps to absolve in case things go worse. It can be said that MNCs and big size companies are more aware of and careful about environmental protection than the smaller ones. Small size companies usually either ignore and/or sacrifice environment for making profit, or do not know environmental regulations, or cannot finance the environment friendly technologies.[220] When their great number is considered, additional to their attitudes towards environmental protection, it is obvious that off-site and on-site monitoring and inspections of SMEs are hard but also crucial for compliance.

1.3.3.3. Scientific and Epistemic Communities

After the 1980s, scientific institutions[221] started organizing and associating globally. This institutionalization and cooperation between scientists made their studies

[218] Vogel and Kessler, p.25 cited from Seymour I. Schwartz et al, "Improving Compliance with Hazardous Waste Regulations Among Small Business", **Hazardous Waste and Hazardous Materials**, Volume.6, Issue.3, 1989, p.282.
[219] "Regulating elephants is different from regulating foxes. It is harder for elephants to hide". Vogel and Kessler, p.25.
[220] Vogel and Kessler, p.25.
[221] Even in some literature, the terms research institute and think tanks are interchangeably used; in this study thinks tanks are considered as "enterprises where knowledge and policy interact" while research institutes are considered as endeavors with pure scientific purposes cleared of political concerns. Sundararaman, p.122.

more common, notable and reachable. Thus, scientific data became inputs of political negotiations.[222]

Researches and scientific findings add quality to decision-making process: First, they increase its reliability and ensure objectivity; second, they provide a clear and in-depth understanding of causes and effects by focusing on problem itself; and third, lead the way to effective solutions. Research institutes and think tanks provide "research relevant to policy, there by promoting public debate and questioning conventional wisdom, leading to formulation and dissemination of alternative concepts".[223]

To be able to take a step on effective regime building, there should be a consensus on causes and effects, at least controversy debates should be minimized. If a consensus is arranged on studies among scientific communities, taking action becomes easier as it was seen with the ozone regime. But if they go contradictory and debatable, taking action could be hard and takes long time as it can be seen with genetically modified organisms. On the other hand, strict science, which does not give politicians enough elbowroom, causes hesitation and may make heavy weather on negotiations. Ambiguous science, which allows re-interpretation on context-base, is more influential in constructed policy. Besides, even how high the scientific credibility is, its usability in politics depends on its authoritativeness, value neutrality and distance from politics. The more science keeps away from politics, the more it is credible and influential in politics.[224]

International environmental law, as a sub-field of international law, depends on scientific knowledge more than any type of law. As it can be clearly seen in building of the ozone regime, the climate change regime etc. international environmental agreements often depend upon science "to inform their policy-making and have built scientific and technical advice, and precautionary approaches to decision-making, into

[222] Aarti Gupta, Steinar Andresen, Bernd Siebenhüner, Frank Biermann, "Science Networks" in **Global Environmental Governance Reconsidered**, (Eds. Frank Biermann and Philipp Pattberg), The MIT Press, Cambridge, 2012, p.69.
[223] Sundararaman, pp.122-123.
[224] Gupta, Andresen, Siebenhüner and Biermann, pp.72-73.

their institutions and procedures that, combined, place pressure on sovereign states to strengthen their commitments."[225] The examples of cooperation between science and international environmental law gradually become widespread. For example the Intergovernmental Panel on Climate Change[226] (IPCC), consisted of independent scientists, was established by the UNEP and the World Meteorological Organization (WMO). A similar institution, the Scientific Committee on Antarctic Research (SCAR) is seen in the Antarctic Treaty system.

The growing number and widening of study field of scientific communities after the World War II emerged "the policy role of the knowledge elite" by ruining the control of governmental bureaucracies on knowledge and its usage while roles and political power of knowledge-based agencies had been coming into prominence. Moreover, instead of their states' official views for policy-determination, unofficial strand of their agencies has started to define political biases of scientists. This way, rather than being pure political and ideological, policies have started gaining a technical and professional and consequently more rational and objective features. Beside of getting gradually more complex of international policies involving subjects like environmental, humanitarian, trade and monetary issues, basic concerns of states, such as security and disarmament and interlinkages between these, required states to get help from experts on these fields.[227]

Knowledge is a factor which triggers foundation of regimes, as well as evolving it "because the knowledge introduced during one phase help[s] shape actors' perceptions

[225] Morrison and Wolfrum, p.102.

[226] IPCC was established as an institution which produced and disseminated the information about climate change. Even after 2007, due to some faults in its calculations and transparency problems, its credibility started to be questioned, yet it is still a good example of cooperation between science and international environmental politics. Therefore, the contribution of IPCC was rewarded with Nobel Peace Prize. Furthermore, in 2001, US President George W.Bush created a scientific commission to contest with IPCC's findings on climate change. His efforts to beat criticisms against not signing Kyoto Protocol, using not politics but science, shows the importance of science on environmental law.

[227] Peter M. Haas, "Epistemic Communities and International Policy Coordination", **International Organization**, Volume.46, No.1, 1992, (Policy Coordination), pp.8-11, 12-13.

of their preferences and opportunities during subsequent phases".[228] Epistemic community is a network of knowledge-based experts. The expertise and competence of these professionals, in a particular field, which will be used in policy-determination, are recognized and then used by policy conductors. Even though these professionals are mostly defined as scientists, in fact, they have more common features. For creation of an epistemic community, pre-condition is existence of shared knowledge which will be submitted to decision-making authorities[229], though, it is not enough. To constitute an epistemic community for regime creation is also needed. For being an epistemic community, scientists, experts and professionals have shared set of normative and principled beliefs, shared causal beliefs, shared notions of validity and shared policy enterprises. These shared features give epistemic community a different position than other groups which, more or less, have influence and interest in policy making.[230] Their aim is to translate the knowledge into public policy in order to help producing human welfare.[231] However, it does not mean that knowledge which they produce or truth which they claim is always same. There are rival epistemic groups who compete to assure their own truth as real or more valid one.[232] However, important point is not being absolutely true but being shared more commonly and being more effective.[233] Policy makers are the ones who decide and choose truth in competition, usually in accordance with their political interests. Additionally, the only target group of epistemic community is not policy makers. Beside of policy makers, which are direct target since they make final decisions about any subject issue, there are also indirect target groups which also have influence on policy makers, such as bureaucrats, legislative and

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[228] Peter M. Haas, "Epistemic Communities and the Dynamics of International Environmental Co-Operation" in **Regime Theory and International Relations**, (Ed. Volker Rittberger), Clarendon Press, New York, 1993, (Environmental Co-Operation), p.169.
[229] List and Rittberger, p.103.
[230] P. Haas, Policy Coordination, p.3; P. Haas, Environmental Co-Operation, p.180.
[231] Ernst B. Haas, **When Knowledge is Power**, University of California Press, Berkeley, 1990, p.41.
[232] E. Haas, p.41.
[233] Peter M. Haas, "Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program" in **Knowledge, Power, and International Policy Coordination**, (Ed. Peter M. Haas), University of South Carolina Press, Columbia, 1997, (Conclusion), p.386.

corporate bodies, NGOs, IGOs, MNCs, public and media, both in national and in international scale.[234]

The advantage of epistemic community is to act and work independently from distribution of international power. Therefore, they have more channels and more tools to influence policies. Besides, they do not have interests and values as states have, such as power and wealth, that is why they pursue more ethical and common objectives.[235] Success of epistemic community in effecting policy depends on two criteria. First, compared with others, their claim of truth must be more persuasive, and secondly, there must be coalition between epistemic community and political institutions.[236]

Epistemic community has an influence on international politics as long as it could create and strengthen the relationship between national and international organizations to be able to create its own institutionalization. However, it does not need to have a power to affect whole international society. If it could affect and change even only one state's interests and behaviors, that state could affect others.[237] So, impacts of epistemic communities circulate "from societies to governments as well as from country to country". Nonetheless, it is certain that transnational coalitions between epistemic communities increase their influence.[238]

Epistemic community has influence to trigger or to launch a political movement on an issue-area and their productions, which means that setting of ideas are mostly used in bargaining.[239] In the process, they "constitut[es] a de facto natural coalition seeking to build a 'winning coalition' of support behind its preferred policy choice" against "blocking coalition".[240] Even though knowledge is independent and neutral, control over knowledge gives power to create new ideas and to lead defining behaviors of others.

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[234] P. Haas, Conclusion, p.379.
[235] P. Haas, Policy Coordination, p.4.
[236] E. Haas, p.42.
[237] P. Haas, Policy Coordination, pp.4, 32-33.
[238] P. Haas, Policy Coordination, p.27.
[239] James K. Sebenius, "Challenging Conventional Explanations of International Cooperation: Negotiation Analysis and the Case of Epistemic Communities" in **Knowledge, Power, and International Policy Coordination**, (Ed. Peter M. Haas), University of South Carolina Press, Columbia, 1997, p.326.
[240] Sebenius, p.352.

Thence, knowledge is the power of determination of international politics.[241] In negotiations, representatives do not discuss and bargain on only policies, but also discuss the set of ideas that provided by epistemic community.[242] So, negotiation process is a change of ideas and beliefs, and also ideas. States choose the best set of ideas in accordance with their interests and values and bargain with others to be able to change theirs.

Epistemic communities are the triggers of learning. They offer new solutions for old problems.[243] They "play in articulating the cause-and-effect relationships of complex problems, helping states identify their interests framing the issues for collective debate, proposing specific policies, and identifying salient points for negotiation".[244] They make clear "causal relationship between conditions, a governing principle, and a result"[245] so politicians may foresee possible outcomes of their choices. However, the role of epistemic community is limited with triggering, effecting and guiding of regime creation. No matter how strong the epistemic community is, the final shape of regime is always given by states which negotiate. Moreover, despite that epistemic community trigger and ease a regime creation, existence of an epistemic community is not a condition to create a regime.

The role of epistemic community in regime effectiveness varies.[246] First, epistemic community provides cause-and-effect relationships and solution offers for policy determination and accelerate the decision-making process. They define the frame of regime and show appropriate norms and institutions which could be needed for management of regime. Second, epistemic community elucidates interlinkages between different events and prevent and/or chain reactions that policy makers cannot see. Third,

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[241] P. Haas, Policy Coordination, pp.2-3.
[242] Emanuel Adler, "The Emergence of Cooperation: National Epistemic Communities and The International Evolution of the Idea of Nuclear Arms Control" in **Knowledge, Power, and International Policy Coordination**, (Ed. Peter M. Haas), University of South Carolina Press, Columbia, 1997, p.106.
[243] E. Haas, p.45.
[244] P. Haas, Policy Coordination, p.2.
[245] Adler, p.107.
[246] For how affected the epistemic community to several regimes see Peter M. Haas (Ed.), **Knowledge, Power, and International Policy Coordination**, University of South Carolina Press, Columbia, 1997.

they help states and in-state stakeholder to re-construct their interests. Fifth, their advice provides a justified ground to policy makers to formulate policies.[247] By doing these, epistemic community diminishes uncertainty, buffers political differences between parties through scientific necessities. They produce knowledge for political choices and behavioral alternatives. They help states to set standards within regime. The strength and penetration of epistemic community into a regime creation process, both national and international, makes that regime more effective, more sophisticated and comprehensive.[248]

When the complex linkages of cause-and-effect relationship between different kinds of environmental activities, decision-makers have more need for guidance of epistemic community in environmental regimes. Furthermore, necessity of epistemic community is not a one-time occasion for environmental regimes, but a continuous requirement. Not only determination of a political action for an environmental problem at the beginning of regime creation; but also monitoring, verifying and reassessment of environmental regime are possible only by continuous contributions of epistemic community. Epistemic community is a factor what makes an environmental regime sustainable and effective.[249] In environmental regimes, existence of epistemic community is essential and the examples show how much it is crucial and effective. In every environmental regime, first epistemic community determines the existence of an environmental problem and defines it with its cause-and-effect linkages, and calls for a political action and then political action starts. Without an alert of epistemic community neither an action could be taken by states, nor without guidance of epistemic community, could the created regime take necessary steps. To sum up, epistemic community was a fostering factor in creation and functioning of environmental

[247] P. Haas, Policy Coordination, p.15; P. Haas, Conclusion, p.375; Oran R. Young and Gail Osherenko (Eds.), **Polar Politics**, Cornell University Press, Ithaca, 1993, p.249.
[248] P. Haas, Environmental Co-Operation, pp.179, 189; P. Haas, Conclusion, p.375; Underdal, One Question, p.36.
[249] Helmut Breitmeier and Klaus Dieter Wolf, "Analysing Regime Consequences Conceptual Outlines and Environmental Explorations" in **Regime Theory and International Relations**, (Ed. Volker Rittberger), Clarendon Press, New York, 1993, pp.352-353.

regimes,[250] vice versa, environmental regimes make epistemic community concept more rewarding, substantial and credible factor in regime creation.

1.3.3.4. Individuals

Individuals have rights and duties in international law only in certain circumstances and usually they are the subject of international law but not makers or objects of international law. Human rights and humanitarian laws are good and exceptional examples of the individuals' taking account in international law. Environmental law, even if rarely, addresses individuals too, as in case of indigenous people.[251] Beside of being the subject of environmental law, individuals may sometimes be leaders and active public opinion leaders in environmental policies' creation. For example Al Gore[252] former vice president of the USA and Mostalpha Tolba, head delegate of Egypt to the UNCHE and the executive director of the UNEP.

Beside the pusher effect of public awareness, as it is also the case with national companies, individuals' role in environmental regulations is not being decision-makers but being implementers of national environmental regulations. Especially, attitudes of poor people have non-ignorable effects on environment.[253] For the poor, compared with providing vital needs, neither environmental degradation nor environmental legal regulation is important. Particularly for developing states, it is obvious that to be able to create environmental awareness and to ensure environmental protection, first of all, economic concerns of poor people should be assured and sustainable development policies should be strengthened. Just the contrary, natural life style of indigenous people

[250] P. Haas, Environmental Co-Operation, pp.172-173.
[251] For example; the UN Declaration on the Rights of Indigenous People in 2007.
[252] Al Gore was the vice president during the Clinton Administration. After retirement, he became more effective environmental activist especially for the climate change. He is a part of the document "An Inconvenient Truth" a campaign to educate people about global warming. He was awarded the Nobel Peace Prize which was shared with the Intergovernmental Panel on Climate Change in 2007.
[253] Ivory trade in Africa, fishing with trawl and dynamite, using harmful chemicals in production, timber production from rare and precious trees, clearing lands for cultivation by burning forests are parts of ordinary life styles of poor people. DiMento, Global Environment, p.74.

who developed an interdependent life in touch with their habitats should be taken as examples for sustainable development policies of environmental regulations.

Control of a government on people, particularly on indigenous people whose behaviors are regulated, is also an important indicator for compliance.[254] Furthermore, adoption of policies by local people is critical. The more changes environmental regulations require in life-style of individuals, the adherence of individual is lower, and hence public support to environmental regulations also decreases.[255] Whale hunting is a tradition and more importantly whale products are one of the main instruments for Japanese culture and religion. No matter how hard Japanese government push and try to control whaling, as long as whaling is a part of their cultural life, whaling prohibition is thought as unjustifiable in public opinion and it will be individually non-complied. Even though states are treated as unitary actors, there are different actors within who have different interests and they could act sometimes contrary to each other. Unpredictability of behaviors of inner state actors causes instability in compliance rate of states. For a higher degree of compliance, targets of treaties must be reflected to these actors by letting them participate in every level of processes and compromising with them.

1.3.4. Regime's Internal Institutions

Every regime has its own institutional structures, not necessarily in a shape of international organization, which have the task of promoting effectiveness and compliance. These institutions are flexible, sometimes *ad hoc*, progressive and promotive. The representatives of states parties, scientific specialist, issue-based experts,

[254] In India, compliance with the CITES relatively low since a significant portion of illegal hunting by poachers in the tropical forests, on where the government does not have strict control, while compliance with the Vienna Convention and the Montreal Protocol is fairly high due to centrally planned economy emissions standards can be strictly implemented. Vogel and Kessler, p.23.

[255] Vogel and Kessler, p.35; Sheila Jasanoff, "Contingent Knowledge: Implications for Implementation and Compliance" in **Engaging Countries: Strengthening Compliance with International Environmental Accords**, (Eds. Edith Brown Weiss and Harold K. Jacobson), MIT Press, Cambridge, 1998, p.86.

legal and administrative professionals compose regime's institutions. There is not a certain structure for these institutions nor their tasks and authorities are same. Each of these institutions is *sui generis* because they are created by regime's own decision-making authority.[256]

Regimes progress and re-shape continuously. So they need of cooperation and communication of states parties. Institutions of a regime create a platform for states parties appropriate for communication and cooperation. While some institutions of a regime have the authority of take decisions like meeting of the contracting parties; others supply technical and legal supportive operations like working groups and research centers; some perform administrative and managerial business like secretariats; and some observe implementation of states and compliance with regime like compliance committees and implementation committees. Thanks to these institutions, regime gets rid of being "sleeping treaties".[257] In this title of the study, meeting of the contracting parties, secretariat and compliance committee have been introduced. Their working procedures, power, authorities, decision-making limits are either determined by their founding treaty of the regime or by regimes own decision-making organ. Therefore, every institution has different shape, structure and power. So it is helpful to give only common features briefly.

1.3.4.1. Meeting of Contracting Parties

Meeting of (Contracting) Parties[258] (MoP) is the highest decision-making authority as a legislative organ in which all states parties are represented. First example of MoP was seen in the RAMSAR signed in 1971. Since then similar institutional decision-making authorities have been created by founding treaty of regime. After its

[256] Kızılsümer Özer, p.162.
[257] Birnie and Boyle, pp.201-202.
[258] Meeting of the Parties is also named as Conference of Parties (CoP). It can also be named peculiarly in some regimes. For example it is named as the 'Executive Body' in the Convention on Long-range Transboundary Air Pollution (LRTAP) and as the 'Commission' in the OSPAR.

establishment, it swiftly convokes its first meeting and determines working procedures if they are not already determined in the founding treaty.

Meetings of the parties convoke once in one or two years. The Buroue or the Secretariat of the regimes make supportive and preliminary preparations for meeting, determine an agenda. Instead of convoking in a particular or permanent place, every meeting is held in different states parties. MoPs are main arena for realization and progression of regime strategies. Binding-decisions of regime, making new conventions, protocols and amendments, changing provisions, determining time-schedules for commitments, defining new procedures, establishment of new organs, even launching non-compliance mechanisms, settling of disputes and interpretation of provisions if there is not exclusive organs for those, are tasks of MoPs.[259]

For this study it is essential to take a look at role of MoP in compliance and effectiveness. If there is not an exclusive organ for that such as Compliance Committees, MoP are the main institutional organs of regimes for observing and promoting compliance and launching non-compliance mechanisms if necessary. Investigation of case, fact-findings are performed by MoP and if a decision is made on there is a non-compliance, required non-compliance mechanisms are determined and launched by the MoP. On the other hand, even there is an exclusive organ for compliance, MoP usually reserve the right on taking final decision on non-compliance. By doing this, case is examined in detail, technically and legally by smaller and narrow-scoped organ. Then findings, conclusions and recommendations are submitted to MoP. Final decisions about whether there is a non-compliance, and if there is, which mechanism is appropriate, what kind of sanctions will conduct if necessary for this particular case are taken by all of the states parties at MoP. The only exclusive example contrary to this is the Kyoto Protocol's compliance mechanisms. Even the final decision on non-compliance is taking

[259] For detailed organizational structures of MoPs and their authorities see Kızılsümer Özer, pp.166-187.

by the Compliance Committee's Enforcement Branch though, decisions relating to emissions targets could be *appealed* by the party concerned to the CoP.[260]

1.3.4.2. Secretariat

Secretariats are the main organ in administrating of regimes, by conducting all internal and external communication. Since environmental regimes are transnationally governed processes, there are bulks of actors in decision-making process, implementation, observation and monitoring of regimes. To be able to bring together and make communicate and cooperate these actors are responsibilities of Secretariats while also functioning as an executive organ.

The role of Secretariat starts even before creation of a regime. Sometimes at the first meeting of negotiations a temporary secretariat is created and at the first meeting of MoP a permanent secretariat is established. Contrary to other institutions such as MoP and Compliance Committee, Secretariat keeps continuously working behind the curtains.[261]

The biggest obstacles for Secretariats conducting their duties successfully are inefficient financial resources and qualified personnel.[262] In order to overcome these obstacles it has been suggested that similar concerned conventions and regimes may use a joint secretariat so they may combine their resources.[263] For most of the environmental regimes, the UNEP conducts the role of the Secretariat, for example the CITES, the Biodiversity Convention and the Montreal Protocol. The UNEP is also the Secretariat of

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[260] Kızılsümer Özer, 2009, p.264; Geir Ulfstein, "Dispute Resolution, Compliance Control and Enforcement in International Environmental Law" in **Making Treaties Work Human Rights, Environment and Arms Control**, (Ed. Geir Ulfstein), Cambridge University Press, New York, 2007, p.128

[261] Rosemary Sandford, "International Environmental Treaty Secretariats: Stage-Hands or Actors?" in **Green Globe Yearbook of International Co-operation on Environment and Development 1994**, (Eds. Helge Ole Bergesen and Georg Parmann), Oxford University Press Oxford, 1994, p.17; Kızılsümer Özer, p.188.

[262] Sandford, p.18.

[263] Kızılsümer Özer, p.189.

the most of the Regional Seas Programmes as well as of the Mediterranean regime before its own secretariat organ was established.

The tasks of Secretariat are determined in the founding treaty or by MoPs.[264] The roles of secretariats in compliance are collecting reports, analyzing them and submitting the results and its comments on general compliance with the regime to MoPs or to compliance committees. If secretariat ascertains a non-compliance case, it submits the case to MoP or to compliance committee. In doing so it triggers non-compliance mechanisms of regime. Its role as a triggering mechanism is particularly important since states parties usually hesitate to denounce each other when there is a non-compliance case.[265] If there is not a particular organ for compliance, Secretariats also have the task of compliance committees' duties. Also, different regimes' Secretariats could cooperate for promoting compliance collaboratively.[266]

1.3.4.3. Compliance Committees

Compliance and non-compliance procedures of a regime is usually controlled and managed by a standing body or rarely by an *ad hoc* committee.[267] Even though name of standing body may change in different treaties, the main purpose of these committees is to observe compliance and to take necessary measures to improve compliance.[268] Even though establishing a compliance committee was not a usual mechanism in beginnings of environmental regime building, after the 1990s almost all treaty-based regimes have created their own committees. The first MEA to establish a

[264] For detailed information about tasks of different examples of the Secretariats see: Sandford, pp.17-29; Kızılsümer Özer, pp.189-194.
[265] Kızılsümer Özer, p.193.
[266] For cooperation between several MEAs' Secretariats see UNEP, **Compliance Mechanisms Under Selected Multilateral Environmental Agreements**, UNEP Publishes, Nairobi, 2007, (Compliance Mechanisms), p.136.
[267] Günther Handl, "Compliance Control Mechanisms and International Environmental Obligations", **Tulane Journal of International and Comparative Law**, Volume.5, 1997, p.38.
[268] For example, 'Implementation Committee' in Montreal Protocol and 'Implementation Committee' in LRTAP conduct compliance procedures. In Kyoto Protocol, it works in a dual structure under compliance committee: Enforcement Branch and Facilitative Branch.

compliance committee was the Montreal Protocol. After then, compliance committees have become a standard procedure for MEAs within a short period. However, some MEAs, such as the CITES and the Bern Convention for the Conservation of European Wildlife and Natural Habitats, still do not have any compliance committee. In such these situations, the task of conduction compliance procedures is given either to Secretariat or MoP.[269]

Members of compliance committees may act in their personal capacities or may represent their states. The first case is more appropriate for impartial structure of the committee. In this situation, members are usually experts in related field of regime. In second case it is better to make participate all of states parties in the committee and thus it becomes a more political organ rather than being technical body. In such committees the issue of compliance is considered as a negotiable subject while in technical committees compliance is a legal, structural, technical, scientific problem.[270]

Compliance Committees which are to be established either by a founding treaty or a decision of the MoP, are tools working on both widening and deepening compliance. Compliance committees may have different authorities and functions. Some only analyses reports from states parties and submit results to CoP either with its own recommendation, while some have the authority to act independently and make binding decisions on measures against a non-compliance case.[271] Either way, they assure that each party is responsible from its obligations and compliance with the treaty. Committees are organs which promotes and standardize compliance. The tasks of compliance committees are observing, verifying and taking required measurements to promote compliance and to investigate alleged non-compliance cases.

[269] Peter G.G. Davies, "Non-Compliance - a Pivotal or Secondary Function of CoP Governance?", **International Community Law Review**, Volume.15, 2013, pp.77-101. In CITES, it is Standing Committee.
[270] The examples of first case are the MAP, the Kyoto Protocol, the Aarhus Convention. The examples of the second one are the Montreal Protocol, the LRTAP and the ESPOO Convention. Fodella, p.360.
[271] Fodella, p.359.

The triggering mechanisms and investigation process in non-compliance cases differ in different regimes. Any party[272] of a treaty or Secretariat could make a complaint about a party's non-compliance.[273] Additionally, many of compliance procedures of MEAs are open to self-turning in, if a state has trouble or if there is a potential for non-compliance.[274] Compliance Committee investigates complaints, then, if it is necessary, starts non-compliance procedures. In recent regulations particularly which has a reporting process, there is also self-triggering mechanism as it was seen in the Montreal Protocol, the Kyoto Protocol etc. In this system, if Compliance Committee finds a non-compliance situation, a potential case, a concern in a state's report or a concern in verifying process, it initially starts the procedure.

To examine and compare different triggering mechanisms and to analyze different Compliance Committees are out of the scope of this study.[275] It is sufficient to say here that effectiveness of Compliance Committees depends on its size, its decision-making procedures, and strength of its institutional authority. Even though larger committees could reflect more differentiated interests and more voice, smaller committees could act quicker and more appropriate.[276] Only the Committees which have determined decision-making procedures could response against non-compliances. As it

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[272] Even every party has right to submit a non-compliance case to compliance committees, a non-complier's self-turning in is more prevail than another party's submission. Notification against another state is legal but may not be politically rational. Ulfstein, pp.126-127. Hesitation of states to complaint each other makes secretariats' and compliance committees' task on triggering of non-compliance procedure more important. Jutta Brunnée, "Compliance Control" in **Making Treaties Work Human Rights, Environment and Arms Control**, (Ed. Geir Ulfstein), Cambridge University Press, New York, 2007, (Compliance Control), p.385.

[273] In the Aarhus Convention, NGOs and individuals also have the right to apply for non-compliance. However accepting the Aarhus Convention as a traditional MEA is hard since its content is more related with human rights than environmental regulation. Brunnée, Compliance Control, p.387.

[274] Self-turning in is an important difference of MEAs from human rights regime and arm control regimes that are usually compared to each other. In these regimes there is not a procedure that a state could trigger the non-compliance mechanisms for its own performance. Brunnée, Compliance Control, p.384.

[275] For a comparative study of MEAs compliance committees' see: UNEP, Compliance Mechanisms.

[276] Large committees which all states parties have representative have the advantage of not to exclude any party. In small committees unrepresented states may have fear of foul plays and of using the committee as tool for intervention. Conspiracy theories of unrepresented states may make the committee unreliable. However especially global treaties like UNFCCC which has 196 members, it is not possible to create compliance committee that every state have representatives. This is more accurate for small, regional regimes. On the other hand, this drawback can be altered through expert members which act independently instead of state representatives.

can be seen in the MAP, since it has still developing its own procedural program, the Compliance Committee cannot response to even explicit non-compliance cases because they have recently decided on an action plan. Institutional authority depends on being able to reflect all interests of different stakeholders. It is possible through representing equitable geographical, political, economic, social and cultural groups of states as well as NGOs and epistemic communities in committees.[277]

In practice, Compliance Committees are small sized[278] and composed by legal and technical experts[279], also sometimes state representatives or government negotiators.[280] The size and expertising fields depend on the subject issue. How delegates are elected or selected and how seats are distributed are decided usually by MoP. As well as designation of compliance committee, final decision of mechanism which is to be launched in a non-compliance case is decided by MoP, as well.[281] Generally, Compliance Committees act like an advisory organ for MoP and final decisions about non-compliance case are taken by MoP, or MoP may be the superior organ for appeals, such as the non-compliance mechanism of the Kyoto Protocol.[282] Involving MoP in compliance procedure and giving it authority about final decisions and appeals are intentions to render the procedure more legitimate and launched mechanism depoliticized. MoP is the organ to which all states parties participate while Compliance

[277] Handl, pp.39-41.
[278] For example, the Facilitative Branch and the Enforcement Branch of the Kyoto Protocol consist of 10 members in each. UNFCCC, "Compliance Committee", https://unfccc.int/bodies/body/6432.php, (30.06.2014).
[279] The Human Rights Council assigns independent experts for investigations about complaints and preparing reports. UNOHCHR, "Special Procedures of the Human Rights Council", http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx, (01.07.2014).
[280] Ulfstein states that state representatives or negotiators form the compliance committees of MEAs political organs while human rights regime committees are composed by experts. Ulfstein, pp.125-126.
[281] Jutta Brunnée, "A Fine Balance: Facilitation and Enforcement in the Design of a Compliance Regime for the Kyoto Protocol", **Tulane Environmental Law Journal**, Volume.13, Issue.2, 2000, (Fine Balance), p.259.
[282] In Kyoto Protocol compliance system, the Enforcement Branch of the Compliance Committee takes the final decision. Meeting of Parties is the organ for appeals only for decisions relating to emissions targets. UNFCCC, "An Introduction to the Kyoto Protocol Compliance Mechanism", https://unfccc.int/kyoto_protocol/compliance/items/3024.php, (01.07.2014).

Committees are limited in member number. So in MoPs, each member has a word on how to respond to non-compliance and "parties have an opportunity to be heard".[283]

Beside of these advantages of this two layered systems, there are some unfavorable conditions. Compliance Committees are composed by technical and legal[284] experts and these experts focus only on compliance issues. Investigations and decisions made by Compliance Committees are more biased to promote compliance while MoP could make more political decisions. Compliance Committees have the advantage of specialization. The only subject field of Compliance Committee is naturally compliance, and, they work on compliance effectively and detailed, while MoP has many works in its agenda.

[283] Brunnée, Fine Balance, p.264-265; Davies, pp.96-96.

[284] Even though there are legal experts and some Compliance Committees have the task for dispute settlement, Compliance Committees are not legal organs, in fact "(t)hey are political and pragmatic". Bodansky, Art and Craft, pp.248.

CHAPTER TWO

COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL REGIMES

One of the most quoted sentences of international law literature says "[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all of the time".[285] The scene of international relations works in such a proving way of this argument. Then, it should be asked why do they comply or why sometimes do they not? Finding an answer to these questions is an important field for research. The following titles have been designed to distinguish the "theoretical and practical perspective" of the question.[286] Theoretical perspective of the question concerns with what states' perception of international law is. Perception of states about why and how international law encumbers some responsibilities on themselves is an important criteria that defines whether they comply or not. On the other hand, practical perspective of question deals with the best designation of tools to promote compliance independently from theoretical perspective of states.

Under the next titles, answers of these questions are given and the tools used for promotion of compliance will be discussed in two different sections. In first section, theoretical perspectives of compliance are examined while the practical perspective of compliance will be mentioned in detail in the next section. Such a differentiation makes clearer the distinction of "why do states comply" and "what makes states comply with

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[285] Louis Henkin, **How Nations Behave**, 2nd Ed., Columbia University Press, New York, 1979, p.47. Hans Morgenthau, the father of realism accepts this: "The great majority of the rules of international law are generally observed by all nations", but not because of the power of and respect to international law itself, because they create a law conforming with their interests. Morgenthau, p.267. However, Peter M. Haas finds Henkin's assumption as "empirically unsupported mantra", Benedict Kingsbury finds as an unreliable anecdote and an unsystematic study and many others as astonishing. Peter M. Haas, "Why Comply, or Some Hypotheses in Search of an Analyst", (Why Comply), p.23; Benedict Kingsbury, "The Concept of Compliance as a Function of Competing Conceptions of International Law", p.50 both in **International Compliance with Nonbinding Accords**, (Ed. Edith Brown Weiss), The American Society of International Law, Washington DC, 1997. Also, according to Kal Raustiala, because the compliance with international law is mostly coincidental, high compliance with international law regulations is not self-evident and not meaningful. Raustiala, p.397.

[286] Harold H. Koh, "Why Do Nations Obey International Law?", **Yale Law Journal**, Volume.106, 1997, (Why Do Nations), p.2600.

international law" and with international environmental law, in particular. This distinguish also determines a blur line between IR and IL point of view. IR theories mostly focus on theoretical frame on logic of states for compliance while IL focuses on more practical issues. IR theories try to understand what "'mattered' to states behaviour".[287] IL, on the other hand, knows that law matters and tries to find out how law could be matter more.

The studies on both theoretical and practical perspectives of compliance reflect general literature on compliance with international law, but not directly with MEAs despite of the fact that international environmental law differs from other international law subfields in some aspects. First of all, the environmental issues, as in human rights field, require immediate concerns and urgent solutions which are unignorable and irrecusable. Secondly, environmental regulations are not just legal arrangements on paper but also have complex scientific, technical and financial details. The regulations cause significant configurations in economic and social life. Furthermore, these regulations, whether they are international or national, do not directly regulate actions of states, but mostly of sub-state actors. Therefore, international environmental law requires a special attention on some points. When there is a distinct feature for compliance with MEAs, it will be emphasized in particular.

2.1. COMPLIANCE THEORIES

In IL studies which focus on compliance, the arguments on why states do and do not comply with law, are examined as 'compliance theories'.[288] On the other hand, in IR

[287] Raustiala and Slaughter, p.538.

[288] For example: Raustiala and Slaughter, "General Theories of Compliance" at, p.539; Davel Grossman and Durwood Zaelke, "An Introduction to Theories of Why States and Firms Do (and Do not) Comply with Law", **Seventh International Conference on Environmental Compliance and Enforcement**, the INECE, Marrakech-Morocco, 9-15 April 2005, Conference Proceedings Vol.1, pp.73-80; Markus Burgstaller, **Theories of Compliance with International Law**, Martinus Nijhoff Publishers, Leiden, 2005; Ronald B. Mitchell, "Compliance Theory: An Overview" in **Improving Compliance with International Environmental Law**, (Eds. James Cameron, Jacob Werksman and Peter Roderick), Earthscan Publications, London, 1996, pp.3-28.

studies, the term 'theory' refers to efforts that try to explain why relations and events between states happen in a way that they happen. By doing these IR theoreticians attempt to explain international relations in past and to predict future.[289] When term theory is used in IR literature, the comprehensive systems of thoughts on understanding and explaining the patterns of international relations comes to mind, such as the Realism, the Liberalism, and the Constructivism. Therefore, 'theory' in IR sense is obviously different from IL terminology.[290] For a more appropriate terminology in IR, perspectives of IR theories on compliance could be named as 'models of compliance' or 'paradigms of compliance' in this sense. In this study, the arguments of IR and IL scholars on why states do and do not comply are referred as 'compliance theories', following to IL tradition. Be models of compliance or be compliance theories, knowing why states do and do not comply is an important issue since designation of compliance mechanisms is possible only by understanding of states' behaviors.

2.1.1. Why States Comply

Inquiring why and why not states comply with international law is helpful in designing of treaties and consequently regimes. International law requires states to have a sense of obligation that they have to fulfill their commitments. However, "it is not the nature of international law which makes it authoritative, but it is the institutions which surround it which encourage compliance with legal injunctions".[291] Norms are one of the institutions created in international law.[292]

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[289] Mustafa Aydın, "Uluslararası İlişkilerde Yaklaşım, Teori ve Analiz", **AÜ SBF Dergisi,** Vol.51, Issue.1, 1996, p.71.

[290] This difference in terminology is a fine example for controversy of IR-IL since IL criticizes IR for being too theoratical while IR criticizes IL for being theoratically insufficient. Raustiala and Slaughter, p.544.

[291] P. Haas, Why Comply, p.28.

[292] International institutions are "persistent and connected sets of rules (formal or informal) that prescribe behavioral roles, constrain activity and shape expectations". Robert O. Keohane, **International Institutions and State Power Essays In International Relations Theory**, Westview Press, Boulder, 1989, (International Institutions), p.163.

According to the general acceptance, each commitment is a confirmation of an established or at least an emerging normative pattern or vice versa. Hence, every treaty that states made are the legal expressions either of their actual behavior which means they already comply that treaty's provisions in advance, or of a desired behavior, means they want to act in that way in future. In both ways, there is not, at least should not be, a potential compliance problem.[293] Furthermore states, the sovereign units, sign and ratify international commitments with free will.[294] They always have the option not to sign and not to ratify any treaty which they do not approve or they disagree.[295] "[S]incere ratifiers" accept the obligations a treaty burdens upon them and they promise to act in accordance with those obligations by signing and ratifying an international treaty.[296] Once a treaty is signed, the next thing is *pacta sunt servanda*.

One of the basic norm in international law is *pacta sunt servanda*, which means 'agreements are to be honoured'. *Pacta sunt servanda* is fundamental principle of treaty law which requires treaties to be obeyed in good faith. States make treaties with each other with the confidence of this rule, which ensures that other states will obey their commitments and as a result means the responsibility of obeying one's own commitments. In the absence of such a confidence, states would never trust each other to interact. "There can be no social order without *pacta sunt servanda*".[297]

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[293] John K. Setear, "An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law", **Harvard International Law Journal**, Volume.37, Number.1, Winter 1996, p.156; Edwin M. Smith, "Understanding Dynamic Obligations: Arms Control Agreements", **California Law Review**, Volume.64, 1990, pp.1565-1566.

[294] In the absence of free will, even the commitment has already been made, it is not legally bound. 1969 Vienna Convention on the Law of Treaties, Article.51, Article.52, https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf, (01.06.2014).

[295] There is also the option of *reservation*, which means "purport(ing) to exclude or to modify the legal effect" of specific clauses of a treaty, if it is allowed in treaty. **Guide to Practice on Reservations to Treaties**, 2011, p.2, http://legal.un.org/ilc/texts/instruments/english/draft%20articles/1_8_2011.pdf, (01.06.2014).

[296] Bodansky, Art and Craft, p.219.

[297] Chayes and Chayes, The New Sovereignty, p.116 cited from Stanley Hoffman, **Duties beyond Borders: On the Limits and Possibilities of Ethical International Politics**, Syracuse University Press, Syracuse, 1981, p.62.

All norms adherently lay an obligation of obedience on states and parties which means to accept that norms are to be obeyed initially. *Pacta sunt servanda*, as the fundamental norm of the international law, is the core of compliance. While negotiating, signing and ratifying an international treaty, states know that they have to comply with their commitments and that they cannot escape this responsibility even if it turns out to be hard or inconvenient anymore.[298] *Pacta sunt servanda* is the first and maybe the main reason why states comply however it is unexplainable why states comply.

This argument takes us to the importance of the norms in international law. Norms are, as it has been explained in the first chapter, the internalized behavioral patterns of a particular law system. Each law system has its own norms which influence the behaviors of individuals and lead them to act within a certain framework without defining an exact way. Contrary to realist assumptions[299], states have a normative cognition that directs their own actions, similar to humans who have ethical, social, religious and cultural norms that prevent them to act in *natural state*. With the guidance of "moral force"[300], states *construct* and *re-construct* principles, standards and consequently create settled norms through a process of interactions with each other.[301] States live in international society, and like every other society, international society also has its own rules required to be obeyed. During the process of socialization, states create shared norms and beliefs and they are expected to obey these norms, but only if they are

[298] Chayes and Chayes, The New Sovereignty, pp.7-8, 116; Kızılsümer Özer, p.202.

[299] For realism see: Kenneth Waltz, **Theory of International Politics**, Addison-Wesley Press, Massachusetts, 1979; Kenneth Waltz, "Realist Thought and Neorealist Theory", **Journal of International Affairs**, Volume.44, Issue.1, 1990, pp.971-991.

[300] Beth A. Simmons, "Compliance with International Agreements", **Annual Review of Political Science**, Volume.1, 1998, p.85 cited from Elihu Root, "The Sanction of International Law", **American Society of International Law**, Volume.2, 1908.

[301] For normativist theory, especially for norm internalization and international law see: Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change", **International Organization**, Volume.52, 1998, pp.887-917; Ethan A. Nadelman, "Global Prohibition Regimes: The Evolution of Norms in International Society", **International Organization**, Volume.44, 1990, pp.479-526. For constructivist theory see Alexander Wendt, "Collective Identity Formation and the International State", **American Political Science Review**, Volume.88, 1994, pp.384-396; John Gerard Ruggie, "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge", **International Organization**, Volume.52, No. 4, 1998, pp.855-885.

shared norms and beliefs of the whole society.[302] States comply with legal rules and authority as soon as questionability about their legitimacy disappears.[303] Legitimacy of a norm depends on its fairness, on non-discriminacy, equality and on the coherence with other norms already adherent.[304] Once they establish such a norm, they self-imply their compliance implicitly. And the treaties are reflections of shared norms of international society.[305] Furthermore, after a degree, these norms become so internalized that they go beyond just being legal constraints, and become the "appropriate standards of conduct".[306] For example, "[p]eople do not refrain from committing murder because they are afraid of being punished, but because they have been brought up to regard murder as unthinkable; habit, conscience, morality, affection and tolerance play a far more important part than sanctions".[307]

Many legal or juridical surveys do not investigate how a particular norm occurs.[308] From the legal point of view, states comply with a norm in their actions, because the legal meaning of a norm demands so; if a norm once occurs -no matter how- it should be complied. On the other hand, theoretical arguments behold this structure in reverse order. Normative explanation of norms argues that "[t]he norm is itself a 'reason for action' and thus becomes an independent basis for conforming behavior. Norms help define the methods and terms of the continuing international discourse in which states seek to justify their actions."[309] This theoretical argument has a different perspective

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[302] Simmons, p.86 cited from Hedley Bull, **The Anarchical Society: A Study of Order in World Politics**, Columbia University Press, New York, 1977.
[303] Friedrich V. Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State", **International Organization**, Volume.40, Issue.4, 1986, p.773; Thomas M. Franck, **The Power of Legitimacy Among Nations**, Oxford University Press, New York, 1990, p.712.
[304] Chayes and Chayes, The New Sovereignty, p.127.
[305] Friedrich V. Kratochwil, **Rules, Norms and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs**, Cambridge University Press, Cambridge, 1989, (Rules, Norms and Decisions), pp.53-54.
[306] Bodansky, Art and Craft, p.221.
[307] Michael Akehurst, **A Modern Introduction to International Law**, Routledge, New York, 1993, p.78.
[308] Investigating how norms rise is out of scope but in nut shell, there are utilitarian, sociological, or canonic/divine approaches.
[309] Chayes and Chayes, The New Sovereignty, p.8 cited from Frederick F. Schauer, **Playing by the Rules: A Philosophical Examination of Rules-Based Decision-Making in Law and Life**, Clarendon Press, Oxford, 1991; Kratochwil, Rules, Norms and Decisions**,** pp.95-129.

from legal aspect, because they are more interested in how norms are created. According to this view, states comply with a norm, because it is their current actions which have created that norm. In fact, the role of the norm is to justify the action. Even without the norm, states act in the same way. So, at that point, it is meaningless to talk about compliance, because it is not the behavior that complies with the norm, but the norm confirms the behavior.

Norms could be considered as the best behavioral patterns for acting. The specific actions and thoughts become norms and rules because they are the most right, the most optimum ones. States accept these norms, because they are the "right thing to do".[310] States prohibit the CFCs emissions because the ozone layer should be protected. States reduce the greenhouse gases because the global warming should be brought to a stop.[311] States develop in a sustainable way, because environmental resources are exhaustible.

Normative explanation of compliance is consistent with many international norms if it is considered that customary rules are consisted of persistent actions of states and also many treaties are in fact the customary rules or the emerging customs which are declared and confirmed by majority of international community. Nevertheless, this explanation comes to a dead end when it is tried to adopt into a rule which is totally contrary to state acts. The climax era of the Cold War, two eternal enemies the USA and the USSR started a race on nuclear armament which could cause an apocalypse on both sides. Despite that there was not a legal obstacle that could prevent them, two states made a treaty for disarmament which was exactly contrary to their present practices at that time. Making such a treaty could be explained by many rational, economic, military, political or conjectural reasons, but the important point is that states make treaties not only conforming their present actions, but also exactly contrary to them. This is a point to which normative and constructivist schools draw attention. States are rational actors

[310] Bodansky, Art and Craft, p.219.
[311] Despite that the USA did not sign the Kyoto Protocol, many US states have reduced the emissions. Bodansky, Art and Craft, p.220.

and act rationally.[312] Furthermore, states are motivated by social norms of community in which they exist.[313]

If a norm is created or could be created steadily, states feel that they have to comply with it. Consensus on the norm, the power of the norm and commitment to it are initial constituent factors of compliance. If these constituent factors are established steadily and are internalized, violations could be reduced down to the bottom and then there would be no consideration of intentional non-compliance. There would be no need for enforcement and sanctions and the other reasons of non-compliance could easily be solved by managerial approaches. The states which have internalized and even regulated the concept of *human rights* are almost perfect compliers of human rights law while many other states, who persistently violate it, accept these rights only on paper.

As a consequence, of sovereignty, states are free whether to make any international commitment. States voluntarily make a commitment, sign and ratify a treaty which means that they are ready to undertake the responsibility of compliance by signing and ratifying it and promise that they will comply. But, free will does not always explain the compliance alone. Additionally, as rational actors, before making any commitment, states calculate their interests[314] and may not sign and ratify any treaty that does not agree with their interests.[315] So, a broader description of compliance would be 'self-interest', which means that states are already have the intention of compliance with a treaty, about which they think that the required behavior is in their interest[316], and as a

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[312] According to the game theory, states are instrumentally rational interest maximizers and act strategically, state choices contingent to actions of other states. This argument may be useful for smaller states but cannot explain the initial action of dominant powers to make a commitment. P. Haas, Why Comply, p.27.

[313] Chayes and Chayes, On Compliance, p.186.

[314] A state may voluntarily accept to replace the green energy production instead of fossil oil using even though the other states do not comply with the Kyoto Protocol. Because, reducing fossil oil consumption also means being not dependent on foreign countries for energy supply. Bodansky, Art and Craft, p.219.

[315] In fact, a peace treaty is the calculation of the defeated state on which and when signing a treaty (or surrendering) is more appealing maximizer. Because, even in these circumstances, there is always an option to continue fighting, but in the end, a state may sign a treaty in a worse condition. Similarly, sometimes poor and undeveloped states inevitability sign treaties, which is called 'unequal treaty', because of the pressures of developed ones. This is also a calculation of whether signing that treaty is more appealing in or bearing the burden of not signing.

[316] Chayes and Chayes, On Compliance, pp.179-185; Chayes and Chayes, The New Sovereignty, pp.6-8.

more optimistic comment - even normatic, if it is considered as a need to legalize the actions-, that they are already acting or may be acting in future[317] consonantly with the formulated rule in the treaty even in the absence of treaty.[318] Keohane also starts his inquiry by questioning why states make international commitments. According to Keohane, international treaties are the results of growing interdependency, they voluntarily take some responsibilities and sacrifice their freedom in a certain degree that they could control the changes in international politics and may gain influence over other states.[319] International treaties are tools of the desire for regularity and predictability of states in their mutual relations. States make treaties to solve problems which they are unable to solve alone.[320] According to these respects, it is easy to understand why states comply with international treaties.

Compliance as conformity between the international rule and the actions of an actor can be achieved through a straight implementation of international treaty. On the other hand, Kal Raustiala claims that compliance with international law is usually coincidental and inadvertent, and there is not a causally-related behavioral change in the actions of states.[321] When obligations of treaties are already in a confirming manner with the current behaviors of states, this kind of compliance is called "coincidental compliance" or "serendipitous compliance" and the rate of compliance with such treaties

[317] There is a high compliance with the Antarctic Treaty which prohibits the replacement of weapons on the Antarctic, because neither states had any weapons there, nor plans to do so. George W. Downs, David M. Rocke and Peter N. Barsoom, "Is the Good News about Compliance Good News about Cooperation?", **International Organization**, Volume.50, 1996, p.389. Similarly, there is a high compliance with Nuclear Non-Proliferation Treaty (NPT) since all but few states already have neither desire nor technology for nuclear weapon production. Chayes, Chayes and Mitchell, p.40. Furthermore, states parties, who want to use nuclear energy for peaceful aims like energy production, are given nuclear technology aid according to this treaty.

[318] Despite of the challenges, the high level of compliance with the Montreal Protocol was due to the recognition of the urgency to repair the Ozone layer depletion, so that the will of reduction of CFCs emissions of states of party was high. Bodansky, Art and Craft, p.219 (note 62).

[319] Simmons, p.76 cited from Robert Keohane, "Sovereignty, Interdependence, and International Institutions" in **Ideas and Ideals: Essays on Politics in Honor of Stanley Hoffmann**, (Eds. LB Miller, MJ Smith), Westview, Boulder, CO, 1993.

[320] Simmons, pp.76, 80.

[321] Raustiala, pp.391, 392-393.

are high, if not perfect.[322] Treaties can be thought as the "catalyst" to accelerate actions[323] and by signing a treaty, states ensure that the others will act in a desired and defined way. Or, under current situations, a state complies perforce, because it does not have any other option than complying just as its high compliance with NPT.[324]

On the other hand, realist explanation of compliance is mostly based on the anarchic structure and the state of balance of international relations. According to realism, compliance is an artificial situation created by structure. States comply because: (1) The hegemonic states enforce them through awards or threats, (2) the treaty rules conform to their interests, or existing or expected behaviors, (3) the achieved balance due to a treaty, is a benefit for everyone. If compliance were defined as change in behaviors, realists would assume that this change is only a coincidence and not intentional, and this change would happen any way even without a treaty.[325]

Contrary to realism and according to liberalism, and also institutionalism specifically, international law and its institutions have important constraining effects on state behaviors. The interests and power could explain compliance to a certain extent. The actual reasons ensuring the compliance are the benefits of learning by cooperation, peace which regimes provide and desires of states to live in such a world.[326] Especially in the problems which states cannot solve by themselves, such as environmental problems, the importance of collective action and compliance is understood. Cooperation creates synergy, and compliance with treaties and regimes will grow higher gradually and regimes will become more effective in future if states learn how to

[322] Mitchell, Regime Design, p.429; Chayes, Chayes and Mitchell, p.40; P. Haas, Why Comply, p.22.
[323] Bodansky, Art and Craft, p.219.
[324] Raustiala, p.393.
[325] Mitchell, Regime Design, pp.428, 429; P. Haas, Why Comply, pp.26-27.
[326] For liberalism and intitutionalism see: Michael W. Doyle, "Liberalism and World Politics", **American Political Science Review**, Volume.80, No.4, 1986, pp.1151-1169; Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics", **International Organization**, Volume.51, No.4, 1997, pp.513-553; Krasner, Structural Cases, pp.185-206; Stephan Haggard and Beth A. Simmons, "Theories of International Regimes", **International Organization**, Volume.41, 1987, pp.491-517.

cooperate.[327] Contrary to realism, compliance is not coincidental, but it is "treaty-induced compliance" and more possible than realists think [328]

A different approach which focuses on internal structures of states instead of international relations argues that to comply with international law depends on domestic regimes of states. The democratic legalism approach argue that democratic states are more tend to comply with their international obligations than autocracies, because democracies have more respect for law and judicial process and the political leaders know restricting power of law on their own actions. In democracies, law-abiding behaviors are wider and, as much as people, institutions are also more willing to comply with law and to use legal ways for settling disputes. These traditions encourage democratic states to act in (international) law-abiding manner.[329] An argument which could be considered as an extension of this approach argues that if states transfer international law commitments into their domestic law, compliance with international law will be inevitable and also easier.[330] Non-compliance with international law regulations "enmeshes" states in their domestic politics, because international and national laws have become the same thing due to internalization.[331] Similarly, if provisions of an agreement are integrated in other agreements, especially in trade regulations, states comply more easily with these obligations.[332]

After reconsidering the arguments of different approaches, scholars explain entering into an international treaty mainly with *interest* but with its different aspects.

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[327] Mitchell, Regime Design, p.429 cited from Joseph S. Nye, Jr., "Nuclear Learning and U.S.-Soviet Security Regimes", **International Organization**, Volume.40, Winter 1987, pp.371-402; P. Haas, Why Comply, pp.41-42.
[328] Mitchell, Regime Design, p.429.
[329] Simmons, p.83, 85 cited from Anne-Marie Slaughter, "International Law in a World of Liberal States", **European Journal of International Law**, Volume.6, 1995 and from William J. Dixon, "Democracy and the Management of International Conflict", **Journal of Conflict Resolution**, Volume.37, Issue.1, 1993.
[330] Fisher, p.138.
[331] Simmons, p.84 cited from Robert Keohane, "Compliance With International Commitments: Politics Within a Framework of Law", **American Society of International Law Proceedings**, Volume.86, 1992, pp.179-180.
[332] Ibrahim F.I. Shihata, "Implementation, Enforcement, and Compliance With International Environmental Agreements - Practical Suggestions in Light of the World Bank's Experience", **Georgetown International Environmental Law Review**, Volume.9, 1997, p.39.

So, answering why states comply with international treaties is very simple. As it is seen, states mostly comply with their international commitments if compliance is of their interest. Then, what is the interest of compliance?

States do not act within an isolated frame. They have interaction with each other -if not interdependent, -in almost all their actions. Moreover, each action they do, defines reliability for further ones. Even though a state gains an interest today by non-compliance with a commitment it had made, it loses future profits; immediate benefits of breaching current commitments may cost higher disadvantages in future, because it is a sign of possible manners of a state which would take shape in future.[333] A state which complies with its commitments gains a *reputation* which boasts other states with confidence, creates an image that that state is reliable and open for cooperation. Other states do not hesitate to make long-term commitments to this state since they know that their commitments are converged.[334] Reputation as a "rule of law countr[y]" is important in international relations, because reliance determines the confidence.[335] A confirmed non-complier is not trusted in mutual commitments. Reputational compliance is particularly a concern of developing states.[336]

Realists' assumption that states always recalculate their interests is true but only to a certain degree. Transaction costs of bargaining are higher, continuous recalculation is both exhausting and, in fact, costlier than preserving an established stable system. Instead of taking risks continuously in order to look for new interest, preserving the ones already guaranteed is more secure and low-costly. Additionally, established systems

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[333] Robert O. Keohane, **After Hegemony: Cooperation and Discord in the World Political Economy**, Princeton University Press, Princeton, 1984, (After Hegemony), p.290.

[334] This is "reputational theory of compliance". Andrew T. Guzman, "Compliance-Based Theory of International Law", **California Law Review**, Volume.90, January 2002, pp.1847-1851.

[335] However, there are also opinions which argue that compliance only with the thought of reputation is a reduction of the cost-benefit calculations of state. *Reputation for protecting vital interests* may be more important than being law-abiding state, or even for *market actors*, *reputation for occasional rage* may be more valuable than *reputation for pure rationality*. Kingsbury, p.55. Even Andrew T. Guzman, provider of reputational theory of compliance, accepts that for some states or when compared with some interests , reputational concern is not a worth-pondering thing. For such states the remedy is direct sanctions. Guzman, Compliance-Based Theory, pp.1850, 1883.

[336] Simmons, p.81 cited from Ibrahim F.I. Shihata, "The Attitude of New States Toward the International Court of Justice", **International Organization**, Volume.19, Issue.2, 1965.

reflect the efficiency of operating behaviors which are, in fact, the inspiration of treaty rules.[337] Chayes and Chayes call this leaning the 'efficiency'.[338]

When the commitments taken under guarantee with treaties are breached, the other states parties have the right to enforce the breaching state to comply. The fear of possible retaliation and sanctions, which will be explained below, are the dissuasive factors to comply.[339] Similar to the fear of international monitoring and enforcing, states are also internally monitored and enforced. Even though the only sanctions for breaching governments are criticisms, protests and voting for the opposite in elections, public awareness plays an important role in conducting both internal and international policies.[340] Also boycotts and notifications are strong persuasive sanctions for companies which are in fear of a market loss. The NGOs and scientific communities are the strongest followers of environmental regulations and compliance, both nationally and internationally.[341] "[P]ublic concern is '(o)ften the most important factor in determining whether international regimes can be effective'."[342] In addition to the liberal structure of a state, existence of a community which commits to subject of international treaty, affects the compliance of a state positively. Epistemic communities create pressure on governments to push them into compliance.[343] The size and strength of epistemic community define the greatness of the pressure.[344] International law regulations basically try to influence and change state behaviors. As Peter Haas points, in international law in general and in regulations of arms control in particular, human

[337] Most of the rules of the Vienna Convention on the Law of Treaties are actual behaviors of states which had became customary rules of international law.
[338] Chayes and Chayes, On Compliance, pp.178-179.
[339] Bodansky, Art and Craft, p.219.
[340] Public protests cannot be considered as ineffective when the possible domestic and international consequences of public movements are thought, for example the 'Arab Spring'.
[341] According to Victor and Skolnikoff, NGO participation in regimes creates more demanding environmental policies, but their effects on implementation and compliance are not necessarily high. George W. Downs, "Constructing Effective Environmental Regimes", **Annual Review of Political Science**, Volume.3, 2000, (Constructing), pp.40-41 cited from David G. Victor and Eugene B. Skolnikoff (Eds), **The Implementation and Effectiveness of International Environmental Agreements**, MIT Press, Cambridge, 1998.
[342] Bodansky, Art and Craft, p.219.
[343] See title 1.3.3.3. Scientific and Epistemic Communities at page.66.
[344] Jacobson and Brown Weiss, Strengthening Compliance, p.130.

rights are indeed "a matter of self regulation".[345] On the contrary, coming in the first place, international environmental law and international trade law are agreed by states but bring obligations for and consequently conducted by non-state actors, particularly industry and individual people. This situation places contributions of epistemic community, public concern on the issues and attitudes of national companies on a more important scale. Therefore, stakeholders' participation and attention paid for their requests and their trust on the legitimacy of treaty must be elevated to a higher degree; because if these stakeholders trust on the legitimacy of a treaty, they become more likely to comply with it.[346] When these stakeholders participate in national and international decision-making process, their compliance and consequently state compliance is higher. On the other hand, especially in international environmental law, private capacity as well as awareness of environmental protection should be considered before taking part in an environmental regime.

Bureaucratic and administrative internal factors are also important factors of compliance. A strong professional bureaucracy facilitates a state's compliance. Bureaucracy develops its own procedural traditions and does not need any commanding signal of any executive; after ratification, it automatically starts with required procedures without calculating the costs and interests. After international commitments, when internalized international norms combined with strong professional bureaucracy, "culture of compliance develops" and "compliance becomes an automatic response".[347]

The final factor which defines compliance of states with international treaties is international politics. As well as peaceful environment, importance given to the subject in international arena and recognition of international law in general determine the compliance levels. The compliance with international law regulations has improved in general since the establishment of UN. If it is taken only according to MEAs' perspective, since the first international conference on environment in 1972, there has been a gradually growing momentum in MEAs. Due to the increasing recognition of

[345] P. Haas, Why Comply, p.24.
[346] Shihata, p.39.
[347] Breitmeier, Young and Zürn, p.187.

environmental problems and to the growing number of signing MEAs, states feel an obligation and also a responsibility to comply with as well as to be part of MEAs.[348]

2.1.2. Why States Do Not Comply

As Louis Henkin left a margin, sometimes or some states do not comply with their international obligations. Even though *pacta sunt servanda* is the basic norm of international law, similar to other forms, it may be breached too, which causes non-compliance. Non-compliance may occur imperatively, incompetently or insincerely but eventually it actualizes. It may not be possible to eliminate non-compliance totally, but to be able to diminish the issues; first the reasons causing non-compliance cases should be known.

As rational actors, states continuously recalculate their interests. In this continuous calculating, there are always more satisfying interest options, because both national and international conditions, predicted facts, interests and state officers may change.[349] If conditions seem to be more favorable about ratifying a treaty, then states ratify it. But if carrying out the commitments is not in their interest any more, a state could decide not to comply. Classical realists see non-compliance as an interest calculation based on costs and benefits and when the circumstances change, states have the option not to keep a given promise. This classical understanding of realism changed since the development of international law and though there are still non-compliance cases, only a small percentage of them could be explained with this point of view.[350]

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[348] Jacobson and Brown Weiss, Strengthening Compliance, p.143.

[349] After Taliban took over the control in Afghanistan, two thousand years old Buddha statues were bombed despite they were under protection as world heritage according to World Heritage Convention, and Afghanistan is party of the convention since 1979. Although US President Bill Clinton signed the Kyoto Protocol, his successor President George W. Bush pulled the US out of the Protocol.

[350] Chayes and Chayes exemplify this point by two quotas, first from Niccolò Machievelli; "a prudent ruler cannot keep his word, nor should he, where such fidelity would damage him, and when the reasons that made him promise are no longer relevant" and second from Morgenthau; "in my experience [states] will keep their bargains as long as it is in their interest". Chayes and Chayes, On Compliance, p.177 cited

Even the states are the main actors in negotiation process, but there are always more or less impacts of IGOs, NGOs, epistemic community and public opinion on shaping the final text. Sometimes, intentions to make an international regulation on a specific issue are so strong or so required that negotiations and bargains lead to far more different treaties than they intend in the beginning. "The treaty is necessarily a compromise, … in such a setting, not even the strongest state will be able to achieve all of its objectives, and some participants may have to settle for much less". So, it is possible in some cases that the complexity of bargain and arduousness of negotiations push states to a point that they do not or cannot comply despite their good faith in the beginning of signing a treaty.[351]

The worst case of non-compliance is a state's ratifying a treaty without any intention to comply with it, a case called bad faith or insincere ratification.[352] Statistics and cases show that states sign treaties mostly with the intention to comply with them. States may be a part of a treaty without intention for compliance but in order to satisfy national or international pressures, yet these cases are rarely seen.[353] The object for ratifying a treaty may be to get into an international bandwagon[354] or not to be kicked out of it, instead of a will to take part in the realization of the target of a specific treaty. During the Cold War, signing of the Declarations of Human Rights, and ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were not because of the respect to human rights Eastern Bloc states showed, but in order to squelch and to please the eye of Western states.[355] And it was the same case with the Protocols on Sulphur Dioxide and

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from Niccolò Machievelli, **The Prince**, (Eds. Quentin Skinner, Russell Price), Cambridge University Press, Cambridge, 1988, p.61-62 and Morgenthau, p.560.

[351] Chayes and Chayes, On Compliance, p.183.

[352] Bodansky, Art and Craft, p.228.

[353] Chayes and Chayes, On Compliance, pp.187-188; Brown Weiss, Strengthening National Compliance, p.298. Or contrary, despite of willingfull of government to comply, the internal opposite and pressures preven the compliance.

[354] Jacobson and Brown Weiss, Framework, p.2.

[355] Chayes and Chayes, The New Sovereignty, p.9.

Nitrogen Oxide to the UNECE Long Range Transboundary Air Pollution Convention.[356] In spite of few sham steps taken in accordance with treaties, there were no intentions of compliance since the very beginning. On the other hand, insincere states may calculate the benefits of being free rider in ratification of a treaty. Instead of staying out of regime, seeming to be a part of it by ratifying but not shouldering the costs of compliance, protect the state from critics of not being involved in the regime. This could also be a hook to convince the other states to be a part of a treaty, so a state would gain comparative advantage before compliers.[357] Such a state is a free rider until its non-compliance is detected. Despite of ratification of the International Convention for the Regulation of Whaling, Soviet Union kept hunting over limits[358] for years until its cheating became apparent through investigations, while Norway and Japan, Soviet Union's biggest competitors were complying with the limits. Furthermore, sometimes a state may be so confident that the other parties will comply whatever it does, it does not hesitate to non-comply apparently.[359] Cheating, lying, insincerity or whatever it is, could only be prevented by strengthening the respect for international law, effective monitoring mechanisms and hard sanctions.

Researches show that the biggest factor causing non-compliance is mostly the treaty itself rather than intentional and unintentional actions of states. Chayes and Chayes see these causes as the "defenses -matters put forth to excuse or justify or extenuate a *prima facie* [at first sight] case of breach" and define three causes of non-compliance that oblige states to do so: "(1) ambiguity and indeterminacy of treaty language, (2) limitations on the capacity of parties to carry out their undertakings, and (3) the temporal dimension of the social and economic changes contemplated by regulatory treaties".[360] Mitchell also agrees that the basic reasons of non-compliances are treaty itself and treaty's deficiency in non-compliance mechanisms. He puts forth

[356] Brown Weiss, Strengthening National Compliance, p.298.
[357] Bodansky, Art and Craft, p.228.
[358] See Virginia M. Walsh, "Illegal Whaling for Humpbacks by the Soviet Union in the Antarctic, 1947-1972", **Journal of Environment and Development**, Volume.8, 1999, pp.307-327.
[359] Bodansky, Art and Craft, p.228.
[360] Chayes and Chayes, On Compliance, p.188.

three reasons for non-compliance: "a failure of obligational clarity", "failure involves performance clarity", "failure involves response clarity".[361]

Structure of a treaty is the first and initial step for compliance.[362] Nevertheless, international treaties are not just legal documents. In fact, they are political compromises which are the results of bargain process between states. Some states get what they want, some cannot, but in the end, treaties stand as reflections of compromise of political intentions of states. The degree of compromise determines the commitments and also the structure of the text.[363] Similarly, it is neither always easy nor possible to make a clear and definite text. There may be an awareness of a problem but at the same time there may not be a political intention to solve it or enough courage to face the costs, states may not be able to define the aim of treaty properly.[364] Also, states may lack in knowledge or may misknow the appropriate ways for solutions.[365] Mistakenly or even intentionally, text may be structured indeterminately. According to Sand, one of the most important reasons of "incertitude with treaty standards" arises from not ascertaining the real meaning of indeterminate rules of treaties. Ambiguity cause tendentious interpretations in different states in her own way and thus leads disputes and non-compliance.[366]

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[361] Ronald B. Mitchell, "Institutional Aspects of Implementation, Compliance, and Effectiveness" in **International Relations and Global Climate Change**, (Eds. Urs Luterbacher and Detlef F. Spinz), MIT Press, Massachusetts, 2001, (Institutional Aspects), pp.228-229.

[362] For creation of treaty and regime see 2.2.1.2.Regime Creation.

[363] Bargaining defines focal issues of a regime and gives fairness to treaty. Urs Luterbacher and Detlef F. Spinz, "Conclusions" in **International Relations and Global Climate Change**, (Eds. Urs Luterbacher and Detlef F. Spinz), MIT Press, Massachusetts, 2001, (Conclusions), p.302.

[364] Mitchell, Institutional Aspects, pp.222-223.

[365] This problem is an important issue for environmental law. No matter how developed the science is, our knowledge about how human actions affect environment is still limited. Besides, we cannot be sure of the positive consequences of measures taken. What is worse that to figure out causes and consequences takes a long time. Even a genuinely designed MEA may have unexpected consequences.

[366] On the same clause of LRTAP, German and Austrian governments, even in the ratification process, had a disagreement about whether that provision involves radioactive substances or not. Peter H. Sand, "Institution-Building to Assist Compliance with International Environmental Law: Perspectives", **Heidelberg Journal of International Law**, Volume.56, 1996, pp.776-777. Just after CITES was accepted, for explanation of the terms "bred in captivity" and "artificially propagated" which are the criteria for strict trade bans, two different resolution needed to be taken in two different COP meetings just in three years. Davies, pp.80-81.

Provisions of treaties are theoretical sentences which require to be applied practically as they are to conduct in future. Despite efforts, both in writing and in translating, treaty language may give way to ambiguity. First of all, sometimes texts are written in an indeterminate language to be comprehensive with purpose of satisfying all negotiation parties; unresolved issues "are swept under the rug" and final interpretation is left to the application of states. Secondly, ambiguity may result from trying to regulate behaviors in advance. Treaties are legal documents aiming to regulate all possibilities in a specific matter which could occur any time in future in any of the current and future parties. Usually, a general language is formulated in order to answer any possible circumstance. "The broader and more general language, the wider the ambit of permissible interpretations to which it gives rise". In the situation of ambiguity and indeterminacy, the desired and predicted applications do not match with the intended behaviors, and give rise to non-compliance cases or at least disputes between parties.[367]

On the other hand, also detailing may cause to non-compliance, because "to express one thing is to exclude the other".[368] Trying to be specific, regulating each rule in detail give rise to exceptions, loopholes which may cause state to seek gap in law. Even good faith cannot be enough for compliance if there is an unregulated situation at the treaty. Especially, if the norm and principle related with expected behavior is not internalized yet, non-compliance is inevitable.

Bodansky defines two functions of compliance, and success in compliance in the end is a correlation of these functions: the first is the rule and the second is the acts of states. Treaty, regime, or the international law in general endorses a rule which establishes an obligation and requires that states should obey. Second, states act or at least should act according to this rule. Formulation of rule and conformation of action to rule is what compliance is.[369] The formulation of the endorsed rule -how clear, meaningful, aimful and good faith- defines how states behave. To accomplish an obligation, states should act or should not act on something. Taking no action, if nothing

[367] Chayes and Chayes, On Compliance, p.188, 186-187.
[368] Chayes and Chayes, On Compliance, p.186.
[369] Bodansky, Art and Craft, p.254.

would change, is neither compliance nor achievement.[370] Full compliance may be caused by simplicity and nothingness of treaty, like disarmament of the space. Similarly, low-compliance may be caused by rigidity of a treaty as it is seen in the Kyoto Protocol. The obligations are so rigid that many states cannot accomplish reducing carbon emissions in time, even though they intend to do so.

The second reason of non-compliance, and one of the most important and most frequently seen reasons of non-compliance with MEAs, is *limited capabilities of states*. Each state has different economic, politic, military, bureaucratic, cultural, social capabilities that limit their action. As they calculate their interests before making a commitment, they also calculate their resources and limits and capabilities they have to see, whether they are able to accomplish their obligations or not.[371] However, sometimes the burden of obligations is so heavy that, in spite of good faith, capabilities of states limit the compliance. These states are called "good faith non-compliers".[372] Lack of capabilities may arise from either miscalculations of states or changing conditions of facts as well as unpredictable costs. Moreover, in some cases, particularly in environmental regulations, the real compliers are not states themselves but actually private actors. Although total capacity of a state seems sufficient, individual capacity of in-state private actors may be less than a state's assumptions. Despite of a state's high compliance with her obligations, private non-compliance with national legislation may be reflected as non-compliance of state, such as implementation of legislative and administrative regulations and taken measures.[373]

The third reason as Chayes and Chayes argues another main reason for non-compliance with MEAs is the *temporal dimensions*. The regime building treaties are

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[370] Percival gives an example the make this clear. There is a perfect compliance with the law which forbids UFO landing on a French village. Is this really the compliance of aliens since they do not land or is it the success of the law? Bodansky, Art and Craft, p.335 (note 10) cited from Robert V. Percival et al., **Environmental Regulation: Law, Science, and Policy**, Little, Brown and Co., Boston, 1992, p.141.

[371] CITES Secretariat's report showed that many countries did not have the experts who could identify the species whether they are listed or not, nor the experts who fill the forms and annual reports. Bodansky, Art and Craft, p.330 (note 18) cited from Simon Lyster, **International Wildlife Law**, Grotius Publications, Cambridge, 1985, p.269.

[372] Chayes, Chayes and Mitchell, p.40.

[373] Chayes and Chayes, On Compliance, pp.193-194.

regulative treaties. Regulations made by these kinds of treaties require a period of time for preparation before compliance in order to, implement and get used to these treaties. Even the most developed and the most enthusiastic states cannot be ready for the new order in one day. This is known in negotiating process and a period for transition is defined, from ratifying moment until coming into force, or a gradated transition process is defined so in each step of the process the parties have to ensure a minimum development.[374] This period ensures states a certain time to arrange their present economic, legal, industrial, military order for new regulations which have to be revised, to be improved, or even to be abolished. Nevertheless, in some treaties, either the defined period is not long enough to accomplish the transition or the time is not the only thing the parties need.

Regional or universal, the states parties of every treaty have different capabilities and also different legal regulations, so each of them need different periods of time and different assistance to be able to respond requirements of a new treaty. Even so, rationally it requires that the time should be arranged according to the urgency of the case; to the international conjuncture; to the pressure of the upper level states can shorten the period. "(L)east-common-denominator basis" which means, by starting with the lowest one, to expand the burden of the obligations along with the experiences increasing as the time goes by[375] is also an important determiner for time schedules. Usually, the framework conventions of environmental law work like this.[376] The framework convention defines an aim and a general strategy about an environmental problem. By signing this framework convention, states parties accept this aim and commit to act appropriately to strategy. Framework conventions address the problem, call states for cooperation and provide information gathering base, rather than provising

[374] There is 10 years grace period for developing states in the Kyoto Protocol. In the Montreal Protocol, it was determined that in the first phase CFCs of each party's consumption level would freeze in 1989 and then in the second phase 75% of reduction from 1986 levels until 1994, and in the third stage 100% reduction until 1996.
[375] Chayes and Chayes, On Compliance, p.195.
[376] For example, the Convention for the Protection of the Ozone Layer signed in 1985 and the Montreal Protocol signed in 1987; the Framework Convention on Climate Change signed 1992 and the Kyoto Protocol signed in 1997.

detailed rules, define the principles and general commitments, usually assign or at least determine methods for creation a committee (for example MoP) in order to arrange further steps. In the end of the negotiations, carrying out accordingly with framework convention, one or more protocols or amendments are concluded. These protocols and amendments regulate what, how and when states exactly should do.[377] Framework convention approach is a useful way to begin building a regime, but that's not enough. Even though framework conventions and further protocols determine a time-line and to do list step by step, states plan and act according to the future obligations. However states sometimes cannot adjust themselves this calendar. This could be caused either by the miscalculations of a state or by misguidance of treaty itself. Treaty could be too impatient or too enthusiastic about assigning enough time to states for preparations. This is a manageable situation at Meeting of the Parties via amendments, protocols and new deadlines. On the other hand, usually poor planning of a state, in spite of her willingness to do so, blockade the compliance. According to Raustiala and Victor, poor planning of a state is the most common reason of non-compliance.[378]

Poor planning put states into a fire that they are unable to see if it is coming. Signing and ratifying, and even negotiating a treaty are actually easier steps of making a treaty. The challenge starts with implementation. Lack of preparedness, incomplete plans, miscalculations, underrating of provisions or arrogance bring unexpected costs and challenges and sometimes unwillingness "when the true costs become apparent".[379] If a state has enough sources and willingness, it could still manage it by taking new measurements. However, sometimes it needs an extra assistance and guidance which could be provided by compliance committee. Otherwise, when it is combined with unwillingness, non-compliance becomes inevitable. For example, bound of Canada with

[377] Especially in environmental law, framework conventions have the advantage ensuring the consensus. Since protocols bring heavy burden, it is hard to melt all the demands of negotiating states in a pot. Due to the framework conventions, at least a base of principles and strategies were assured of which a minimum behavioral change is guaranteed. Kiss and Shelton, pp.74-75.

[378] Kal Raustiala and David G. Victor, "Conclusions" in **The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice**, (Eds. David G. Victor, Kal Raustiala and Eugene B. Skolnikoff), MIT Press, Cambridge, 1998, p.661

[379] Bodansky, Art and Craft, p.230.

Kyoto Protocol was already weak and when conclusions of poor planning appeared, Canada did not comply with the Kyoto.[380]

Treaties are written texts which take its final shape after a long negotiating process.[381] There may be structural, conjectural, economic and political changes which affect the implementation and compliance after ratification, even during negotiations of a treaty. Treaties should be revised, accorded to changes by amendments and modifications or should be terminated, otherwise non-compliance becomes inevitable. A treaty which does not serve the current needs and does not fit for the practical implementation is destined to non-compliance despite of efforts of states.

After a general evaluation of why states do not comply with their international commitments, it is also important to understand the why states do not comply with international environmental treaties. A World Bank officer's observation on compliance with MEAs shows that one of the leading causes of non-compliance with MEAs is fragmentation in internal process. The real obligators of MEAs are sub-state actors and state compliance is actually a result of the compliance of these actors. If there is a missing link between decision-making authority and actual obligators, this causes non-compliance. This problem may arise from either decisions of governments which are incongruent with wills and interests of internal actors, from lacks in transfer of international regulations into domestic law or from low capacities of domestic obligators which are not assisted by governments. Either way of non-compliance of in-state actors cause non-compliance for states in the last instance.[382]

In addition to all these general causes above, a state's environmental values are important points to see whether a state is likely to comply. The stronger environmental values states have, the more endurance states will show to comply, or even they could over-comply. Contrary, the weaker the environmental values are, the more probably environment is sacrificed. In developing states, the environmental values generally lost the priority before the desire of developing. This is why the budget for environmental

[380] Bodansky, Art and Craft, p.230.
[381] Concluding the 1982 UNCLOS took nine years after the first meeting in 1973.
[382] Shihata, p.50.

protection procedures is almost always insufficient in developing countries. When their technical and financial incapabilities for environmental protection are combined with the social, cultural and economic incapabilities they already have, low budgets make it impossible to comply even if they wish to comply with.

States are not unitary actors. There is only one supreme decision-making organ but still different combinations of implementators. The level of compliance of a state, in the final analyses, depends on consent of all internal units to this commitment, and their compliance with related national regulations. Especially international environmental law, as it is repeated frequently, negotiated by states but implemented by in-state actors such as companies, industries, local governments, and the like. No matter how legislative is successful in incorporating international obligations into national law, if readiness, willingness, capability and cognition of internal actors are not efficient, state cannot accomplish compliance. Furthermore, environmental obligations are neither easy nor cheap tasks to do. They require adaptation of new technologies, high-cost transitions, environment friendly investments and abandonment of traditional behaviors which are hard to convince the internal actors. The compliance promoting mechanisms for states, which are monitoring, capacity-building and other mechanisms, are also the mechanisms that states could use for compliance of in-state actors. For the aspect of environmental law, the public awareness on environment and environmental education, strengthening environmental NGOs, encouragement of green technologies are also useful tactics.

2.2. COMPLIANCE PROMOTING MECHANISMS

Before making a decision on compliance mechanisms, first of all, the reasons of non-compliance in general should be explored as it was done in previous chapter. Knowing the reasons of non-compliance is a necessary investigation to select the proper tool for promoting the compliance, but not enough. Each non-compliance case has its own characteristics, so each case, even if the reasons are similar, requires different

approaches. As much as the reasons, the general characteristics of states parties, the urgency of a problem, defined route for policy and determined legal obligations also affect appropriate mechanisms.[383] Additionally, each treaty has different context and each party has different perceptions of and interests in a treaty. It should be remembered that there is not a certain prescription which could heal all cases of non-compliance with international law. On the other hand, if there are only three main reasons for non-compliance; treaty itself, capacities and intentions, at least two of them may seem manageable while intentions cannot be affected by interventions. But, since intentions are based on interest calculations, it is still manageable through increasing the cost of non-compliance.

There are also external factors which affect the compliance in a positive or a negative way, such as international political system. The international conjuncture is not always convenient for international cooperation, as it was seen during the Cold War period. This issue is hard to be altered but a way to achieve it is actually international cooperation itself. The effects of external factors cannot be controlled, but could be defeated by empowering compliance mechanisms.

The mechanisms which will be introduced below have three tasks to promote compliance; first, they create a confidence between parties by collecting and disseminating knowledge about individual performances; second, they help to create an infrastructure in parties which is essential for compliance, through facilitating and assistance; third, in case of non-compliance they detect, ascertain and respond it.[384] These mechanisms are designed to manage states behaviors towards compliance on a common ground for all parties, and not to give way to violations, *erga omnes*.[385] If enforcement mechanisms, which are activated when non-compliance occurs, are put

[383] Problems which requires coordination are easier to solve and compliance rates are usually high. On the other hand cooperation-required problems need more effort, because there is an advantage of being free-rider in cooperation games. Besides, if the cost of solution is low, if there is strong scientific evidence and public pressure, and there is not concern of relative gains of states, problems are easier to solve. Contrary, the more number of states required for cooperation, the harder to make that cooperation. Bodansky, Art and Craft, p.262.

[384] Bodansky, Art and Craft, p.233.

[385] Elli Louka, **International Environmental Law**, Cambridge University Press, New York, 2006, p.128.

aside, it means that compliance mechanisms are designed and operationalized not to face with non-compliance and to prevent a non-compliance case.[386] The compliance is accepted not as a one-time thing but as a continuous process which keeps monitoring and to gives acceleration.[387] But first a regime should be built to penetrate international consensus and expectation with state interests.

2.2.1. Regime Building

"Regime design matters".[388] For international cooperation, international regimes are important institutions. But only the creation of regime alone neither promotes international cooperation nor ensures effectiveness; without optimum designing neither enforcement nor managerial approaches promote compliance.[389] Instead of building a regime only by signing a treaty and determining principles, compliance and effectiveness of the regime depend on how it is designed.[390] Does it address the problems correctly? Does it define a meaningful and reachable target? Is it applicable? Is it donated with right tools? Is it legitimate, is it supported by powerful states? Despite the length of the list of effecting factors of an effective regime, researchers agree on only some of them: The institutional design of regime, its functioning, the strength of its regulative rules like legitimacy, balance of power in and out of regime, cruciality and importance of the problem, cost of solution, political consensus on need for international cooperation, clear and agreed political objectives, clarity and strength of norms, organizational capabilities of the international organization and its secretariat, financial resources, the scientific consensus on information about causes and effects of the problem, support and alliances -even if it is *ad hoc*- between state of parties,

[386] Ulfstein, p.117; Geir Ulfstein and Jacob Werksman, "The Kyoto Compliance System: Towards Hard Enforcement" in **Implementing the Climate Regime: International Compliance**, (Eds. Jon Hovi, Olav Stokke and Geir Ulfstein), Earthscan, London, 2005, p.39.
[387] Bodansky, Art and Craft, pp.248.
[388] Mitchell, Regime Design, p.425.
[389] See title 2.3 Compliance Approaches.
[390] Breitmeier, Young and Zürn, p.110; Mitchell, Regime Design, p.425.

transparency for public and scientific contribution, being open to NGOs' participation and transnational participation, common but differentiated responsibilities of states, a compliance-promoting mechanism, dispute resolution process, inflexible sanctions.[391] For example, in the research of Miles and Underdal which evaluates effectiveness of fourteen environmental regimes, the variables which are accepted as essentials in an effective regime are decision-making procedure by majority of members, a qualified IGO for management of regime, a well-integrated epistemic community, distributed power between pushers of regime or between pusher and intermediary members, strong but instrumental leadership of one or group of states or individuals or delegates.[392] Contrary to widely believed assumptions, subject issue being common good or high priority in agenda and participation of all interested parties in regime have less or no effect on regime success.[393] However, these arguments and also the ones that have been mentioning about regime effectiveness are not sure-fire prescriptions that definitely work in every regime. Some of them may be more accurate in certain kind of regimes while others may be irrelevant. Similarly, different variations or combinations of these tools give rise to different results. Like compliance mechanism, regime creation should be though as guiding object and each of them should be under consideration in particular of specific regime.

The question why some treaties are more effective and others not is a research concern of international lawyers and both practitioners and professors while international relations theorists and political scientists ask also the same question for regimes. Under this title, both treaties and regimes are deal since regimes are accepted as the institutions which are created by at least one international treaty. Below, first the arguments of regime theorists about regime building and then arguments of legal scholars about treaty design for effective regimes and high rate of compliance will be scrutinized.

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[391] DiMento, Global Environment, pp.139-140.
[392] Miles and Underdal et all, p.63.
[393] Young and Osherenko, p.240.

2.2.1.1. Regime Negotiation

According to legal scholars, ratifying a treaty, and according to regimes scholars sharing the norms is the base of regime creation. It is true though that the other side of the medallion should be examined, too. Before coming to stage, states need to come together and should reach a consensus about these shared and agreed norms. Because, states coming together and starting to discuss a problem means that a regime has been already began to constitute an international society. The need for international cooperation to solve a common problem is the basic step for regime building.

Making a regime and signing a treaty seem easy[394] on paper, but maybe the hardest and most important part of creating a regime is the process between coming to the table and agreeing on the norms. Of course, implementation and compliance are further challenges but pushing states to make international commitments and establishing regulative rules are especially important, because these norms and commitments are the ones which determine further behaviors of state. This is a process which independent and sovereign authorities try "to reach an agreement on packages of provisions to be included in constitutional contracts".[395] Differences of perceptions of states on a problem and values may prevent the common understanding. However, in negotiation process; norm creation, construction, cooperation and communication come into play. Negotiating and bargaining of treaties and regimes are in fact the "continuous exchange of commitments among the participants"[396] and a continual learning process. This is a constructivist process that creates and changes and re-constructs state preferences, beliefs and perceptions so that produces shared norms and principles.

The most crucial stage of regime creation is the negotiation process. The regime is framed by negotiation and bargaining. Even though parties start having minimum knowledge about subject and perceptions and, interpretations of others, parties build a

[394] See the Vienna Convention on the Law of Treaties.
[395] Young and Osherenko, p.257.
[396] Chayes and Chayes, The New Sovereignty, p.272

regime from the beginning through negotiation process.[397] And at the final, no party could keep its beginning points. During the negotiation, states not only negotiate and bargain, but also they use their tactical strategies like threats, promises, sacrifices and rewards.[398] Negotiation is a constructivist process. Even though in the beginning states come to table with pre-existing interests and interpretations, in the end they construct new and common ones. During the process, states discuss and interpret same facts and same expectations in different perceptions. Repeated interpretations create a new reality and new values. Common realities and common values eventually reach to a collective norm.[399] Negotiation is the process of learning. Parties learn and also try to manipulate others' interpretations and perception, and transfer their values. Reaching to a consensus is hard if there are dissensual conflicts between parties. If "norms, values, or beliefs and either the requirements of co-ordination" differ in parties, it is hard to find a melting pot for all counter partners[400] but not impossible. At the final, even though there is not treaty in the end, they modify and start sharing values and find common interests and change behaviors.[401] These unwritten norms accepted explicitly or implicitly during the negotiations limit the effects of changing interests on behaviors of states with the help of information and beliefs[402] which are also created and descriptive in this process.

For the success of regime it is important that all parties must believe that regime is fair and equitable. Bargaining process never ends unless all parties believe that the agreed results such as norms, rules, commitments, responsibilities, are equitable and fair. To be able to achieve equity, some necessities of problem-solving effectiveness could be ignored[403] as it is seen in climate change regime. To be able to reach to a satisfactory agreement for all parties, problematic issues are laid over and either the issues on which

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[397] Young and Osherenko, p.252.
[398] Oran R. Young, **Creating Regimes**, Cornell University Press, Ithaca. 1998, (Creating Regimes), pp.25, 175-175.
[399] DiMento, Global Environment, p.158.
[400] List and Rittberger, p.91 cited from Louis Kriesberg, **Social Conflict**, Englewood Cliffs, Prentice Hall, 1982, p.30.
[401] Underdal, One Question, p.5; Young and Osherenko, p.248.
[402] Robert O. Keohane, "International Relations and International Law: Two Topics", **Harvard International Law Journal**, Volume.38, No.2, 1997, (Two Topics), p.501.
[403] Young and Osherenko, p.235.

all parties have a consensus are adopted or unsatisfied parties are left with some leeway through leaving solutions ambiguous.

The states may have different priorities and different goals, and each is assumed to pursue its own interests without regard for the other. No matter to which agreement they ultimately reach and no matter how it is reached -hard or soft, efficient or not, have required mechanisms for compliance, enforcement, dispute resolution or not- it can be assumed that the final agreement is the best alternative that all parties are better off. Likewise, every state have different priorities, every state have different capacities to bargain. Even so, usually underdeveloped states do not have enough negotiating power in the international arena, because all states are free to make international commitments; it is assumed that they've calculated that there is not a better alternative than current one and if they have any benefits, they sign it.[404]

NGO participation in this process is an important support for developing states and important for regime effectiveness. Despite allowing formal NGO participation is still a debate for states, success of transnational environmental regimes depends on participation of NGOs in both decision-making, implementation and compliance processes. Researches show that participation of NGOs, even only in negotiation process of a treaty as observers and negotiators, raise the compliance rate 20%.[405] Having new perspectives and getting consent and supports of different stakeholders render regime more legitimate, at least for transnational actors, as long as transnational actors, who have different interests, are involved in regime.

The responsibilities should be provisioned according to capabilities of states. If developing states would have the same responsibilities with developed ones and if the grace period has not been applied to them, it would almost be impossible for them to comply with the Kyoto Protocol. Similarly, if CITES had provisioned border monitoring only at exporting states, which are mostly developing states, the regime would not be that much effective due to they do not have enough ability to control. The Basel

[404] IRD indicates that asymmetrical power of members in a regime is irrelevant for compliance as long as even the powerless ones participate into decision-making processes. Breitmeier, Young and Zürn, p.96.
[405] Breitmeier, Young and Zürn, p.104.

Convention provisions the same logic but applies it reversely. The responsibility to control hazardous waste is given to developed states which are the exporters, so the consequences of potential lacks of developing states have been overcome.[406]

2.2.1.2. Regime Creation

As it is said at the beginning of this section "[r]egimes do matter"[407] only if it is designed well.[408] So the first mechanism for compliance is well-designed treaties and regimes.[409] This is called "coerced compliance".[410] A well-designed environmental regime which identifies the problem completely, determines the causes and effects

[406] Bodansky, Art and Craft, pp.264-265.
[407] O.Young, World Affairs, p.249.
[408] In this study a weak Grotian approach is adopted which argues that "regimes [are] pervasive phenomenon of all political systems" and they "exist in all areas of international relations". Even though there is no doubt that regimes are both essentials and consequences of "an increasingly complex, interdependent, and dangerous world", we rather to tread warily to success of regimes in highly conflictual issue-areas especially like security and raison d'être. In these issues if independent decisions and actions can lead more satisfactory results than collective actions, states prefer to act solitary instead of chained by a regime as structural realists claim. For three orientations about whether regimes do matter and if so to what extent and under which conditions see Stephen D. Krasner (Ed.), **International Regimes**, 4th Ed., Cornell University Press, Ithaca, 1986.
[409] The one of the main reason of equipment sub-regime is more successful than discharge sub-regime of oil pollution regime is that the higher level of transparency in equipment sub-regime. According to discharge sub-regime, oil tankers have to note their discharges in their record books and to show them to authorities if asked in ports. The reliance on self-recording of tankers causes low compliance rate in this system. Contrary, according to equipment sub-regime oil tankers have to attach an equipment that prevent the intentional discharging and also get the 'International Oil Pollution Prevention Certificate'. Furthermore the tankers will be inspected periodically to keep their certificate is valid. So that, instead of relying on tankers' own record, compliance is ensured at the very beginning of construction of the tankers and then monitored through periodical and compulsory inspections. This is the equipment standards subregime which is "relied on a 'coerced compliance' strategy, which sought to monitor behavior to prevent violations from occurring in the first place. The Discharge standards subregime was deterrence-oriented, attempting to detect, prosecute, and sanction violations after they occurred to deter future violations." Coerced compliance system is more manageable than the deterring system. Coerced systems "relied on surveying behavior and preventing violations rather than detecting and investigating them afterwards". Mitchell, Regime Design, pp.445, 454-455. Another coerced compliance is seen in USA's federal automobile emissions standard. Compliance with this standard is almost 100% because of the cars are inspected during production at automobile companies on whether they are equipped for emission control instead of inspecting the billions of car after they sold. Vogel and Kessler, pp.24-25. By such structuring of MARPOL, it is almost perfect rate of compliance. Chayes and Chayes, The New Sovereignty, p.185.
[410] Mitchell, Regime Design, p.454.

rooted, involves all relevant actors and stakeholders, chooses right legal and institutional design and appropriate mechanisms; promotes compliance endogenously.[411] So the success of regime depends on better understanding and managing of exogenous factors and endogenous factors.

Regimes are "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."[412] Although this is the most accepted regime definition of IR, it can still be criticized or developed but this is not our task in this study.[413] No matter how different it is defined, regimes are one of the institutions of international relations. In conduct of international relations, institutions are source of information and knowledge for parties and they connect issues in a framework of set of values.[414] Regimes are social practices in which both formal and informal actors communicate with each other and a "complex web of interactive relationships" is launched and conducted.[415] The contribution of regimes to international relations is summarized with the three C's. The first one of these is the *concern* created on or raised as a result of the issue with which regime deals. The second is *contractual* environment, a platform on which states and other actors could bargain, communicate and observe others. The third is the ability of states to solve a problem called *capacity*.[416] According to Hedley Bull, regimes like other international "[i]nstitutions … help to secure adherence to rules by formulating, communicating, administering, enforcing, interpreting, legitimating, and adapting

[411] Bodansky, Art and Craft, p.262.
[412] Krasner, Structural Cases, p.2
[413] See Oran R. Young, "International Regimes: Toward a New Theory of Institutions", **World Politics**, Volume.39, 1986, (International Regimes), p.106; Robert O. Keohane, "Neoliberal Institutionalism: A Perspective on World Politics" in **International Institutions and State Power: Essays in International Relations Theory**, (Robert O. Keohane), Westview Press, Boulder, 1989, (Neoliberal Institutionalism), p.4.
[414] Keohane, Two Topics, p.499.
[415] O.Young, World Affairs, p.120.
[416] Wettestad, pp.302-303 cited from Peter M. Haas, Robert O. Keohane and Marc A. Levy, **Institutions for the Earth**, MIT Press, Massachutes, 1993, p.na; David Leonard Downie, "Global Environmental Policy: Governance through Regimes" in **The Global Environment Institutions, Law, and Policy**, (Eds. Regina S. Axelrod, Stacy D. Vandeveer and David Leonard Downie), CQ Press, Washington DC, 2011, pp.81-82.

them".[417] Regimes are the modifiers of the utility functions; benefits of cooperative action are high, on the other hand, cost of counter action is also high.[418] Regimes gather states for a certain subject-issue and converge their expectations. In fact, these convergent expectations enable the constitutive base of norms and principles.[419] Through regimes states learn to communicate and cooperate, and regime habits spread to other issue areas.[420]

The regimes are ways to conduct international relations by rational actors in an anarchic world by facilitating cooperation. The advantage of the regimes is reducing the transaction costs and uncertainties. "[I]nternational regimes perform the function of establishing patterns of legal liability, providing relatively symmetrical information, and arranging the costs of bargaining so that specific agreements can more easily be made".[421]

There are different arguments for a better regime creation. According to case, different combinations of these arguments could accomplish the result for successful regime. These arguments mainly focus on states' power and balance of power, structure of regime, nature of problem and commitments, legitimacy and strength of norms and internal structure of states parties.[422] Structure of regime is the main issue which defines the capacity of regime. Balance of power is an external condition[423] that cannot be changed, so it is put away by this study. But it is sufficient to say here that the effects of balance of power can still be moderate by wise regime designation. Internal political structure of parties is also another study field but capability of states is mainly problem

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[417] Krasner, Structural Cases, p.2 cited from Hedley Bull, **The Anarchical Society: A Study of Order in World Politics**, Columbia University Press, New York, 1977, p.54.
[418] O. Young and Levy, p.22.
[419] Andreas Hasenclever, Peter Mayer and Volker Rittberger, **Theories Of International Regimes**, Cambridge University Press, Cambridge, 1997, p.16; Kratochwill and Ruggie, p.764.
[420] This is called democratic experimentalism. See Michael Dorf and Charles Sabel, "A Constitution of Democratic Experimentalism", **Columbia Law Review**, Volume.98, 1998, pp.267-473.
[421] Keohane, After Hegemony, p.88.
[422] Robert O. Keohane, "Compliance With International Commitments: Politics within a Framework of Law", **American Society of International Law**, Proceedings of the Annual Meeting of ASIL, Volume.86, 1992, (Compliance), p.177.
[423] Oran R. Young calls exogenous variable to these environmental conditions in which regimes function and so conditions that cannot be changed but still affect the regime effectiveness.

of capacity building mechanism, so it will be examined in the related title. Legitimacy and strength of norms have already been dealt, but still there are somethings to say.

Every regime has its own set of norms and beliefs. Norms are guidance for regime members to show the right patterns of behavior to produce aimed outcome. They indicate states what should they do, what is necessary to do and what is wrong to do. Without norms, states cannot be harmonized because there would not be a path which leads to shared beliefs and goals.[424] However, some norms are very clear and detailed while others are blurred and/or elastic. They leave elbowroom for states to a degree, but still they lead states to the agreed target and permitted behavior patterns. Beliefs, values and goals within a regime may change in time, but if the norms and principles of a regime change, regime itself changes. Regimes are dynamic institutions and as the time goes by and as they progress, they need to be change. Effective regimes are both robust and resilient. They are robust that they could resist stress and challenges without change and they protect their cores like norms and principles, on the other hand, they are resilient that they could adopt themselves to changes by new mechanisms and tools, so they could improve. Regimes which are desired to survive should have stringent norms and elastic procedures and should balance robustness and resilient.[425]

Small but integrated and interactive regimes are called regime complex or fragmented regimes. Rather than creating one single but comprehensive regime on an issue point, complex regimes or fragmented regimes, which deal with different aspects of the same problem and support each other, seem more effective. There is a comprehensive umbrella regime of norms and values under which other smaller regimes are created and are functioning. Complex regimes have different advantages. First of all, the interconnection between regimes creates synergy for problem solution. Overlaps of norms, rules and behavioral patterns which are embedded into different regimes

[424] Krasner, Structural Cases, p.2; Hasenclever, Mayer and Rittberger, p.9.
[425] Oran R. Young, **Institutional Dynamics Emerging Patterns in International Environmental Governance**, MIT Press, Cambridge, 2010, (Institutional Dynamics), pp.4-5.

surround states all across and leave no room for cheating.[426] Furthermore, rather than regimes which impose complex behavioral change regulations and try to solve more problems at once, regimes dealing with one single problem at a time and require one behavioral change are more successful.[427] Beside of surrounding states with different regimes with embedded norms, complex regimes deal with smaller pieces of a big problem like a puzzle. Particularly environmental regimes, like climate change regime, have different challenges and attributes which require distinctive approaches. Because the linkages between environment and economic activities are complex, the contradictions between economic order and environmental regime decrease effectiveness of environmental regime. To strengthen the environmental regime, confirming and supportive actions must be taken in economic regimes, too. Instead of enforcing states to tight and comprehensive frames, regime complex pulls states into regime, gradually.[428]

Secondly, states have different interests and different capabilities. Different regimes answer to different states and to their different interests through differentiated commitments. In a fragmented regime system, every state could find a convenient regime for itself. Every fragmentation has its own commitments and beliefs. States parties of each regime create their small *clubs*, benefits and values are mutual in these clubs and they do not let free riders in the club. Since interests, beliefs and values are shared and power is less asymmetrical, effectiveness of these regimes are relatively higher. When the different clubs intercept with each other, common values support one another. If a problem, norm or value is intercepted, common club members link the issues, so the shared values spread through regimes.[429] Formal and also informal communication between regimes help regimes to strength each other via mutual

[426] Keohane, Compliance, p.178. Making links between regimes promote effectiveness. There are two kinds of linkages: Horizontal and vertical linkages. Horizontal linkages are the overlaps and congestions between international institutional arrangements. Vertical linkages are the links between international institutions and national institutions. O.Young, World Affairs, pp.121-122.
[427] Chayes, Chayes and Mitchell, p.45.
[428] Robert O. Keohane and David G. Victor, "The Regime Complex for Climate Change", **Harvard Project on International Climate Agreements**, Discussion Paper 33, Cambridge, 2010, pp.9, 14.
[429] Keohane and Victor, pp.3-4, 14-15.

learning.[430] However, fragmentation in regimes also has some problems. When the norms or commitments of different regimes or clubs conflict it impairs the integrity of the system as a whole.[431] In international law there are rules about conflicting treaty commitments but it should be remembered that treaties are just a small part of the regimes. It is obvious that attempt to evaluate the effectiveness of a regime by dealing only one side of definition is neither comprehensive nor complete.

An important criteria for regime success is the structure of the problem with which it deals. "[S]ome problems are intellectually less complicated or politically more benign than others" and malign problems are generally harder to solve.[432] Some problems need small behavioral adjustments while others require important behavioral changes. The more complex the problem and the higher the cost of solution, the lower the success of regime is. Furthermore, misunderstanding of or misknowledge about problem also affect regime success. Additionally, the more common, rooted and essential a behavior is which is tried to be changed by regime, the more it is hard to alter. These regimes are hard to create, harder to comply. Many environmental problems are caused by normal or at least standardized functions and habits which are hard to change, such as fossil oil usage which causes climate change while Antarctica regime is less complicated. These regimes demand change in state behaviors as well as change in economy and social life. The needed time to ensure changes in habits set success and compliance back. However, complexity of problem is not an excuse for regime failure. Otherwise, it means that there is no need to try to solve complex problems by regime because it would fail anyway. Contrary, it means that benign problems and complex problems need different problem solving capacities and different regime structure. If the benign problems need less energy, complex problems need "more powerful [institutional] tools" like political cooperation, norm creation, compliance mechanisms

[430] Margaret A. Young, "Climate Change Law and Regime Interaction", **Carbon and Climate Law Review**, Volume.5, Issue.2, 2011, (Climate Change), p.166.
[431] M. Young, Climate Change, p.154.
[432] Underdal, One Question, p.3.

and enforcement mechanisms.[433] Fragmented regimes are, for example, useful for complex problems since in every small regime a different side of the main problem could be dealt.

The size of group which teams up for regime is an important point. As much as the quality, quantity of regime participants also matters. However, the optimum size of regime depends on the structure of problem. Some problems require big numbers, such as climate change, while some of them require small numbers, such as Baltic Sea regime. The optimum point is that number should be small enough for the number to monitor each other and big enough to promote energy and enforce sanction. The bigger the number is, the higher the possibility for cheating is. The risk of free riders is also high in large numbers.[434] However, in small groups the options for technical and financial assistance may remain limited. Because the risk of free-riding is high in environmental regimes, all relevant and particularly all polluter parties, and additionally, the states which have technical, financial and scientific capability for functioning must be included in regime.[435]

Despite democracy and joint decision-making process are essentials, regimes need leadership. According to structure of regime and nature of problem, the leader may be a state or systemic actor like the secretariat or conference chairs. However, especially complex problems need powerful leadership in regime. A hegemonic leadership does not guarantee success necessarily, but success is relatively higher in unipolar structures, especially in regulative regimes. However, leadership -not necessarily hegemonic power, it may be structural, entrepreneurial and intellectual leadership[436]- is an

[433] Underdal, One Question, pp.3, 14-15.
[434] Chayes and Chayes, The New Sovereignty, p.149 cited from Mancur Olson, **The Logic of Collective Action: Public Goods and the Theory of Groups**, 2nd Ed., Harvard University Press, Massachusetts, 1971.
[435] Breitmeier and Wolf, p.356.
[436] According to Young, different stages of regime creation process are required for different kind of leadership. At the process of agenda formation, intellectual leadership is important while entrepreneurial leadership important at negotiation process. On the other hand, structural leadership plays important roles at all processes. O. Young, Creating Regimes, pp.21,172.

important factor in accelerating and shaping the regime.[437] Leaders lead policies, impose rules, select political tools and control functioning. If necessary, leaders are strong enough to conduct enforcement mechanisms.[438] Beside political leadership, in accordance with subject issue of regime, a leader who has technology and financial source for capacity building may be necessary.[439] This kind of leadership or at least skill is particularly important for environmental regimes. On the other hand, GEF and WTO are also the tools to conduct this leadership. However, as well as its power, the effect of leadership depends on its followers. Without the acceptance of followers for its leadership, being leader does not initially promote effectiveness.[440]

Regime design is a complex issue. The aim and scope of regimes should be determined carefully. For example, if the aim of regime was cooperation only, there would be limited change in state behaviors, and that regime would be relatively easier for implementation. Many international regimes seek to ensure cooperation in state behaviors. However, only cooperation is not enough for environmental regimes.[441] Cooperation, coordination and regulation are needed to stop degradation and to repair. On the other hand, when the aim of regime is regulation, there is a higher need for change in state behaviors and consequently implementation becomes harder.[442]

In regime design as much as clarity, fairness and equity should be pursued. It was emphasized in preceding section that when states believe that a rule is fair and legitimate, they more voluntarily comply with it. So the first condition for regime effectiveness is fairness and equity in legal obligations. Particularly for developing states involving in a regime these are essential criteria.[443] However, in environmental regimes, it is claimed that to reach to an ecologically fair arrangement is not easy because of asymmetry of power -both in bargaining and implementation capacity- between

[437] Young and Osherenko, pp.229-230; Underdal, One Question, p.29.
[438] Underdal, One Question, pp.29-33.
[439] Underdal, One Question, p.35.
[440] Young and Osherenko, p.259.
[441] Mitchell, Institutional Aspects, p.223. tumu pp.221-244.
[442] DiMento, Global Environment, p.86.
[443] Luterbacher and Spinz, Conclusions, p.302.

polluters and victims of environment. This claim is acceptable because usually the polluter states have the bargaining power and so they define the conditions of regime, victims of degradation of environment are mostly developing states which neither have power to bargain to set the rules of game nor technical and financial capability to solve the environmental problem without helps of polluters. Even if the polluters are excluded from or cannot induce to regime to be able to create more effective solution-oriented regulations through normally harsh regulations which they would not accept, since they will continue to act in polluter behavior, regime would be ineffective again.[444]

For environmental regimes, scientific findings are particularly essential. As much as evidence of degradation, negative consequences of this degradation, outcomes of current behaviors which are desired to be altered and expected results of regime should be revealed. Scientific evidences are tools to convince all parties including sub-state actors that these responsibilities are everybody's gain.[445] However, uncertainty and division in science and knowledge decelerates regime movement.[446] Success of many environmental regimes has been depending on scientific contribution to regime design and scientific consensus on causal link of environmental degradation and political action. This is the role of epistemic community. Ozone regime is a good example for science and regime relationship. First, scientific research showed that there was depletion in ozone layer which was arising from mainly CFCs emissions. Scientific findings created both political and public awareness. This awareness pushed states into cooperation and in the end ozone regime was created by two international treaties.

The necessity for an umbrella organization is debatable however the successes of regimes which are functioning under an international organization prove that international organizations affect regime effectiveness positively. Beside their management capability, these organizations collect knowledge and experiences from

[444] Breitmeier and Wolf, p.350.
[445] Luterbacher and Spinz, Conclusions, p.301.
[446] Underdal, One Question, p.22.

other related organizations with which they have common interest and create its own epistemic capacity.[447]

2.2.1.3. Regime Legalization: Treaty Design

Many legal scholars -even in this study - say that to build a regime, one of the first steps is to make a treaty. It is believed that regimes which are based on a legal system instead of only on bulk of norms seem more legitimate and will be more effective consequently.[448] Legal texts make regimes formal, legal, legitimate, concrete and explicit. The frame of treaty-based regimes is more specific and clear, the parties and non-parties of regime are more definite. So, legal systems like treaties are the self-pull tools of compliance.[449]"[N]ailing things down" decreases ambiguity of norms, diminishes contestations of parties and increases mutual reliance.[450] It is generally accepted that compliance with hard law instruments relatively more possible than compliance with soft law instruments.[451] So, in designing of a regime, rather than soft law instruments, hard law instruments should be used. However, as it is already underlined, there should not be any difference among the commitments made by states.[452] So, to make a legal document like treaty and to negotiate on this treaty actually are the first signs of taken step for regime building.

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[447] M. Young, Climate Change, pp.164-165. UNEP and WTO have cooperation agreement and financial assistance of environmental capacity building; the Secretariat of UNFCCC has observer status at Committee on Trade and Environment of WTO; the Secretariat of the CBD and the Secretariat of the CITES signed the Memorandum of Understanding.

[448] Breitmeier, Young and Zürn, p.79.

[449] Breitmeier, Young and Zürn, p.79 cited from Thomas M. Franck, **The Power of Legitimacy Among Nations**, Oxford University Press, New York, 1990.

[450] Friedrich V. Kratochwil, "Contract and Regimes Do Issue Specificity and Variations of Formality Matter?" in **Regime Theory and International Relations**, (Ed. Volker Rittberger), Clarendon Press, New York, 1993, (Contract and Regimes), p.91.

[451] Guzman, The Design, pp.582-593.

[452] Even in the 'common but differantiated responsibilities principle', the commitment is substantially same but the designation of the obligations for that commitment is adjusted according to the developing states' capabilities.

To succeed in achieving goal, treaty rules should have been designed appropriately for intended aim. Treaty provisions should be clear, so each party could know "who must do what".[453] In textualizing of treaty and in choosing the techniques, the characters of the problems and of the parties should be considered, too. Some problems need more precise obligations, such as reducing the carbon emissions in a specific time schedule or quotas for whaling, some need more elastic obligations, such as undertaking appropriate measures for the protection of cultural and natural heritage.[454] More precise and strict obligations could frighten away states from being a party of a treaty or could make it harder, if not impossible, to reach the target. So, sometimes it is avoided from clarity intentionally. Besides, during textualizing a treaty, a language which needs to be interpreted for specific applications is used because it is not always possible to foresee every possible circumstance of application. The need of interpretation may conduce to different applications which can cause disputes between parties. Contesting interpretations of an obligation put the states in such a position in which they all think that they themselves comply with the treaty while the rest not.

International law rules are mostly static regulations. It takes a long time to ingenerate but once they come into existence they stay stable for a long time. Most of the Convention on the Law of Treaties' rules have been used since 1969. The rules of the Convention on Diplomatic Relations also have been used since 1961. They also reflect the customary rules which are created for a long time ago and both do not need to be changed at least in a near future. Nevertheless, international environmental law does not have much long-established rules so that continuous new learning and new necessities are rising up and new rules are emerging.

As the time goes by people change, politics change, needs change. Sometimes foreseen future does not match with the reality. And it is always possible and almost inevitable that treaty gets older. It is not likely to foresee the legal, political, even technical changes of future, especially in environmental law. Even the best designed

[453] Mitchell, Institutional Aspects, p.228.
[454] Brown Weiss, Understanding Compliance, pp.1572-1573.

treaties need reviewing and adjustment. Regimes are dynamic and evolutionary institutions. Over the course of time, regimes change and develop and so the treaty on which regime is based need to adjust itself to this change. Additionally, when the cooperation between states starts obtaining results, it is more likely to deepen the current cooperation and to expand the treaty into new phases. So, treaties change, learn, adapt and develop in time. The text of treaty "should be regarded as 'living instruments' within which 'more attention is to be focused on ongoing developments than upon the mind-sets of the parties back when the treaty was negotiated'".[455] "Arrested development" regimes stuck eventually even if they were created promisingly and have risen in a certain degree due to they cannot adjust and update themselves or they collapse.[456] Reviews of state reports by compliance committees and meetings of MoPs are good alerting mechanisms for the need of change. Review and transparent information system are essentials for determining the failures, necessities and lacks in regime creation. Interpretations are necessary but limited tools which answer the new challenges. Regimes could develop through principles and behavioral changes by itself since it is not consisted of only written legal regulations however treaties are static legal texts which are hard to change. Amendments and protocols are ways to adapt the regime to new necessities in a stable and also dynamic manner. In a continuously evolving regime, states are engaged better and effectiveness is higher. This is also a functional way for deepening and widening in institutionalism.

In environmental law, framework-protocol approach is adopted to evolve the treaty continuously and this is called progressive development.[457] First, a general convention is made to frame a general term. The purpose of frame conventions is usually limited with creating a common start point for parties and commencing collaboration between parties. The framework convention reflects a political consensus for further legal movements on a specific issue area. In framework conventions, definition of

[455] Davies, p.85.
[456] O. Young, Institutional Dynamics, pp.10-12.
[457] Young emphasizes that this is a distinctive feature of environmental regimes. O. Young, Institutional Dynamics, pp.9-10.

problem, a call and need for cooperation for solution, frequency and structure of further meetings to review the problem and evaluation of new knowledge and reassessment of cooperation are regulated.[458] After signing framework convention, which tries to develop a general approach to the problem, in a further meeting, parties focus on the details of actions to "achieve concrete objectives consistent with the [framework] convention".[459]

The advantage of framework-protocol approach is being more productive for international cooperation. Because of a general statement of problem and loose commitments at the beginning, to find a common base for cooperation among different oriented parties is easier in the first steps, and in the further steps, constructing new values and norms over this base are more progressive. To take the required actions in a "step-by-step process" in a momentum and to create a fertile environment to maintain the negotiation and, consequently, learning process by value and knowledge exchange. Continuing process may diminish bargaining tactics like one-shot threat and bluffs which are more effective on one-step negotiations. Though, there are still some disadvantages in this approach. Framework convention may remain a symbolic step to quell stakeholders or may "take the heat off" of parties' belief in the urgency of problem and in necessity of quick action. And the length of the process may cause to go on cold even for the crusader parties or the process may be dragged out because of loose commitments and flexible schedules in the further steps.[460]

On the other hand, continuous evolvement means never ending new commitments. New commitments in new protocols and amendments bring different and maybe unexpected burden on states which they do not know in signing in the main framework convention. Even though states are ready and consent to that current commitments in the beginning, so that the compliance with and success of regime

[458] Lawrence Susskind and Connie Ozawa, "Negotiating More Effective International Environmental Agreements" in **The International Politics of the Environment**, (Eds. Andrew Hurrell and Benedict Kingsbury), Clarendon Press, Oxford, 1992, p.144.
[459] Susskind and Ozawa, p.144.
[460] Susskind and Ozawa, pp.146-151.

become high, new commitments may lead to lose motivation and cause lower compliance.[461] Norm internalization and effectiveness of regime in behavioral change manner can overcome this risk. If regime could success to assert the belief for the need of change in behavior, further commitments could be much easily encumbered.

In environmental framework conventions, states are first asked for scientific researches and data exchange in the scope of the conventions which are the base of further regulations. More importantly, framework conventions create signs for the necessity of international legal regulations and the seeds of common normative understanding. The Vienna Convention on Protection of the Ozone Layer and the Montreal Protocol; and UN Framework Convention on Climate Change and the Kyoto Protocol are the examples of this approach. In all these framework conventions, attention was drawn to urgency of the problem; and the necessity for a common international policy was emphasized; technical, scientific and legal cooperation were asked. After cooperation on scientific researches, data exchange, bouncing the ideas off from each other and consensus on further policies in MoPs and in international conferences, the protocols brought prohibitions and limits on related substances. While the general rules are defined with protocols, practical adaptations, such as extensions of deadlines; arrangements of limiting quantities; additions of new substances are made by MoPs through amendments[462], because protocol adaptation takes a long time since it is another kind of international agreement which requires negotiations, signing, ratification and time period for entering into force. Whenever new knowledge presents about problem, annexes and amendments reassess the new regulations.[463] In a regime conducted by international organization, authority of these adaptations is given to governing body as it can be seen in WTO, OECD, IMO, and International Civil Aviation Organization (ICAO).

[461] Sand, Institution, pp.790-791.
[462] In CITES, species which "threatened with extinction" are listed in Appendix I and their trade is prohibited in general; species which "may become so" are listed in Appendix II, their trade is certified by exporting state. According to monitoring, the declining and raising the population of species, they replace in Appendix I or II and move from one to other by voting of CoP.
[463] Sand, Institution, p.786; Susskind and Ozawa, p.154.

Before proceeding, it should be emphasized that regime creation is not panacea for any kind of international cooperation and regulation problem. No matter how well a regime is designed, the most important criteria for effectiveness of an international norm are legitimacy and internalization of the norm. First, agreed norms, principles and rules in a regime must be coherent with the ones in another regime. Especially, primary regimes which shape the general frame of international relations and the regimes with which primary regimes are related in terms of subject and purpose must be coherent. Otherwise, not only parties of regime, non-parties start questioning legitimacy of the regime. Second, parties must believe that norms, principles and rules agreed in a regime are fair and legitimate by their own. For the acceptance of a norm as legitimate which is created within a regime, shared expectations of regime partners must pattern the determined behavior.[464] As long as states believe that the norm is legitimate, they comply because they accept that this is the right and necessary action to do. Similarly, non-compliance may be prevented by compliance mechanisms but states watch for an opportunity for non-compliance unless norm internalization and behavioral effectiveness cannot be actualized. Maybe, Russian dumping of hundreds of tons of nuclear waste into Sea of Japan at 1993 was not non-compliance with London Convention since the level of radioactivity of the waste was lower than the prohibited limit in the Convention, but it was still a non-compliance with the spirit of the regime since Russia had not internalized the norm yet.

Comparison between ozone regime and climate regime is helpful for a better understanding of regime building for higher effectiveness. Ozone regime was started to be built in early 1980s. In 1985, Vienna Convention for the Protection of the Ozone Layer was signed as a framework convention and in 1987; Montreal Protocol on Substances that Deplete the Ozone Layer was signed. Both treaties and their four amendments were universally ratified. So, the ozone regime is a treaty-based universal regime which is based on scientific findings and it is still evolving with new legal and scientific developments. According to compliance committee, compliance rate with

[464] Krasner, Structural Cases, p.18.

ozone regime is 98%. Most importantly, the determined level for phasing-out of ozone depleting substances, for 2010 term, was succeeded and, in total, 98% of ozone depleting substances were phased-out. In 2010, new and the last term was begun and in this period the remaining 2% is targeted. Furthermore, scientific observations shows that ozone depletion has started healing itself and ozone layer will return to pre-1980 situation in the 2050s, though 15 years more are needed for the healing of depletion over Antarctic.[465] However, it is still questionable whether full-recovery will be achieved against the negative effects of climate change.

On the other hand, climate change regime has not been successful[466] as much as ozone regime despite of relatively more developed regime experiences in international relations. In the late 1970s and the early 1980s, scientific findings started to give signals about climate change. First climate change conference was held in 1979. After several international meetings in 1992, the UN Framework Convention on Climate Change (UNFCCC) was signed and entered into force in 1994. In 1997, the Kyoto Protocol was adopted. So far UNFCCC was ratified by 195, and the Kyoto Protocol was ratified by 192 states. The ratification numbers are almost equal to ozone regime, and both ozone regime and climate change are universal regimes. Detection of problem and international cooperation for solution started almost at the same time. Furthermore, both are dealing with equally important and universal problems which could affect human life critically. Moreover, when states parties were creating the climate change regime, they knew the benefits, challenges and techniques for regime creation from ozone regime. Thus they copied and then developed some features of ozone regime, such as compliance mechanisms, enforcements mechanisms, technical and financial assistance. But, somehow climate change regime could not reach the effectiveness score of ozone regime. It is still needed to be emphasized that the climate change regime is accepted as

[465] The Vienna Convention and the Montreal Protocol and four amendments are the first and only universally ratified treaties through 197 ratifications. "Montreal Protocol - Achievements to Date and Challenges Ahead", http://montreal-protocol.org/new_site/en/MP_achievements_challenges.php, (01.12.2014).

[466] Young called climate regime as an arrested development case. O. Young, Institutional Dynamics, p.13.

one of the most successful environmental regimes. But the point here is that, no matter how it is successful, it is not an over-achievement as much as the ozone regime. So, what did make difference in effectiveness between these two regimes?

First of all, there was a consensus between scientists on the depletion of ozone layer and on its arising as a result of human actions. After scientific researches, the ozone depleting substances were clearly found out. States and UNEP were strictly trusted and depended on scientific findings along the regime creation. However, there is still debate even over whether the climate change is real. Some scientists claim that this is a natural cycle which happens in each century. Also, according to some scientists even human actions have negative effects which may cause climate changes, these effects are minimal and not necessarily needed to be altered. Natural balance of earth has capacity to absorb these effects. Despite there is a growing belief that that is real, division in science on the causes of climate change lead to division in states' outlook on political steps. Even though almost all states signed and ratified UNFCCC and the Kyoto Protocol, the results of this suspicion still appear in CoPs. States involuntarily accept some regulations if they do not object at all. And concerns on necessity and consequently legitimacy of regulation cause non-compliance cases. So, the legitimacy of climate change regime is lower than ozone regime.

Secondly, the emissions accepted as ozone depleting substances like CFCs, halons, carbon tetrachloride, methyl chloroform and chlorobromomethane have been relatively limited for use when they are compared with greenhouse gas emissions which cause climate change like carbon emissions. Carbon emissions result from mainly fossil oil consumption on which almost all industrial and energy production activities are based. Ozone depleting substances are mainly used as intermediate-product in industry. Substitution of these substances in their first production level by ozone-friendly substances was relatively easy and effective for phasing-out. Additionally, the cost of transformation was relatively cheap. Furthermore, there was a competition between companies like DuPont who produce ozone depleting substances to be the market leader. Thus they started to produce ozone-friendly substances quickly; accordingly industries

which used ozone depleting substances in their production stages had been obliged to keep the pace with these transformations. So, with the interest and support of first-producers, intermediate-consumer and final-consumers, first targets of regime met for well ahead of schedule. Contrarily, the greenhouse gases arise from almost all kind of human activities like industry, energy production, and transportation. From first-producers to final-consumers, there is a wide and grift consumption of greenhouse gases-related substances. To be able to phase out greenhouse gases, vital changes are needed, from state policies to individual life-style. It is hard and high costly to replace usage of substances, mainly fossil oils, emissions of which are the reason of greenhouse, since they enmeshed all our lives. What worse is that economies of a remarkable amount of states depend on fossil oil production which is hard to convince those states to stop production. So the solution of climate change problem is harder than ozone depletion because of the malign problem.

Thirdly, main companies which are producers and main buyers of ozone depleting substances supported ozone regime. Similarly, the market states of ozone depleting substances signed, ratified and complied with the ozone regime. However, being in the first place USA, and then Russia, China and India, the largest greenhouse gas emitters, objected to climate change regime in the first time. Russia, China and India ratified the Kyoto Protocol though still they have some concerns. China, even though it is the largest greenhouse gas emitter by being responsible for 23% of total emission, and India, being the third one by 5%, are accepted as developing states, so they are in grace period and do not need to reduce carbon emissions. USA, China and India emitted 43% of the total greenhouse gases in 2013.[467] To create a politically agreeable regime, problem-solving effectiveness of regime was ignored in climate regime. Many scientists claimed that taken measures and determined time-schedules of reducing greenhouse emissions are ways below than the required actions in order to reverse climate change.[468]

[467] Statistic Portal, http://www.statista.com/statistics/271748/the-largest-emitters-of-co2-in-the-world/, (01.07.2014).

[468] See Eugene Linden, **The Winds of Change: Climate, Weather, and the Destruction of Civilizations**, Simon and Schuster, New York, 2006.

On the other hand, USA, who is unsatisfied the burden it is supposed to take, has not signed the protocol yet.

Fourthly, as a consequence of political satisfaction, UNFCCC does not allow the CoP to make amendments, arrangements and adjustments in accordance with the Convention and the Protocol. Every new regulation needs to be negotiated at conferences and separately signed and ratified by parties. This new treaty making process makes the regulative decision-making process harder and bulky. The climate change regime does not have the flexibility and progressive features independent from parties' initiatives in contrast with the ozone regime.[469] The ozone regime allows CoP to make self-triggering adjustments without ratification which gives flexibility and acceleration to regime.

Fifthly, high financial burden of climate change regime is an obstacle. Even the GEF has the task to support financial assistance to the developed states; there are still many burdens on them for transition of technologies. The North-South division is clearer in climate change regime since developing states see the industrial policies of developed states as the reason of climate change, so they do not want to suffer from their fault. In ozone regime, the burden on developing states is relatively low. Because ozone depleting substances were produced and used mostly in developed states, their responsibilities are lower than they have in climate change.

2.2.2. Compliance Mechanisms

The question of why states comply was tried to be answered previously. Even though there is a belief that states comply initially, sometimes, more or less, they may need to be pushed to it. Under this title, mechanisms which make states comply will be analyzed.

[469] O. Young, Institutional Dynamics, pp.93-94.

2.2.2.1. Confidence Building Mechanisms

Edith Brown Weiss explains "sunshine methods" as monitoring, reporting, transparency and non-state actors' involvement in compliance mechanisms which are the topics of this title.[470] It is rather call "confidence building mechanisms" to emphasize their role in compliance. These tools promote confidence among states parties. Confidence building mechanisms make all parties sure that all commitments in a regime or at least in a treaty "are 'safe, advantageous and credible'."[471]

Sunshine methods or confidence building mechanisms can be thought as the insurance of compliance for observing whether parties pull their weight. A well-built mechanism disseminates information to parties about each individual action and about regime as a whole. By reviewing state performances, intentional and good faith non-compliances can be distinguished as well as the systemic violators and the accidental non-compliers all of which are important to determine for responding policies such as whether sanctions or capacity building. The information coming from parties is gathered, analyzed and feedbacked to the parties again. This is why Ronald B. Mitchell calls this mechanism "compliance information system".[472]

Confidence building mechanisms hamper cheatings and create correlation, cooperation and coordination by increasing visibility of state actions and comprehensive dialogue between parties. Functioning of a regime depends on mutual trust and on knowing that there is not a cheater among them. The function of the ABM regime which prohibits anti-ballistic missile systems 1972 Anti-Ballistic Missile Treaty (ABMT) and 1986 Conference on Confidence- and Security-Building Measures (CSBMS), 1973 Helsinki Final Act of Conference on Security and Co-operation in Europe mainly relied on the 'national technical means of verification' -whatever the real interest of parties

[470] Brown Weiss, Strengthening National Compliance, p.299.
[471] Chayes and Chayes, The New Sovereignty, p.148 cited from Elinor Ostrom, **Governing the Commons: The Evolution of Institutions for Collective Action**, Cambridge University Press, Cambridge, 1990, p.186.
[472] Mitchell, Regime Design, p.430.

was-, a system which is based on an information about regulated activities that, this way, all sides could be sure that the other side was not cheating and was complying with the regime. The effectiveness of and compliance with disarmament, and the widening of disarmament even during the highest tension of Cold War times, depended on the confidence of USA and USSR each other.[473]

Confidence building mechanisms are reporting, monitoring and transparency. In specific regular reporting, on-site and off-site monitoring, report reviewing processes, access to information about state actions are all confidence building mechanisms which are examined below in details.

2.2.2.1.1. Transparency

The unique tool which is required and works in every kind of cooperation and relation is *transparency*. Transparency is a general managerial strategy works not only for international law, but also with business, state governance etc. when cooperation is required between parties. Transparency is "the generation and dissemination of information about the requirements of the regime and the parties' performance under it".[474] Transparency means accessibility to information and availability of knowledge about what others do, what they do not do and what one shall do. In a transparent process, conflicts diminish, cheatings are moribund, confidence is built, cooperation improves and actions are harmonized. This is important for compliance as well as for cooperation in general. In a transparent process, states find a platform not only to show their own compliance levels, also to review the circumstances which cause non-compliances, and to see the comments of others. As well as transparency is a confidence-building mechanism, it is also a mechanism to explore and identify the common causalities of non-compliance and an opportunity for brain-storming between

[473] Chayes and Chayes, The New Sovereignty, pp.146-147.
[474] Chayes and Chayes, The New Sovereignty, p.22.

parties in order to solve obstacles of compliance. If there are initial problems in regime-design which cause non-compliance, transparency is a mechanism to determine them.

Creating more transparency in a regime depends not only on involving the states parties and organs of treaty but all relevant actors in compliance mechanisms. If states parties participated in compliance mechanisms, these mechanisms could be more effective and reliable. The more participatory the mechanism is, the more transparent it is and the more effective the regime is. Transparency is; a warning system which prevents parties even before a non-compliance situation happens[475]; a promoting system in which all stakeholders deal with a problem in different aspects so that they could find the best solution; and an enforcement system which keeps parties in line through knowing that they inevitably covered if they non-comply and this is also a sanctioning system which may cause loss of reputation and a decline before the graces of international actors.

Transparency in regimes means "the adequacy, accuracy, availability, and accessibility of knowledge and information about the policies and activities of parties to the treaty, and of the central organizations established by it on matters relevant to compliance and effectiveness, and about the operation of the norms, rules, and procedures established by the treaty".[476] There are three functions of transparency for compliance: coordination, reassurance and deterrence.

Coordination is a basic target of all international regimes. Transparency assures coordination and convergence between the actions of sovereign parties and so creates harmonization by facilitating states to come to a decision on and how to conduct a rule. Agreed rule is publicized and widened via transparency. Once a rule produced, states do not have incentives to act contrary. States harmonize their behaviors and cooperate to promote a common interest. Interest related with or generated from a rule which is hard or expensive to generate on one's own, is collectively produced and shared.[477]

[475] Brunnée, Fine Balance, p.239.
[476] Chayes, Chayes and Mitchell, p.43.
[477] Chayes, Chayes and Mitchell, pp.43-44; Chayes and Chayes, The New Sovereignty, pp.22, 142, 151.

Knowing that others also comply is a reassurance for the compliers. States comply with rules as long as others do so. Individual compliance is contingent to compliance rate of others. Transparency creates confidence, make sure that all parties comply and all parties have equal responsibilities as well as they have benefits from a treaty.[478]

Fear of being detected with cheating is a deterrence preceded with the punishment against cheating. Transparency makes clear which parties non-comply with the rules and who are the free-riders. In a transparent system, knowing that exposure is possible keeps the states in line and deters about cheating. So, potential non-compliance cases are prevented even before it happens because the state which intends to do so, knows that it could be detected immediately.[479]

States, like people, obey the rules as long as they are sure that the others also obey, so that they are not cheated.[480] Regime should be created as transparent and make sure that *pure coordination* is generated. It is said that pure coordination leaves no rooms for individual incentives for not complying. In a pure coordinated system, each party is sure that the other parties also comply and will continue to comply. The expectation in building a regime is that all parties comply with the norms and each one contributes to create a common good. As long as a state is sure that this expectation comes true and that all other parties comply with the norms, it also feels an obligation to comply. The mechanism which assures parties that every state complies and contributes is transparency. Chayes and Chayes convert the *prisoners' dilemma* game into an *assurance* game through transparency. If both prisoners know what other one is doing, they both keep silent and get off with a minimum punishment which is the best result for both of them. Even though there is not a norm in this situation and also they still have and incentive to confess and be free, the availability of knowledge about the actions of

[478] Chayes, Chayes and Mitchell, p.44.
[479] Chayes and Chayes, The New Sovereignty, pp.22, 142, 151; Chayes, Chayes and Mitchell, p.44.
[480] Chayes, Chayes and Mitchell, p.43.

others promote common interest and absolute gain in this simulation.[481] Such knowledge is also a basis for further decisions of states. Parties decide whether to keep the regime continue accordingly with the knowledge about "past rounds"; states observe the behaviors of others in past rounds[482] and consider the outcomes of the past rounds in order to determine the retaliation and stabilization of a regime.[483]

Transparency cannot be ensured only by states parties. The Secretariat, compliance committees, Conferences of Parties and all other organs of a regime are responsible to act transparently and to enhance transparency. Besides, transparency is an important tool for compliance of in-state and non-state actors, too. As it is mentioned, environmental regimes require specifically compliance of in-state actors more than compliance of states. In fact, states are intermediaries in transferring the international environmental law regulations to national laws for regulation of the environmental actions of people and companies within their borders. To achieve the desired level of compliance, a state should make the in-state actors comply by using the same tools on itself. Transparency and reporting is one of these tools which enable states to monitor actions of in-state actors. As much as the compliance committees do, if the states could use these tools functioning, the desired level of compliance will be eventually get.

2.2.2.1.2. Reporting

One of the mechanisms which ensure transparency is a working reporting mechanism. Regular review of the regime and determining the condition of regime demand required information from parties. To be able to determine a roadmap, it is important to determine whether states comply and to find out reasons of non-compliance if there is a non-compliance case. Reporting is a tool for information transfer and data

[481] Chayes and Chayes, The New Sovereignty, pp.142, 144-145 cited from Michael Taylor, **Community, Anarchy and Liberty**, Cambridge University Press, Cambridge, 1982, pp.48-50 and from Carlisle Ford Runge, "Institutions and the Free Rider: Assurance Problem in Collective Action", **The Journal of Politics**, Volume.46, 1984, pp.160-162.
[482] This is why reputation is important in cooperation games.
[483] Robert Axelrod, **The Evolution of Cooperation**, Basic Books, New York, 1984, p.54.

gathering is the first step for review process as well. Reporting mechanism engages states both vertically and horizontally. It is an opportunity for states to do a self-controlling. Reporting obligation affects states positively in both psychological and political ways.[484] Reporting is not just a procedure to measure national compliance levels. Reporting is also a mechanism for collection of relevant data, documental time line of how much regime progressed, how successful it is, performance of regime in general, measurement of its adequacy, evaluation of regime's success in realization of its target, a survey for determination of regime's problem, a guide for future policies.[485]

Reporting of national compliance with MEAs has begun in 1972 after the Rio Summit.[486] Today almost all environmental treaties obligate periodic reporting of parties. Reporting mechanism turns national activities into common knowledge and thus generates information on treaty's effectiveness. Nevertheless only provision of periodic reporting obligation in a treaty does not suffice for compliance. There are also problems of non-compliance in reporting obligation and unreliable reporting, late reporting, incomplete reporting and unverifiable reporting. Many states of party, even though it gradually diminishes, either do not submit their periodic reports at all or submit them lately. Furthermore, the big part of the submitted reports are either unreliable or unverifiable, or inaccurate, which make harder, if not impossible, to evaluate the compliance of a state. In fact, for review compliance with treaty, compliance with reporting obligation should be reached at first. Lack and failure in reporting arise mostly from technical or administrative incapabilities.[487] On the other hand, if non-compliance with reporting obligation is not due to incapability but done consciously, then mostly it is an "early warning system" about a crucial non-compliance. The state which avoids or

[484] Kiss and Shelton, p.84.
[485] Chayes, Chayes and Mitchell, pp.48-49; Kiss and Shelton, pp.81-82; Brunnée, Compliance Control, p.374.
[486] Kiss and Shelton, p.82.
[487] Chayes, Chayes and Mitchell, p.46.

refuses reporting, usually hides something as it was seen in North Korea's refusal to report in Nuclear Non-Proliferation Treaty or Panama's refusal to report to the IWC.[488]

ILO, which publishes reporting failures in black lists, -whatever the reason is, either administrative and technical difficulties or intentional- emphasizes that the reporting is so essential that any toleration in reporting pressure by the Organization may diminish the compliance with both reporting obligation and regime.[489] Since ILO is pushy and obnoxious on compliance with reporting, ILO is of the organizations which have the highest reporting rate. Similarly, compliance rate with ILO regulations is very high. The high manner of the reporting rate and high reliability of reports in ILO system is caused first by Organization's regiment of reporting obligations, secondly, the functional monitoring mechanism, thirdly and most importantly by the NGO participation in regime. States know that albeit they do not submit any report or do submit misreports, the NGOs and Unions will reveal their non-compliance though they try to hide. This is the system that it is offered to improve compliance with environmental regimes. But, despite that almost all environmental treaties impose obligation of reporting, the researches and official documents show that as well as non-compliance with MEAs' provisions, there is also fairly a high rate of non-compliance with reporting obligations.[490] Especially developing countries need assistance on how to report.[491] Relevant units need to be trained on reporting skills and the objective of reporting mechanism is to be explained by experts of related treaty. This training is usually organized by the Secretariats of international organizations.

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[488] Chayes and Chayes, The New Sovereignty, p.155; Chayes, Chayes and Mitchell, p.46 cited from Patricia W. Birnie, **International Regulation of Whaling: From Conservation of Whaling to Conservation of Whales and Regulation of Whale Watching**, Oceana Publications, New York, 1985.

[489] Chayes and Chayes, The New Sovereignty, p.157 cited from International Labor Conference, **Record of Proceedings**, 1980, 37/4-10.

[490] Only 49% of parties to OILPOL and MARPOL submitted their reports in 1990. Mitchell, Intentional Oil Pollution, p.132.

[491] According to findings of The Ad Hoc Group of Experts on Reporting, who investigated inaccuracy reporting to the Montreal Protocol in 1991, failure in reporting of developing countries were caused by technical problems which could be solved through financial and technical assistance. Chayes and Chayes, The New Sovereignty, p.158.

The conditions a report has to have are accuracy, honesty and reliability in reporting.[492] States may submit falsely or miss reports which does not reflect the reality due to the fear of punishment, publicize and embarrassment of being non-complier and display ulterior behavior to cover the guilt especially in accusatory non-compliance systems. In accusatory systems, reporting is recognized as a problem to parry. But, in fact, determination of real causes of non-compliance and facilitation of compliance are possible only by accurate reportings. Instead of accusing the non-complier party, and to sanction it, the real circumstances of case could be explored and, if necessary, assistance and guidance could be provided.[493]

The problem of reporting is creating a work load for actors. Reports are prepared by middle or low level officials of relevant ministries.[494] These officials usually are not required to have skills nor information about treaty and its components. There may be technical and administrative incapabilities for reporting, especially in developing countries. As well as they are hard to review and verify by compliance committees, these reports which take long times to prepare, unnecessarily detailed, over extended, and digressive cause loss of energy and time, lack of motivation and prove to be out of focus.[495] On the other hand, inadequate reports cannot serve their purpose. Setting this balance is possible by result-based reporting through guidelines about reporting and standardizing primary reporting formats; and common templates are suitable for the purpose of treaty and appropriate for parties.[496] Thus, every reporting party submits only relevant and accurate reports.[497] Standardized reports are not only facilitate works of

[492] Brunnée, Compliance Control, p.374.
[493] Chayes, Chayes and Mitchell, p.49; Brunnée, Compliance Control, p.383.
[494] Chayes and Chayes, The New Sovereignty, p.165.
[495] Additionally, states are not parties of only one treaty which impose reporting. According to Ministry of Foreign Affairs' international treaties database, Turkey is a party to 75 international agreements about environmental protection. MFA, "Database Search", http://ua.mfa.gov.tr/, (21.11.2014). To prepare separate reports for every treaty creates work overload on units. Brown Weiss calls it "congestion in treaty reporting". Brown Weiss, Strengthening National Compliance, p.299.
[496] The first MEA, which standardized reporting format, was CITES. Kiss and Shelton, p.82.
[497] It took almost 20 years of IMO to prepare a template for reporting for MARPOL. After that, both compliance with reporting obligation and compliance with MARPOL in general and also verifiable of reports improved. The Ad Hoc Group of Experts on Reporting says that due to the required information in

states, but also enable reviewing, verification, information convey, evaluation and comparison of committees through clearing off inaccurate information.[498]

The actual duty of parties is not reporting. Reporting is only a tool for compliance. Instead of overwhelming all relevant units of states with reporting, to establish a distinguished reporting unit in ministries -with regard to MEAs, it is usually environmental ministries- seems more effective. Thus, an expert staff could handle all reporting problems and reporting workload. Besides, the stuff whose fundamental duty is to take action on a relevant treaty is not occupied with reporting.[499] Like Brown Weiss, Chayes and Chayes suggest to separate reporting team from operational team.[500] Though agreeing substantially, disadvantages are also needed to regard. The reporting team who works in their own office, despite they prepare reports based on reliable feedbacks and statics data coming from the field, may unintentionally lose touch with reality since they keep off field and operational reality. And then, this may lead to unrealistic reports. In this division of labor, reporting and operational teams should have an intelligent communication beside continuous mutual feedbacks. If necessary, reporting teams should be educated in-field-training regularly.

National reporting is not meaningful without verification and confirmation. Self-reporting is just the beginning of a process. Albeit a full report is given to treaty organs, it is just a paper work which will be archived if not verified. It is enough to say here that verifying of reports by international organs are rare and hard in international law. International verification may be taken as intervention and even sometimes as spying. Bewaring from these accusations is possible by rendering verification of national reports transparent to public and NGOs.[501] ILO, for example, verifies national reports through reports of trade unions, press reports, reports of ILO experts, NGO comments and

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reports for Montreal Protocol are confusing, irrelevant and complex, reports are faulty, defective and deficient. Chayes and Chayes, The New Sovereignty, pp.157-159.

[498] Brown Weiss, Strengthening National Compliance, p.297; Bodansky, Art and Craft, pp.239-240.

[499] Brown Weiss, Strengthening National Compliance, p.299.

[500] Chayes and Chayes, The New Sovereignty, p.166.

[501] Brown Weiss, Strengthening National Compliance, p.301. The meetings of Implementation Committee of Convention on Environmental Impact Assessment in a Transboundary Context (Espoo) is open to public. Ulfstein, p.127.

reports of UN agencies.[502] In ILO system, like International Atomic Energy Agency (IAEA), states compulsorily need to be honest on reporting even if they do not comply, because their reports are confirmed by other partners. This is why ILO established one of the most effective regimes of international law and also this is why for effective environmental regime the ILO model is suggested as an example which is a transnational model in regime pursuing process as well as in decision-making process. A contrary example of how reliability of national reports without any confirmation and verification could cause non-compliance and ultimately ineffectiveness in regime is Russian whaling reports to International Whaling Commission (IWC). After the collapse of Soviet Russia, misreports which were submitted to IWC for years was revealed. The real number of Soviet whaling in the Antarctic was much higher than its national quota and several times higher than sustainable whaling limits as well.[503] If reports are not verified, false reports cannot be detected. A state who does not hesitate to non-comply, does not also hesitate to submit false reports if knows that the reports will not be verified.[504]

NGOs are the most important actors for cross-checking and confirmation of national reports. NGOs and public access to information create pressure for compliance on units and uncover the non-compliance cases. Human rights regime is an example for NGO participation for regime effectiveness. The working of UN Human Rights Council depends on activities of NGOs.[505] Similarly, CITES get help from TRAFFIC and WWF to monitor illegal trading of endangered species and IMO monitor sea pollution with the help of International Chamber of Shipping. Contributions of NGOs are so important that many of environmental treaties are based on -and trust in- submissions of NGOs more

[502] Chayes and Chayes, The New Sovereignty, p.164 cited from Ernst B. Haas, **Beyond the Nation-State: Functionalism and International Organization**, Stanford University Press, Stanford, 1964, pp.254-255.
[503] Walsh, p.317.
[504] Bodansky, Art and Craft, pp.238-240.
[505] Chayes and Chayes, The New Sovereignty, p.164 cited from P.H. Kooijmans, **The Role of Non-Governmental Organizations in the Promotion and Protection of Human Rights**, Stichting Nscm-Boekerij, Leiden, 1990, p.16.

than national reports.[506] The United Nations Commission on Sustainable Development (UNCSD) legitimately collects reports, opinions and suggestions from NGOs about states' compliance.[507] Because, beside cross-checking of national reports, NGOs submit extra information about national implementations, complain about non-compliance cases and keep the issue on agenda. The role of NGOs and other non-state actors in MEAs are gradually increasing. These actors which participate in environmental regimes more than they do in any other international regimes still have limited and informal roles and effects.[508]

2.2.2.1.3. Monitoring

Instead of using the term verification -or inspection though it is rarely- in checking the national reports and declarations, the term of monitoring is used in international law. Off-site monitoring is controlling the questioned subject-field from a distance and it is performed through satellite observation, cross-checks of national reports via submitted documents by NGOs and other sources, scientific consultation, etc. On-site monitoring is visiting and controlling the scene by other parties and representatives of the Secretariat of the Compliance Committees in order to gather information about an actor's regulated actions. The actors who know they are under observance feel obliged to comply to be able to be accountable, especially when the results of monitoring are publicized to domestic and foreign audiences which may be

[506] Chayes and Chayes, The New Sovereignty, p.164.
[507] Chayes, Chayes and Mitchell, p.47; "Non-Governmental Organizations", http://sustainabledevelopment.un.org/index.php?menu=164, (01.07.2014).
[508] Brunnée, Compliance Control, pp.386-387. Because of this, Greenpeace is not officially recognized by International Whaling Commission as a partner, it gets round to supply its information and opinions to Commission. It submit its report via a friend state, and this state submit it as its own report. Bodansky, Art and Craft, p.241.

potentially critical influences.[509] And either high or low, every state is vulnerable to the external influences.[510]

Environmental activities are hard to monitor and inspect. Minor or major, environmental degradations are mostly caused by economic activities, which is conducted within national borders by in-state actors[511], and because it is useful, profitable and sometimes vital, it is impossible to prohibit them completely.[512] The challenge for monitoring in environmental regime is that, complied or not, monitoring a regulated activity is harder than monitoring an activity prohibited completely. In monitoring MEAs, the preferred and convenient way of monitoring is on-site monitoring through local and informal ways.[513] The on-site monitoring is important particularly in international environmental law as much as it is in arms control and nuclear arms regimes because of the higher risks of lacking in control. However, the difference between environmental regimes and arms control regime is that, according to Chayes and Chayes, while the aim of monitoring in arms control is to detect non-compliers, in environmental law it is to assess the effectiveness of regime whether there is a need for further regulations.[514]

The first examples of monitoring of compliance were seen in arms control treaties during the Cold War. These were off-site monitorings, such as observing bases, military facilities and army movements from satellites. In the Post-Cold War period, off-

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[509] The Montreal Protocol publishes CFCs consumption data of states, but keeps the production of states, import and export figures confidential and only states parties can see each other's figures but neither the NGOs nor the scientists. Chayes and Chayes, The New Sovereignty, p.191.

[510] P. Haas, Why Comply, pp.31, 36.

[511] Andrew Farmer, **Handbook of Environmental Protection and Enforcement: Principles and Practice**, Eartscan, London, 2007, pp.106-133.

[512] Richard W. Parker, "Choosing Norms to Promote Compliance and Effectiveness: The Case for International Environmental Benchmark Standards" in **International Compliance with Nonbinding Accords**, (Ed. Edith Brown Weiss), The American Society of International Law, Washington DC, 1997, p.146.

[513] World Conservation Monitoring Unit is asked to monitor import and export lists of states comparatively with CITES listed species. TRAFFIC and WWF monitor trade of endangered species in accordance with CITES. Brown Weiss, Strengthening National Compliance, p.301. Because of ineffective protection of whale population, IWC also started to get help from International Observer Scheme (IOS) by voluntary on-site inspections on whaling ships and on land facilities. Chayes and Chayes, The New Sovereignty, p.186.

[514] Chayes and Chayes, The New Sovereignty, pp.183-185.

site monitoring deepened, expanded and developed into on-site monitoring. The bilateral satellite observation regulated in the 1963 and 1972 ABMT between USA-USSR evolved into mixed commissions of on-site inspections of parties within multilateral INF, CFE, START I, START II, Chemical Weapons Conventions (CWC), Biological Weapons Conventions (BWC), NTM. For monitoring, usually a commission is established by MoP or Secretariat. An alternative and also more effective monitoring method for regime effectiveness is monitoring by a relevant international organization as it was seen in IAEA. However, in environmental regimes, there are few international institutions and hardly any of them have authority for inspections.[515]

Even though only a few regimes like atomic energy, arms control, human rights and environmental protection conduct on-site monitoring, results and benefits show how important verification is.[516] Unfortunately, cheating is still possible if verifications are irregular and not deep.[517] But, if verification is done firmly, deeply, periodically and also randomly (without notifying time and place in advance) the obtained findings could be more reliable and accurate. Nevertheless, states are not volunteers for *challenging inspections*, such as no given notice in advance, 'any time and any where' inspections[518] and generally insist on manageable inspections during treaty negotiations.

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[515] The European Monitoring and Evaluation Programme (EMEP) monitors and inspects emissions and air pollutants in accordance with LRTAP. The Secretariat of CITES makes on-site monitoring by country visitings. Bodansky, Art and Craft, p.241.

[516] The Antarctic Treaty, which prohibits military activities on the continent, has regulated on-site inspections of parties on any other's facilities and expanded it to NGOs' inspections. The Ramsar Convention regulates on-site monitoring of wetlands in case of detection of a risk at a national report or accusations. These inspections are conducted by a team of secretariat representatives and technical experts accompanied by national officials. Implementation Committee makes on-site monitoring of compliance with the Montreal Protocol on the request of state of party. Chayes and Chayes, The New Sovereignty, pp.186-187.

[517] Iraq's undeclared nuclear energy facility, hence being out of scope of IAEA's inspection authority, was uncovered after the Gulf War. After IAEA's inspection, policy turned out to be unsuccessful, it was re-structured including expanded authority and special inspections which is cold-call if there is a suspicion. The first implementation of this practice would be North Korean nuclear energy program if it would gave consent. Chayes and Chayes, The New Sovereignty, p.181. Being dependent on the consent of the party, the faith of cold-call inspections is the lack of IAEA monitoring system, controlling of the nuclear weapon regime is a successful one in general though.

[518] Chayes and Chayes, The New Sovereignty, p.182.

For a model of more participatory and efficient monitoring mechanism, a combination model of ILO and UN the Human Rights Committee structures can be thought. ILO is a model that unions, employers, employees and government representatives actively participate in. When different stakeholders meet at a common place, all sides have opportunity to pursue, to control and to monitor each other. More importantly, such a model creates a base that every party could talk about its own problems and suggest solutions for their own problems to other parties. Communication is the first step for consensus and cooperation to be able to promote development. Different reports from different stakeholders reveal different perceptions and comments of one particular subject while also states are deterred about cheating in reports.[519] A different but still a fair sample is the Human Rights Council. Even though non-state actors are not allowed formal reporting, non-state actors, especially national and international human rights institutions, have crucial roles in monitoring of national compliance. Last but not least, the Human Rights Committee is open to individual complaints beside state complaints.

2.2.2.2. Capacity Building Mechanisms

In a nutshell, willingness and capacities states have affect attitude of compliance.[520] The willingness is an internal *interest calculation* which could be affected by the characteristics of objects only to certain degree. Capabilities mean the internal ability to accomplish commitments. Peter Haas summarizes the interaction between willingness, capability and compliance in a table.

[519] Peter H. Sand, "Lessons Learned in Global Environmental Governance", **Boston College Environmental Affairs Law Review**, Volume.18, 1991, (Lessons Learned), p.273.
[520] Brown Weiss, Strengthening National Compliance, p.297

Figure 2: Likelihood of State Compliance

	Costly Compliance	Compliance Not Costly
State is capable and willing	possible	most likely
State is capable but unwilling	unlikely	unlikely
State is incapable and willing	State may try to comply and expect to fail in order to attract resources from international institutions to improve capacity	State may try to comply
State is incapable but unwilling	highly unlikely	unlikely

Resource: Peter M. Haas, "Choosing to Comply: Theorizing from International Relations and Comparative Politics" in **Commitment and Compliance The Role of Non-Binding Norms in The International Legal System**, (Ed. Dinah Shelton), Oxford University Press, New York, 2000, (Choosing to Comply), p.47.

The researches about compliance with international environmental regimes show that non-compliance mostly arises from incapabilities of states. If the main reason of non-compliance is capacities of states, the solution is very easy -at least said easier than done: capacity building. While sunshine methods insure compliance once it is achieved, "positive incentives" like capacity building make states able to comply. Since the first aim of MEAs is to promote compliance rather than to punish non-compliance, the capacity building is an *ex ante* approach to do so.

Capacity building can be seen in the forms of education and training, strengthening national institutions, financial aids and technology transfers. Even though technological and financial capacity differences among parties are tried to overcome through arrangements, such as common but differentiated responsibilities and technology transfers and financial aids; international regulations usually do not take national administrative and bureaucratic capacities into account. Additionally, states are party to dozens of international environmental treaties of which each has different obligations; each requires different treatment and specialization. Furthermore, some of

them impose controversial provisions. States should have technical, administrative and financial capacities to manage them.

2.2.2.2.1. Administrative Assistance and Education

The most common administrative incapabilities of states are "inadequate permit review, infrequent and cursory inspections, announced inspections, poorly trained inspectors, high turnover of inspection staff, and inadequate monitoring techniques or equipment" and "bureaucratic inertia".[521] Some of these shortcomings could be altered by re-structuring relevant departments while some need financial and technical support. In the simplest term, to be able to perform the duties duly, states need technical and legal expert stuff, for example, to fill reports[522], to transfer the international law obligations to national legislation, to inspect the local implementations, beside the need for expert stuff specific to treaty incidents, such as the personnel which monitors the illegal trade of untradeable-species in CITES and measures carbon emissions and sea pollution. Although these duties seem easy, they necessitate qualified personnel substantially. For a higher rate of compliance, administrative officials need to be trained both technically and ethically appropriate with their duties.[523]

Seminars, workshops, and trainings are necessary for the education of national expert officials. Furthermore, for the harmonization of national implementation in accordance with international regulations, these educations are better if taken on an

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[521] Vogel and Kessler, pp.21, 23 cited from Gordon L. Brady and Blair T. Bower, "Effectiveness of the US Regulatory Approach to Air Quality Management: Stationary Sources" in **International Comparisons in Implementing Pollution Laws,** Kluwer-Nijhoff, Boston, 1983, p.44.

[522] The GEF had given priority to projects about improvement of reporting capacity in developing states when the UNFCCC was first signed. After an improvement ensured in reporting and administrative capacities, then funding of GEF has expanded to capacity building and technology improvement projects for emission reduction to promote the compliance of developing states with climate change regime. Chayes and Chayes, The New Sovereignty, p.248.

[523] Economists of future in developing states are trained in industrialized countries to learn economy policies and then work in IMF to learn the philosophy of IMF so that they conformingly comply with IMF policies when they are nominated to a position in their home countries. Chayes and Chayes, The New Sovereignty, p.198.

international scale.[524] State data must be verifiable and comparable for a common data bank, harmonized techniques and information technology. These are also the necessities for data bank of regime. The personnel who are to submit, use, evaluate, analyze and monitor these data about regime need to be educated both nationally and internationally. Then, administrative personnel who are being able to perform the duties duly in accordance with the regime could be employed, lest there should be interpretation differences and national implementation disparities. On the other hand, administrative and technical education requires "training the trainers"[525] at first, so that the personnels of all states parties could be educated by a common expert group regularly and continuously.

2.2.2.2.2. Technology Transfer and Financial Aid

Even in a minimum level, technology is a necessity to verify data systematically to be able to monitor in-state compliance and to report the national compliance to related international organs.

Even though Agenda 21 which was accepted in 1992, was not binding, endorsed a full chapter about technical assistance to developing countries in capacity building.[526] Since the 1992 Earth Summit, technical assistance has become essential in MEAs.[527] Particularly, the Montreal Protocol[528] and the Kyoto Protocol give special concern

[524] After the recognition of necessity of training national officials to promote compliance with CITES, UNEP has started an education program for states of party. In the first year only two seminars were held and only 39 people attended. After 5 years, at 1994, 388 people attended to 5 seminars. Edith Brown Weiss, "The Five International Treaties: A Living History" in **Engaging Countries: Strengthening Compliance with International Environmental Accords**, (Eds. Edith Brown Weiss and Harold K. Jacobson), MIT Press, Cambridge, 1998, (Living History), p.115.
[525] Brown Weiss, Strengthening National Compliance, p.302.
[526] At that time, estimated cost to comply with Agenda 21 requirements for developing states was $600 billion per year. Bodansky, Art and Craft, p.243.
[527] Chayes and Chayes, The New Sovereignty, p.198.
[528] The Montreal Protocol, Article.10A, http://ozone.unep.org/pdfs/Montreal-Protocol2000.pdf, (01.07.2014).

technological assistance. In Kyoto, The Subsidiary Body for Scientific and Technological Advice was established to assist states.[529]

Usually, the greater the economic income is, the greater the compliance is. The most of the non-complying states with international environmental law are the developing states.[530] Sharing the cost is one of the most debated problems of environmental negotiations between North and South division. Almost all kind of international commitments, particularly environmental obligations, bring some financial burdens on states. Environmental treaties bring financial burdens on national budget which developing countries neither have enough nor willing to bear, so consequently financial aid and funding have become a prerequisite for developing states to join the MEAs.[531] To take the load off from the shoulders of developing countries is essential to promote their compliance and internalize them into regime. The level of their compliance is contingent to financial aid by developed states, though it does not mean to push all the cost off on developed countries. However, the cost of financing developing countries is an investment of developed countries to produce *common goods* which they benefit from them.[532]

The Montreal Protocol was the first MEA which brought an arrangement about financial aid.[533] The Protocol established a special fund to provide financial aid to developing states. To enable the compliance of the developing states with Montreal Protocol, Multilateral Fund was established to "meet all agreed incremental costs of" them.[534] It was planned to phase out more than half of the total consumptions of ozone depleting substances by developing countries due to financial assistance through these

[529] The Kyoto Protocol, Article.15, http://unfccc.int/resource/docs/convkp/kpeng.pdf, (01.07.2014).
[530] Vogel and Kessler, pp.22-23, 35.
[531] Brown Weiss, Strengthening National Compliance, p.301. China and India accepted to ratify the Montreal Protocol on the condition of the establishment of Multilateral Fund. Many developing countries accepted the UNFCCC on the condition of financial aid. Bodansky, Art and Craft, p.244.
[532] Bodansky, Art and Craft, p.244.
[533] Chayes and Chayes, The New Sovereignty, p.15. In 1973 World Heritage Convention established a special funding but this Convention is not solely environmental concept.
[534] The Montreal Protocol, Article.10 and London Amendments, Article.10, http://ozone.unep.org/new_site/en/Treaties/treaties_decisions-hb.php?dec_id_anx_auto=780, (01.07.2014).

funds.[535] UNFCCC and Kyoto Protocol have a special mechanism to create funds: Carbon emissions trade. Developed states which filled their quota, buy the carbon emissions right of developing countries which they do not use. Carbon emission trade creates an income for developing states to finance their obligations to the Kyoto Protocol while developed states get rid of their over-emission if they could not achieve to reduce it below their limits. Carbon trade is a mechanism that both keeps the total carbon emissions remain within environmentally safe limits and creates a financial income for developing states.

Today almost all MEAs provide funds. Beside treaty specific financial funds, there are international institutions which finance states' environmental obligations, such as the World Bank. A specific international partnership is which established to finance burdens of environmental treaties is the Global Environmental Facility. The GEF was established as a World Bank program to financially help to developing states for ozone layer depletion, biological diversity, marine pollution and climate change for 3 years. It was a temporary program and was functioning under the World Bank in the beginning. In 1994, at the Rio Earth Summit, it was restructured, became a permanent and separate institution, its budget was increased and its scope has been widened. Today the GEF serves as financial mechanism for six MEAs: Convention on Biological Diversity, UNFCCC, Stockholm Convention on Persistent Organic Pollutants, UN Convention to Combat Desertification, Minamata Convention on Mercury, Montreal Protocol. Since its establishment, the GEF has provided $12.5 billion in grants and contributed $58 billion in co-financing for 3,690 projects in 165 developing countries.[536] Turkey has received $82 million in grants and $461 million in co-financing for 9 national projects.[537]

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[535] Chayes and Chayes, The New Sovereignty, pp.199-200 cited from **Report of the Intergovernmental Negotiating Committees for a Framework Convention on Climate Change on the Work of Its 11th Session**, Held at New York, 6-17 February 1995, Doc.A/aAC.237/91/add.1, 8 March 1995, p.45.

[536] The GEF, "What is GEF", http://www.thegef.org/gef/whatisgef, (01.07.2014).

[537] The GEF, "GEF Projects",http://www.thegef.org/gef/project_list?keyword=&countryCode=TR&focalAreaCode=all&agencyCode=all&projectType=all&fundingSource=all&approvalFYFrom=all&approvalFYTo=all&ltgt=lt&ltgtAmt=&op=Search&form_build_id=form-XcUS4eCLWsZTHdQHS9_KtYzqcXMSsyFR97OD2Anan7M&form _id = prjsearch_searchfrm, (01.07.2014).

Capacity building mechanisms are very effective in insuring compliance. But the shortcoming here is if states are willing for compliance but do not have capability, and if this is why they are abstaining on compliance, sunshine mechanisms create pressure on states toward compliance. On the other hand, they do not initially promote compliance, especially in circumstances when a state is unwilling to comply. They are better to be used as secondary and inducing tools not to change intentions once the desired level of compliance is ensured.[538] The mechanism for states which intentionally non-comply is enforcement mechanism.

2.2.2.3. Dispute Settlement Mechanisms

Either a disagreement on interpretation, an implementation of a rule, an accusation of non-compliance or a conflict, if a dispute between parties cannot be settled, it will eventually become stone-walling for regime effectiveness. According to UN Charter, states need to find a solution for their disputes "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".[539] Many of MEAs, even the UNFCCC which is regarded as the most contemporary MEA, use the same boilerplate provisions for disputes on a treaty.[540] What is worse is that, these provisions are launched on the request of states if they require, and hence they are rarely used.[541] But, according to Guzman's calculations, if the probability of compliance is 50% in an

[538] Brown Weiss, Strengthening National Compliance, p.302.
[539] The UN, "Charter of the United Nations", Article.33, http://www.un.org/en/documents/charter/chapter6.shtml, (01.07.2014).
[540] When the dispute settlement mechanism of human rights regime and environmental regimes are compared, the biggest difference is apolitical juridical organs in human rights regime like European Human Rights Court and Human Rights Committee. Secondly, these juridical processes are inherently open to individual submissions, while non-state actors cannot submit a complaint in environmental regimes.
[541] Daniel Bodansky, "International Law and the Design of a Climate Change Regime" in **International Relations and Global Climate Change**, (Eds. Urs Luterbacher and Detlef F. Spinz), MIT Press, Massachusetts, 2001, (International Law), p.216; Ulfstein, p.131.

ordinary international treaty and if a working dispute settlement procedure is added to that treaty, the probability of compliance increases to 60%.[542]

It is obvious that dispute settlement should be provisioned in treaties to prevent non-compliance cases and it should be mandatory. But, which mechanism is more beneficial for treaty compliance is arguable. The researches show that states highly respects the ICJ as an institution for international dispute resolution. However, a mandatory ICJ provision for disputes in a treaty may cause reservations and less state accepts to form a party of a treaty. Instead of ICJ, which is a formal, inflexible and cumbersome judicial mechanism, informal, flexible and fast-working quasi-adjudication mechanisms are more preferable, such as arbitration or mediation. The procedure of arbitration and mediation is more convenient for developing countries as regime develops. Besides, because they are familiar to background of a treaty and spirit of regime from the very beginning, their operation mode and resolutions are likely to be more beneficial for regime. The deficiency of such a mechanism like this is to decide whether their resolutions are to be binding or not. Even though states may agree on decisions to be binding in a treaty, it again reveals the question of how much states are ready to voluntarily transfer their sovereign rights to another organ which they cannot control.[543]

Analyzing the effectiveness of dispute settlement mechanisms in MEAs is not in the scope of this study. It is sufficient to say here that a working dispute settlement is the one which is compulsory, binding and has power of sanction. For MEAs, as in human rights regime, it would be better to be served to submissions of individuals and non-state actors. In every MEA, the procedure to follow in case of any disputes should be provisioned in detail. Like capacity building and confidence building mechanisms, the importance of dispute settlement for a regime is frequently emphasized by managerial approach scholars. Also in enforcement approach, it is recommended to strengthen the dispute settlement mechanism. According to enforcement approach scholars, states may

[542] Guzman, The Design, p.600.
[543] Chayes and Chayes, The New Sovereignty, pp.224-225.

have different perceptions and different information about a non-compliance case so that their judgments and decisions on sanctions could be affected. And every non-compliance case has its own circumstances. The way to deal with a particular case as it is required is a formal dispute settlement mechanism. Through a formal dispute settlement mechanism, the severity of the cases and the appropriate sanctions could be evaluated case by case, because the optimal treat changes in every case.[544]

Independently from treaties, there is not a specific dispute settlement court for environmental disputes. In 1993, a special chamber for environmental disputes the Chamber for Environment Matters was established within ICJ.[545] International Centre for Settlement of Investment Disputes (ICSID) is also a special mechanism for disputes over investments when it is related with environment.[546] When the relation with environment and economic activities are considered ICSID is an important mechanism for MNCs and states.[547] Every treaty recommends a dispute settlement mechanism or establishes its own organ. For example, the UNFCCC has established Subsidiary Body on Implementation which works on state request over disputes about the implementation of the Convention.[548]

However, compulsory dispute settlement mechanisms are enacted even in the most contemporary ones only in a few number of MEAs.[549] According to the most them,

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[544] George W. Downs, "Enforcement and the Evolution of Cooperation", **Michigan Journal of International Law**, Volume.19, 1998, (Enforcement), p.325.

[545] Constitution of a Chamber of the Court for Environmental Matters, I.C.J. Communique No. 93/20, July 19, 1993. http://www.icj-cij.org/presscom/files/7/10307.pdf, (01.07.2014).

[546] ICSID, "Convention on the Settlement of Investment Disputes", https://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf, (01.07.2014).

[547] Shihata, p.44.

[548] UNFCCC, Article.13, https://unfccc.int/essential_background/convention/background/items/1381.php, (01.07.2014).

[549] Andreas L. Paulus, "Dispute Resolution" in **Making Treaties Work Human Rights, Environment and Arms Control**, (Ed. Geir Ulfstein), Cambridge University Press, New York, 2007, pp.362, 364. In the UNFCCC, submission of a dispute to arbitration and/or ICJ is provisioned for dispute settlement by the "optional clause". It is binding for the state of parties which declares its acceptance. See UNFCCC, Article.14(2). Up to the present only 4 of 192 parties declared its acceptance. "Declarations by Parties - United Nations Framework Convention on Climate Change", https://unfccc.int/essential_background/convention/items/5410.php, (01.12.2014). Similarly, the Vienna Convention has the same optional dispute settlement provision which accepted by only 5 of 197 parties. "The Vienna Convention", Article.11.3, http://ozone.unep.org/new_site/en/Treaties/treaties_decisions-

if parties cannot agree on a mechanism, then mediation and conciliation are designated as the compulsory mechanisms.[550] However, the enacted and applied mechanisms are mostly informal and dominated by negotiation process rather than adjudication. There is an opinion difference between legal and political science scholars about the necessity of formal and adjudication dispute settlement for MEAs. Some scholars argue that, like every other international law subfields, in environmental law too, formal and adjudication dispute settlement mechanisms are more efficient, such as ICJ. Chayes and Chayes, for example, argue that for the normative treaties and regimes which are legal aspects are is more important than implemental stakes, mandatory and binding juridical settlements as international courts are more convenient.[551] On the other hand, some scholars argue that in environmental regimes which have different institutions for conflicts and separate dispute settlement mechanisms are unlikely to promote regime effectiveness necessarily. The dispute settlement mechanisms launched in MEAs are negotiations since it is more appropriate, so there is no need for a adjudication process. This argument arises from the point that there is not much *real dispute* based on the violation of MEAs. The disputes mostly derives from non-compliance due to incapabilities which cannot be solved by juridical decisions nor sanctions, but incentives which could be solve in negotiations by experts and politicians, not by lawyers and judges.[552] Additionally, no state is flawless in implementation of MEAs, thus no state may want to make a complaint about others.[553]

Since states hesitate to go in an international adjudication process, the arguments on the lapses of non-adjudication mechanisms seem more accurate. Despite being "principal judicial organ of the United Nations", ICJ could not become a commonly used

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hb.php?art_id=12, (01.07.2014). United Nations Treaty Database, "Status of Vienna Convention for the Protection of the Ozone Layer", https://treaties.un.org/pages/ ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XXVII-2&chapter=27&lang=en#Participants, (01.12.2014).

[550] Chayes and Chayes, The New Sovereignty, p.223.

[551] Chayes and Chayes, The New Sovereignty, p.224.

[552] Paulus, p.365.

[553] Konrad Von Moltke, "Clustering International Environmental Agreements" in **Multilevel Governance of Global Environmental Change**, (Ed. Gerd Winter), Cambridge University Press, New York, 2006, p.425.

adjudication organ in practice. Few states accepted the ICJ's jurisdiction in general though, almost all of them made some reservations, particularly about national security and sovereignty. Many states hesitate to go to ICJ for disputes because it is risky and unpredictable. None of the parties of a dispute satisfied with the final decision of Court over a case.[554] Furthermore, bringing the dispute to trial is costly and it takes a long time to get a conclusion because the procedure is lumpish. These shortcomings make ICJ's future skeptical since many states choose informal ways of dispute settlement mechanism as well as MEAs hardly determining the ICJ as the compulsory dispute settlement mechanism. So, the other mechanisms which parties could pursue for a dispute over a MEA are arbitration and informal mechanisms, such as negotiation, enquiry, mediation, conciliation. Indeed, adjudication is not an appropriate mechanism for disputes over the interpretation and implementation of a MEA,[555] nor the arbitration. However, MEAs' weak approach to dispute settlement mechanism leaving the initiative to states may leave disputes insoluble.

Mediation and conciliation are mostly used for dispute settlement procedure in MEAs, decisions of the mediation and conciliation and other informal mechanisms are not binding according to international law, so these dispute settlement procedures do not guarantee solution of a dispute. On the other hand, the advantage of these procedures is that parties find an opportunity to negotiate with each other. Especially in conciliation, a third party which is neutral and trustable for each side investigates the dispute and recommends an informed, neutral and genuine solution. Even though it is not binding, it creates a pressure on parties.

Disputes over MEAs are more appropriate to be settled by internal organs of MEA, such as MoP or Compliance Committee. Treaty's own-designated but not *ad hoc* arbitrational and consultative organs, commissions and councils may also be more useful or a more specific organ, such as UNFCCC did in Subsidiary Body on

[554] Chayes and Chayes, The New Sovereignty, p.205.
[555] Chayes and Chayes, The New Sovereignty, p.206.

Implementation.[556] A similar approach is used for regimes managed by an international organization.[557] An international organization usually designates or addresses an organ for interpretation of related treaties and disputes between parties.[558] This could be a compulsory method for disputes and its decisions may be binding not only for parties of dispute but also for the other members of the organization. In our opinion, since these organs are more familiar to the scope and the aim of treaty, their resolutions will be more conforming to the spirit of regime. If dispute has a characteristic that other parties of treaty may be faced in future, it would be better to solve it once and in advance for all parties before it becomes a wider and a deeper problem for compliance with regime. This is also a preventive solution for further non-compliance cases caused by misinterpretations.

In some MEAs, compliance committees have also dispute settlement function.[559] However, this function differs from the conventional dispute settlement procedures. First of all, traditional dispute settlement mechanisms are mostly legal procedures which include a judicial organ like ICJ or arbitration. On the other hand, since compliance committees are composed by either state representatives and government negotiators or technical experts, this process is either more political or technical than judicial. Secondly, even triggering mechanisms differs in regimes, every party have right to apply against a non-compliance case even though it is not the suffering side, because environment is accepted as a public good. In traditional dispute settlement mechanism only injured states make a complaint against allegedly breaching state. In this sense,

[556] For example, the Standing Consultative Commission in SALT I treaties; the Special Verification Commission in Intermediate-Range Nuclear Forces Treaty; the Human Rights Committee for International Covenant on Civil and Political Rights; the Conciliation Commission for the Conference on Security and Co-operation in Europe were established for dispute settlements and consultations about treaty interpretations and implementations. Chayes and Chayes, The New Sovereignty, pp.207, 208, 216, 221-222. Rarely, own adjudication organ is established in treaty as in 1982 United Nations Convention on Law of the Sea.

[557] For example, Executive Directors for IMF, the Ministerial Conference for WTO were addressed for dispute settlements and consultations on treaty interpretations. Chayes and Chayes, The New Sovereignty, pp.210, 215.

[558] Chayes and Chayes, The New Sovereignty, p.209.

[559] The Montreal Protocol's and the Kyoto Protocol's compliance committees also take on the dispute settlement mechanism of the protocols. Handl, p.46.

traditional dispute settlement mechanisms are bilateral while procedure of compliance committees is collective. Thirdly, complaints to compliance committee could be made for potential non-compliance case. But, in traditional procedure only actual breaching is grievances. Fourthly, as it is often emphasized, the aim of compliance committees is not to punish non-complier state but to promote compliance. In this manner, response to disputes arising from non-compliance is facilitation and assistance rather than punishing the violator. In traditional dispute settlement, this mentality may be recognized as some kind of rewarding because a correct response to a violation is to punish the guilty and remedying to the victim.[560]

2.2.2.4. Enforcement and Sanction Mechanisms

Enforcement mechanism, enforcements and sanctions, is the actions taken when a breaching of law occurs. Enforcement mechanisms are essential, because states, as well as humans, try to justify[561] and change their behaviors when they are reacted. Dispute settlement mechanism gives states opportunity to justify themselves, enforcement and sanctions are both deterrent procedures which keep states away from an intent to cheat and mechanisms which finds the unlawful actions and penalize the responsible. "[T]he availability of credible enforcement mechanisms is necessary to gain high levels of compliance, especially where the behavioral adjustments required to capture collective benefits are extensive".[562]According to Beyerlin and Marauhn, four principles must be considered for the designation of enforcement mechanism when the special character of MEAs is considered: (1) The actions should be collective rather than individual. (2) Instead of accusations, cooperative steps should be taken. (3) Taking the

[560] Bodansky, Art and Craft, pp.248.
[561] USA tried to legitimate its military intervention to Iraq at 2003 as 'preventive war' by defining it as a self defense in advance against potential attacks in future.
[562] O.Young, World Affairs, p.80.

compliance preventive measurements is easier than to repress the states. (4) Assistance and capacity-building is more effective than sanctions.[563]

Explanation of opting on compliance and non-compliance on the basis of interest calculation, gives a simple resolution for enforcement and sanctions of compliance: make the cost of the non-compliance so high, this way, despite of any costs, compliance will be less burden. Treaties in fact the words that states commit themselves to act in determined way. Every state makes a rational choice to sign or not to sign a particular treaty. Even though their calculations show signing a treaty is in their interest, circumstances, interests and calculations may change and complying with that commitment may be out of their interest any more. At this point, a new calculation is made and if non-compliance is more interesting, states opt not to comply. The burden of escaping from their commitments could be so harsh that even the burden of compliance seems less costly.

In compliance approaches explained in the section 2.3, sanctions are described as negative consequences of a non-compliance case. These consequences are "operate[d] to offset the net benefit that potential violator could gain from noncompliance".[564] Traditional response of international law to non-compliance and breaching law is sanctions. Sanctions, inarguably applied in international law, are suspension of treaty or membership, termination of treaty or membership, retorsion, retaliation, embargo. There are also arguable sanctions of which involve some contradictions to international law such as blockade and using of armed force. These last ones are only possible when there is a major threat for international peace and security.

In international environmental law, sanctions are rarely used and even if used, they are usually ineffective.[565] But it does not mean that they are useless at all. Sanctions are effective to deter the intentional non-compliance. Today, they must be used as a last resort international environmental law after other compliance promoting measures had

[563] Ulrich Beyerlin and Thilo Marauhn, **Law-Making and Law-Enforcement in International Environmental Law After the Rio Conference**, Erich Schmidt Verlag, Berlin, 1997, p.83.
[564] Downs, Enforcement, pp.320-321.
[565] Chayes and Chayes, The New Sovereignty, pp.32-33.

been taken. Furthermore, not only as a compliance mechanism but also in international law in general, sanctions are problematic and usually cannot assure the desired effects. The intention of this study is not to explain why sanctions are ineffective in general, but to explain why they are not effective for compliance with MEAs. For this reason, the problems of sanctions in international law will be briefly mentioned here and for further information readers are invited to related studies.[566]

1. The main deficit of international law is the weakness of sanctioning system itself. There is neither a supreme authority to make decisions on sanctions, like whether or not an action requires to be sanctioned, and if so, by which way and how, nor there is a police force to apply the sanctions.

2. Sanctions are effective only when applied by relatively more powerful states on weaker ones. In the current system, unfortunately, to be able to enforce powerful states like USA and the EU to do something like compliance through sanctions is not possible.

3. There is always a legitimacy problem in sanctions. Sanctioning actions which are not approved and supported by international community lose its legitimacy and cause to end up in being wrong. In this situation, if even the state to which sanctions are against is really breaching a rule, it becomes the victim.

4. Legitimacy of sanctions is always questionable even if they are based on a juridical or organizational decision. A binding resolution for all states could be taken by the UN Security Council only if sanction is in convenience with the interests of

[566] See: W. Michael Reisman, "Sanctions and International Law", **Yale Law School Faculty Scholarship Series**, Paper.3864, 2009, pp.9-20; Dumitriţa Florea, "Sanctions in The International Public Law", **The USV Annals of Economics and Public Administration**, Volume.13, Issue.1(17), 2013, pp.264-272; Boris Kondoch, "The Limits of Economic Sanctions under International Law: The Case of Iraq" in **International Peacekeeping: The Yearbook of International Peace Operations**, (Eds. Michael Bothe and Boris Kondoch), Kluwer Law International, The Hague, 2002, pp.267-294; Michael Brzoska, **Design and Implementation of Arms Embargo and Travel and Aviation Related Sanctions**, BICC, Bonn, 2001; Paul Conlon, "Legal Problems at the Centre of the United Nations Sanctions", Nordic Journal of International Law, Volume.65, Issue.1, 1996, pp.73-90; Paul Conlon, "The Humanitarian Mitigation of UN Sanctions", **German Yearbook of International Law**, Volume.39, 1997, pp.249-284; Richard E.Hull, **Imposing International Sanctions: Legal Aspects and Enforcement by the Military**, NDU Press, Washington DC, 1997; Hans Köchler, **Ethical Aspects of Sanctions in International Law The Practice of the Sanctions Policy and Human Rights**, International Progress Organization, Vienna, 1994.

permanent members. A non-binding recommendation could be taken in UN General Assembly with two-thirds of the present voters.

5. As long as bilateral sanctions are recognized illegitimate, they may cause conflicts between parties; may create enmity in breaching state towards conductor. Moreover, collective actions are always more effective on breaching states while they are less costly for appliers, and monitoring and conducting are easily compared with unilateral applications. Nevertheless, it is hard to organize a multilateral action.

6. Institutional organs may be more effective on sanctioning, because they have wider alternatives, such as suspension of membership, cutting of funding and assistance. But, international institutions are rare and they even hardly invoke sanctions.

7. There are limited sanction methods accepted in international law and none of them has absolute power on a violator state. Retaliation and compensation are mostly used ones but as Bodansky says "[i]f a state violates … [a] commitment, what reason is there to think that it will comply with an obligation to pay a financial penalty?"[567]

8. Military sanctions are so high costly for sanctioning states and so over-effective on breached state. They may cause innocent people to suffer and to die and it is hard to convince the participant states.[568] Once launched, military actions are hard to operate since there is not a global police force. Each time, either states use their own military force under a general command or a new troop is established by troops that participant states form as in the example of Blue Beret. However, these forces have lack of coordination and they do not have efficient military drill experiences and collaboration. Additionally, different military culture and military structuring and tactics may cause problems and casualties in operations, effectiveness of military action may go down.

9. Even though the most effective sanctions are economic ones in an economy-based world, the contradiction here is that beside the state to which sanctions are

[567] Bodansky, Art and Craft, p.249.

[568] There were severe human rights abuses in Libya since the beginning of civil war on August 2009, nevertheless military intervention decision was taken in 2011 by UN Security Council with 10 affirmative votes and 5 abstentions and only three states actually conducted the intervention.

directed, also the state which applies sanctions is affected; so, a leakage in sanctions is highly possible. Additionally, there is risk that the goods which lay in embargo, being basic human needs like medicine and basic foodstuff, cause civil people to suffer more than governments[569] and cause manipulation of guilty state on international society.[570]

10. Ensuring the compliance with sanction decision is as hard as ensuring the compliance with treaty itself. Sanctions are collective actions and effective only when collectively and strictly applied. Free riders and leakages damage sanctioning regime.

11. There is not a guide book like penal laws in national legal systems to determine what the sanction of a particular violation is. This gives way to unequal applications of sanction in international law. For example, the sanction against Iraq for its Kuwait invasion was 12 years of embargo while sanctions against Russia for large-scale military drills to Georgia in 2008 and Ukraine in 2014 were nothing. A quotation from Justice Oliver Wendell Holmes makes a determination of law: "The very meaning of a line in the law is that you intentionally may come as close to it as you can if you do not pass it". Differentiated approaches against non-compliers cause each state to try to explore their own lines and to push it as much as forward not for others but for themselves. In a political world, it is hard to standardize the punishments but at least state-based tolerances must be ruled out for regime integrity. Rather than differentiated sanctions against different states in a regime, differentiated responsibilities is a better solution for non-compliance cases arising from incapabilities. For intentional non-

[569] Although the economic and military embargo laid on Iraq after Kuwait invasion was not including basic human needs, in practice the embargo was applied so strict that normal life of Iraqi people came to a halt. For casualties of civil people arising from embargo see: Richard Garfield, "Morbidity and Mortality Among Iraqi Children from 1990 Through 1998: Assessing the Impact of the Gulf War and Economic Sanctions", http://www.casi.org.uk/info/garfield/dr-garfield.html, (03.07.2014); Michael Powell, "The Deaths He Cannot Sanction; Ex-U.N. Worker Details Harm to Iraqi Children", **The Washington Post**, 17.December.1998, http://www.public.asu.edu/~wellsda/foreignpolicy/Halliday-criticizes-sanctions.html, (03.07.2014).

[570] For detailed analyzed about the effects of sanctions on civil people and critics about economic sanctions, see: Thomas George Weiss et al. (Eds.), **Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions**, Rowman & Littlefield, Maryland, 1997; Robert A. Pape, "Why Economic Sanctions Still Do not Work", **International Security**, Volume.23, No.1, Summer 1998, pp.66-77.

compliance, differentiated sanctions depending on the importance of different rules are also another option for regime effectiveness.

12. Sanction and enforcement decisions are mostly political but not lawful as it can be seen in the example of Russia. Furthermore, the risk that, a pay-back day may come or the support of a targeted state may be needed in future turns the scales in political calculations. No state has a clean legal history nor will have.

As a final word on sanctions in general, it will be helpful to make an analogy between international law and domestic law. It can be said that, one of the biggest crime is murder and the heaviest penalty for this crime is capital punishment in many domestic law systems. Despite knowing that one will lose his own life if he kills someone, there are still countless murderers and even serial killers. This example shows that even though the penalty is harsh, there are still crimes. But, one can at least diminish the murder rates through education for respect human life, anger management, psychological and psychiatrical treatments, dispute settlement teaching and the like. The effects of sanctions cannot be denied; however, even the heaviest sanctions are not efficient to stop non-compliance, also analogically in international law, without promoting respect to international law.

When sanctions are considered from the international environmental law point of view, the situation becomes more complex. The concept of sanctions is to deter states from breaching law, and in case they still continue in their actions, to punish and make them restitute or compensate the damage they cause. In international environmental law, it is hard, high costly and even sometimes it is impossible to restitute damages. The sanction against a breaching state may be effective on it to change its attitude, but even though the financial and economic costs of violation may be compensated, how can an irreversible environmental damage be restituted through sanctions? For example, termination or suspension of a treaty against a breaching state is a frequently used sanction method in international law. This kind of sanction makes sense for environmental protection, because if other states of party also start to suspend or terminate MEA, it would cause more ill effects on environment under protection. The

aim and designation of international environmental law is "to promote future compliance rather than to remedy past non-compliance".[571] This rationality makes sanctions less important for MEAs -and for human rights regime- when it is compared with other international law fields. The issues of enforcement and sanctions are so disregarded in international environmental law and in academic literature, in the negotiations of states representations on international environmental law that they are rarely mentioned and in the texts of MEAs they are seldom included.[572] It is a widely held understanding among international lawyers, and political science scholars and practitioners[573] and professors that assistance and capacity-building is more effective than sanctions in international environmental law. As it is frequently repeated, the main reason of non-compliance with MEAs is incapabilities of parties which prevent them to accomplish their commitments despite their willingness to comply. Such non-compliance cases could only be altered by improving first, national capability of state and then private capacities of in-state units through technology transfers, financial and administrative support, training and common but differentiated responsibilities. Sanctioning an incapable state by cutting or suspending financial assistance makes its situation worse. If a state cannot comply with a treaty now, if the reasons are not overcome, it will not be able to do so in the future either, even if other states bomb it.

2.3. COMPLIANCE APPPROACHES

The aim of compliance mechanisms is to create a ground to lead states to compliance and thus to maintain international cooperation, peace and security on the one hand, and to observe the basic concerns of international law like respect to sovereignty

[571] Bodansky, Art and Craft, p.232.
[572] Jutta Brunnée, "Enforcement Mechanisms in International Law and International Environmental Law" in **Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia**, (Eds. Ulrich Beyerlin, Peter Tobias Stoll and Rüdiger Wolfrum), Martinus Nijhoff, Leiden, 2006, (Enforcement), pp.1-2.
[573] Shihata, p.40.

and non-intervention to national affairs is on the other.[574] This balance act requires special mechanism which it has been already analyzed above. Success and effectiveness of a treaty depends which and how a regime is used. But there are still debates about which of them and/or which combination of them is more effective on pushing states to compliance. Two schools define the outlines of this debate: Managerial Approach and Enforcement Approach. The different assumptions on state behaviors and the recognition of international cooperation are underlined in the background of the frame of these approaches. The basic one is that managerial approach accepts that "[a]lmost all nations observe almost all principles of international law and almost all of their obligations almost all of the time"[575] while enforcement approach argues that if there are more interests and less cost, states violate law.

[574] Brunnée, Fine Balance, pp.225-226.
[575] Henkin, p.47.

Figure 3: Two Models of International Compliance

	ASSUMPTIONS ABOUT STATE BEHAVIOR	THEORY OF COMPLIANCE
MANAGERIAL APPROACH	• States are engaged in a cooperative venture. • States internalize treaty norms and are likely to comply unless there are strong countervailing circumstances. • Non-compliance usually results from lack of capacity or clarity rather than from willful disobedience.	• Treaty regimes play an active role in modifying state preferences. • Non-compliance is a problem to be solved through mutual consultation and deliberation. • Treaties help to encourage compliance by promoting transparency and building national capacity.
ENFORCEMENT APPROACH	• States are rational utility maximizers. • States will violate treaties if the benefits of violation outweigh the costs.	• Coerced compliance to prevent violations. • Treaty must raise the cost of violation by imposing sanctions.

Resource: Bodansky, Art and Craft, p.236.

Below, backgrounds and arguments of these two approaches about what makes states comply will be explained in detail.

2.3.1. Managerial Approach

Managerial approach[576], provided and pioneered by Abram and Antonia Handler Chayes, is "a cooperative, problem-solving approach".[577] Contrary to enforcement approach, managerial approach aims to prevent non-compliance *ex ante* by clarity, communication and assistance, while enforcement approach calls the cost of non-compliance *ex post*.[578] Rather than punishing states, they focus on a better management of regime.

Starting point of managerial approach is that states voluntarily become party to international treaties as long as it is legitimate, and they have high propensity to comply. The managerial approach is a rationalist approach, because by incentives it makes treaties attractive, thus states become a part of treaties and comply with treaties. The advantages of facilities create an interest-plus. But when this approach is evaluated for dealing with norm-creation and norm-binding, it becomes constructivist. They also argue that states want to be part of regimes, because they want to be a good member of international community.[579] Negotiation of an agreement is neither easy, nor is a short period nor cheap. If states do not have an intention to comply with a treaty, they do not waste their time, energy and money to make a treaty. Moreover, if they do not want to take an obligation, why they would sign a treaty. States have the sovereignty to do or not to do international commitments.[580] Hence, non-compliances are usually not violations of law that states intentionally do, because there are obstacles that prevent them to comply. These obstacles are mostly either lack of capacity or ambiguity in a treaty.

The process of managerial approach is that if a problem of compliance occurs, instead of punishing the non-complier, to explore, analyze and solve the problem and so

[576] Joyeeta Gupta names *compliance pull elements* to process of managerial approaches. Joyeeta Gupta, "Regulatory Competition and Developing Countries and the Challenge for Compliance Push and Pull Measures" in **Multilevel Governance of Global Environmental Change**, (Ed. Gerd Winter), Cambridge University Press, New York, 2006, p.461.
[577] Chayes and Chayes, The New Sovereignty, p.3.
[578] Guzman, Compliance-Based Theory, p.1833 (note 30).
[579] Brunnée, Enforcement, p.8; Raustiala, pp.407-408.
[580] Chayes and Chayes, On Compliance, p.187.

to improve the regime. Similarly, if there is a potential non-compliance case for the future, instead of deterring states to get them avoid non-compliance, to eliminate potential obstacles through preventive solutions is required. Managerial approach uses carrots to govern a regime, contrary to enforcement approach which uses sticks. The reasons which cause non-compliance are more important than an actual non-compliance itself. Rather than focusing on state behaviors, either wrong or lacking, it focuses on the performance of regime itself to be able to improve it by improving the individual performance one by one and systemic performance in total via harmonizing state behaviors. To enable this, it emphasizes dialogue between parties and accountability of individual states. To shape the future evolution, managerial approach evaluates the past records of the regime.[581]

Managerial approaches create a pressure on states for complying. In fact enforcement approach also creates a pressure by coercing, deterring, terrifying and threatening states with sanctions. Contrary, the pressure created by managerial approach is actually a persuasion which is an internal pressure that makes compliance rational. States comply not because of the fear what non-compliance causes to lose, but the satisfaction of what compliance induce to gain.

According to Chayeses and Mitchell, there are two pillars of management approach: Transparent information system and a response system. Basically, the information system explores the causes of non-compliance and is used to monitor the regime functioning while response system promotes the compliance by removing obstacles of compliance.[582] Capacity building through technical assistance, financial aid, research, information and education, adaptation and modification of treaty norms are response systems and dispute settlement, reporting, monitoring are mechanisms of the transparent information system.[583] These systems and mechanisms are essential tools for active management of regime even though they do not function spontaneously. "[T]heir

[581] Chayes and Chayes, The New Sovereignty, pp.230-231.
[582] Chayes, Chayes and Mitchell, p.42.
[583] Chayes and Chayes, The New Sovereignty, pp.197, 227.

effectiveness depends heavily on the institutional setting in which they are deployed"[584] and controlling and functioning of these setting require an effective institutional body. The regimes which establish a body that acts as "a neutral monitoring agency" rather than "an active policing agency" are more effective.[585] It is usually MoP and/or compliance committees which are in treaty-based regimes.

In managerial approach, there is no need for hard sanctions but for exposure since the most deterrent enforcement of non-compliance is ruining of reputation of reliability in interdependent world. States want to be a member of international system, and this way they engage within regimes and the loss of reputation is more than enough drop the chance to remain in the system[586] and they "may feel that 'shaming' by being named as non-complying is in itself a form of pressure".[587] According to managerial approach, exposure of non-compliance is a harsh sanction for a non-complier state[588], yet contrarily, according to enforcement approach, it is not even a sanction.[589] Thus, most of MEAs and other international regimes, such as human rights, use the publicizing of national reports of non-compliers as an effective enforcement mechanism.

The development of managerial approach has begun with ILO, IMF, WTO functioning and peaks in environmental regimes. In MEAs, soft sanctions are preferred; such as trade sanctions, withdrawal of certain privileges for the members of –if there is any- related international organization or for a party of MEA and lastly, publicizing the non-complier before public. The harshest sanctions provisioned in MEAs are; the suspension of the right for the trade of ozone-depleting substances in Montreal Protocol; suspension of the right for carbon emission trade and doubling up the emission reduce

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[584] Chayes and Chayes, The New Sovereignty, p.271.
[585] Chayes and Chayes, The New Sovereignty, p.149.
[586] Chayes and Chayes, The New Sovereignty, p.230; Bodansky, Art and Craft, p.249.
[587] Ulfstein, p.129.
[588] Keohane also accepts reputation as an important enforcement mechanism because there is an interaction between state's interests and reputation; both depend on and define each other. Robert O. Keohane, "International Relations and International Law: Two Optics", **Harvard International Law Journal**, Volume.38, Issue.2, 1997, (Two Optics), p.500.
[589] See: Downs and Jones, pp.95-114.

obligation for the next commitment period in Kyoto Protocol and recommendatory and non-binding trade measures in CITES.[590]

The reflections of the effectiveness of managerial approaches are seen in national environmental law, too. Instead of enforcement and sanction based approaches, the problem-solving managerial approaches create cooperation and thus more effective results could be gained in in-state applications. When the importance of preventive steps in environmental regulations are considered, such a problem solving approach take steps before an environmental degradation happens. The comparison between enforcement based approach of USA and managerial approach of Great Britain shows that environmental protection is more improved and the rate of compliance with national environmental law is higher in Britain than in USA.[591]

However some critics of managerial approach emphasize that even though this approach is successful in the coordination of treaties, it is not much useful in more complex regulations, especially regulations related with state interests. Coordination treaties regulate a certain set of behaviors and, states comply with regulated behaviors even without enforcement, because there is not an incentive for cheating. The benefits are high and the costs are low in the coordination of regimes. Furthermore, the mechanisms of managerial approach, such as transparency, dispute settlement and capacity building, are in fact the coordination mechanisms. However, when the issue of treaty is contrary to state interests, this means that states require acting against their self-interests, that intentional non-compliance is highly possible and in such a non-compliance case and managerial approach is infertile since states purchase their own interests but international cooperation. The only condition which brings the state back to negotiation table is the "shadow of potential sanctions". This criticism argues that the only way, in which managerial approach could work with interest-based regulations and cooperation-based regulations as well, is indeed mandatory dispute settlement

[590] Ulfstein, p.130.
[591] An environmental inspector in Britain defines their jobs "as educating industry, persuading it, cajoling it". Vogel and Kessler, p.28 cited from David Vogel, **Fluctuating Fortunes**, Basic Books, New York, 1989, p.89.

mechanisms and effective sanctions for intentional non-compliances which are actually ignored by them. The lack in giving importance to dispute settlements and sanctions makes the managerial approach "a useful but incomplete model".[592]

2.3.2. Enforcement Approach

The difference of arguments of enforcement approach[593] arises from the assumptions that they have different acceptances from managerial school. The necessity of coercive enforcement mechanisms to keep the states in compliance is argued usually by realism biased scholars, no matter how they focus on IR theory or on IL. They argue that the main reason that states are involved in a treaty is either the treaty is in their interest or it does not require big sacrifices and high costs and radical changes in their current behaviors. Furthermore, states arrange terms of treaties according to their expectations to succeed. These are the reasons that compliance with international treaties high as institutionalists, liberals and some legal scholars argue.[594] In these circumstances, the only measurement which pushes states to comply with deeper cooperation -of course in case it is achieved- is the cost of severe sanctions which is higher than the interest of non-compliance. Especially when the commitments go bigger and deeper, more severe sanctions are required. The rationality here is that "the punishment must hurt the transgressor state at least as much as that state could gain by the violation".[595]

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[592] Guzman, Compliance-Based Theory, pp.1831-1833.

[593] Downs et al, the advancers of enforcement approach, prefer to be called as *political economists*, because their compliance promoting policies are based on cost and benefit calculations. Downs, Constructing, pp.26, 30. On the other hand, Joyeeta Gupta names *compliance push elements* to enforcement based approaches and monitoring, reporting and reviewing. Gupta, p.460.

[594] And this is also why international cooperation is convicted to remain in a certain degree. Downs et al argue that "deeply cooperative regimes have a limited number of members and … regimes with a large number of members tend to engage in only shallow cooperation". Downs, Rocke and Barsoom, p.399; Downs, Constructing, p.32.

[595] Downs, Rocke and Barsoom, pp.385-386.

As the managerial school argues, the capacity limitations, changing circumstances and ambiguity[596] may cause non-compliance but not as frequent as they assume.[597] Similarly to managerial approach, enforcement approach scholars agree with the effects of diffusion of ideas and norms on promoting compliance. However, they still have some objections about overcharging of the roles of ideas and norms in changing state behaviors. They find the roles of ideas and norms, as managerial school argues, understandable but overly optimistic. Rather, they argue that the strategies of using ideas and norms used for changing state behaviors are not clear, because examples are limited. There is no evidence for how and to what degree diffusion of ideas and norms affected state preferences. Besides, diffusion of ideas and norms are too slow to get immediate results. But the strategies of using sanctions are clear, effective and fast.[598]

Enforcement approach scholars also criticize the argument of managerial school that claims even in the absence of hard sanction, compliance with analyzed MEAs are quite high. The treaties with managerial approach may seem successful on compliance even in the absence of enforcement mechanisms. But according to the enforcement approach, this is neither the proof of success of managerial mechanisms nor the evidence for unnecessariness of enforcement mechanisms. They seem successful because the treaty choices of managerial scholar are misleading since they do not pay attention to the contexts of treaties.[599] These treaties involve shallow cooperation which requires minor behavioral changing. There is high compliance in the absence of enforcement, because there is no need for enforcement for such these shallow cooperations. "There is little need for enforcement because there is little deep cooperation" in these regimes. The deeper cooperation the agreement creates, the stronger enforcement mechanism it

[596] According to Downs, ambiguity cannot be recognized as an excuse for non-compliance as managerelists claim, because in many international agreement the unclear provisions and uncertion statements are intentional political choices of states. Moreover, the claim of ambiguity is usually a cover for intentional non-compliance. Downs, Enforcement, p.330.
[597] Downs, Rocke and Barsoom, pp.394-395.
[598] Downs, Rocke and Barsoom, p.398.
[599] However managerial approach has not answered this criticism adequately. Crossen, 2003, p.498.

requires.[600] In a convey they conducted in 1997 on fifty MEAs, it was seen that thirty five MEAs did not have any provisions about non-compliance while five of them set forth only 'appropriate actions' of other states parties. Ten MEAs or 20% of the total number set forth explicit enforcement procedures. At the second phase of inquiry, they evaluated the depth of the cooperation on the same agreements. The result they achieved is that a scale of 0,01 is a significant level, the correlation between the depth of cooperation and the strength of enforcement is 0,74.[601] For example at the beginning ASEAN, APEC and even GATT were just the statements of principles and negotiation forums. Downs notably gives the example of the European Union to prove that the deepening cooperation requires harder enforcement mechanism. As long as the EU integration deepens, the formality and severity of enforcement mechanism deepens, too. However, deepening is not a continuum process[602] nor it is easy to establish a deep cooperation and to provision coercive enforcement mechanisms in regimes. In the current agreements, there are not coercive enforcement mechanisms because states do not know what future brings and do not want to tie themselves with an undesired commitment anymore for an unclear future. This uncertainty frightens states and even they are willingful to make some regulations today. They choose to make less stringent commitments without aggressive enforcement mechanism.[603] This is why the current international cooperations are shallow and as long as the future is unpredictable, they remain shallow.

Enforcement school accepts that, in the beginning, there were very few enforcement mechanisms specific to MEAs, like arms control and trade treaties. And as managerial school claimed, there were high rates of compliance in spite of absence of sanctions. However, the argument of enforcement approach is that the progress is

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[600] Downs, Rocke and Barsoom, pp.388, 391, 397; Crossen, 2003, pp.493, 499-500; Bodansky, Art and Craft, p.237.

[601] Downs, Enforcement, pp.332-333 cited from George W. Downs et al., "Designing Multilaterals: The Architecture and Evolution of Environmental Agreement", Presented at the 1997 Annual Meeting of the American Political Science Association, Aug. 14, 1997.

[602] Downs, Enforcement, pp.344, 323. (note 12)

[603] George W. Downs and David M. Rocke, **Optimal Imperfection?: Domestic Uncertainty and Institutions in International Relations**, Princeton University Press, Princeton, 1995, p.48.

skeptical in treaties that still do not have enforcement mechanisms.[604] Ibrahim Shihata, Senior Vice President and General Counsel of the World Bank, agrees with Down and his co-authors. According to Shihata, an important reason of non-compliance with MEAs is limited enforcement mechanisms.[605]After USA-imposed sanctions to non-compliance with GATT, the rate of compliance leaped forward.[606] Downs et al object the Ronald Mitchell's argument that after more effective reporting and transparency mechanisms, the compliance with MARPOL has been raised.[607] For Downs et al, not only these mechanisms positively affected the compliance but the fear of the ships which do not have certificates which shows that tanker has necessary equipment for disposing would be barred from the ports.[608]

In enforcement approach, for all kind of treaties necessity of transparency and monitoring for the promotion of compliance is accepted. However, these mechanisms are important in a degree that if there is a sanction, they provoke. Accepting them as effective compliance mechanisms, even in the absence of sanctions, is a naïve argument. Detection of a non-compliance itself is not a mechanism *per se*, but the fear of sanction comes with being uncovered is the actual mechanism. If the interest of non-compliance is high and there is no threat of greater costs of sanction, states do not hesitate to be uncovered as cheater.[609] The conditions of enforcement approach to deter the states from complying are clear. First, as being a part of a treaty based on interest calculations, complying or not complying is also an interest calculation. The factor, which makes the compliance less costly whatever the commitment is, is the high cost of the consequences of non-compliance. The sanctions must be underestimatable, unignorable, unbearable

[604] Downs, Rocke and Barsoom, p.397.
[605] Shihata, p.50.
[606] Downs, Rocke and Barsoom, p.395.
[607] See supra note 409. Mitchell accepts the effects of the sanction on potential non-compliers though, underlines that this effect is actually minimal because it is rarely used. Mitchell, Intentional Oil Pollution, p.220.
[608] Downs, Rocke and Barsoom, pp.396-397.
[609] Downs, Rocke and Barsoom, pp.393-396.

and significant costs. Secondly, sanctions should be credible.[610] The fear of these negative consequences and of potential costs is used as a strategy to deter states from non-complying. But the fear or threat is just one step of the strategy, and the actual usage of them as punishment is another.[611] As it has been said, states always test and try to push the limits of their elbowroom in law. If states think that it is just a hollow threat or that it will be tolerated, every party pushes and pushes the limits and thus the regime is riddled. For punishments designed for deterrence they use both cost-creating sanctions and benefit deprivation measures[612] as it was seen in Kyoto Protocol compliance system. In Kyoto Protocol compliance system, besides sanctions, non-complier states lose its carbon-trade eligibility. However, Downs do not mention which methods are more useful to enforce states to comply and how sanctions could be used, such as unilateral or multilateral sanctions or how legitimacy problems of sanction would be overcome.[613] Downs explain this by saying that optimal strategies vary according to the context of regime itself and in each non-compliance case the best strategy differs.[614] To make predictions about uncertain cases may weaken the strategy chosen in advance. However, he is strictly against to the acceptance of reputation as an enforcement mechanism as managerialists argue. States' compliance level may vary according to different commitments. One state which has a good history on reputation as complier may choose not to comply with a particular agreement and it does not mean that it lost its reputation as complier. Besides, states compliance with an agreement's different provisions also may change. Furthermore, to be a complier is not the only option of reputation[615], since there are other options, too, such as being a punisher for enemies.[616]

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[610] Jon Hovi, Camilla Bretteville Froyn and Guri Bang, "Enforcing the Kyoto Protocol: Can Punitive Consequences Restore Compliance?", **Review of International Studies**, Volume.33, 2007, p.442.
[611] Downs, Enforcement, pp.320-321.
[612] Downs, Enforcement, p.321. (note 4)
[613] Crossen, 2003, p.497.
[614] Downs, Enforcement, p.320.
[615] George W. Downs and Michael A. Jones, "Reputation, Compliance and International Law", **Legal Studies**, Volume.31, 2002, pp.95, 112-113.
[616] Keohane, Two Optics, p.498.

An important deficit of enforcement approach is its lack in explanation of how states could be induced to make a treaty or to create a regime that based on treaties with teeth.[617] If states are rational actors as enforcement approach scholars accepts; and if states avoid to make commitments that may be against their interests in future; and if states fear of hard sanctions which may be used against themselves in future, how could be states persuaded to make such a treaty at the first place? If international law could cause only a little behavioral change in states, as enforcement approach claimed, then international law is stupid indeed.[618] If their three arguments that (1) states bound to be limited at shallow cooperations; (2) shallow cooperations do not need enforcement; and (3) current shallow cooperations have high compliance rates even at the absence of enforcement, are correct and thus enforcement approach itself is fruitless and redundant.

Sanctions are "rarely used when granted, and likely to be ineffective when used" and "[t]he effort to devise and incorporate [coercive economic or military] sanctions in treaties is largely a waste of time".[619] These arguments of the Chayeses are the ones which generate the debate between managerial approach and enforcement approach. The Chayeses are not alone in claiming such arguments. Oran Young also argues that "it is virtually impossible to achieve high levels of implementation and compliance over time through coercion".[620]

The determination of effectiveness and even the necessity of enforcement approach depend a little bit on which theoretical position about compliance theories one takes. When the enforcement approach is discussed within the theoretical perspective of compliance, in the aspects of norm internalization and legitimacy, enforcements and sanctions are accepted out of issue and there is no need even to discuss it. According to legitimacy theory, if states believe that a norm is fair and legitimate, sanctions becomes

[617] Brunnée, Enforcement, p.9.
[618] "Saying that international law is "epiphenomenal," which, according to David Bederman, "is a nice way of saying it is stupid". David J. Bederman, "Constructivism, Positivism and Empiricism in International Law", **Georgetown Law Journal**, Volume.89, 2001, p.473.
[619] Chayes and Chayes, The New Sovereignty, pp.2, 32-33.
[620] Young, International Governance, p.134.

unnecessary since states think that they have to comply with that norm.[621] In norm internalization theory, international law norms are internalized and become an inseparable part of domestic law, so they do not seem as a different law system and states inherently comply with international law norms without the necessity of enforcement.[622] In these theoretical perspectives, the attached importance to sanctions is found exaggerated. "…They are not the main reason why the law is obeyed in any legal system. People do not refrain from committing murder because they are afraid of being punished, but because they have been brought up to regard murder as unthinkable; habit, conscience, morality, affection and tolerance play a far more important part than sanctions. Sanctions are effective only if the law-breaker is in a small minority; if he is not, sanctions are powerless to secure compliance with the law, as is shown by wide-spread violation of speed limits. . . . It is unsound to study any legal system in terms of sanctions. It is better to study law as a body of rules which are usually obeyed, not to concentrate exclusively on what happens when the rules are broken. We must not confuse the pathology of law with law itself."[623]

When it is compared with managerial approach, enforcement approach is accepted as accusatory.[624] This approach ignores why states do not comply, and so cannot explore the circumstances of non-compliance cases. Enforcement methods try to heal a disease through painful amputees instead of getting rid of pathogenesis. The relevancy between the reasons and consequences of non-compliance could be ignored in enforcement approach. For example, there is not an explanation for how the sanctions could deter a state which cannot comply because of its incapabilities. Furthermore, in some cases it is even hard to determine a non-compliance. The determination whether and why a state non-comply, requires a careful inspection, judgment and discretion. This

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[621] Thomas M. Franck, **Fairness in International Law and Institutions**, Clarendon Press, Oxford, 1995, p.290; Fisher, pp.140-141.
[622] According to Koh, transnational actors are more important for compliance than enforcements. Koh, Why Do Nations, pp.2599-2659. Fisher agrees that: "(O)ne of the best ways of causing respect for international law is to make it indistinguishable from domestic law". Fisher, p.141; Shihata, p.39.
[623] Akehurst, p.78.
[624] Shihata, p.45.

is not an easy task, sometimes it is even a political process rather than a legal.[625] And, a big handicap of enforcement approach is that, like being a party of any treaty, withdrawing from a treaty is also state's sovereign right. So, sanctions or threat of sanction hardly may cause non-compliers to withdraw from a treaty, even if they once accept to become a party of such treaties. Furthermore, when the problematic character of sanctions of international law is kept in mind together with the reasons of non-compliance, it is obvious that enforcement approach could only be effective in limited cases. This ineffectiveness of enforcement approach increases the importance of managerial approach, especially in international environmental law, in which coordination is more important than regulation. In regulative regimes or collaborative situations, in which interests are at risk and incentive to cheat is higher, enforcement approach is more effective.[626]

The ineffectiveness of enforcement approach and particularly its theoretical background on recognition of international cooperation makes it less credible for international cooperation. Even though the managerialists accept that especially in intentional non-compliance cases enforcement mechanisms –however, these are not at the same scales that enforcement approach defends- are essential, there is no hardliner defenders of enforcement approach. It can also be seen in references under this title. This probably arises due to the liberalism, institutionalism and constructivism disposed people who work on the problem of how compliance could be promoted. According to these theories, international cooperation is possible and it could be improved. On the contrary, according to realist theories, international cooperation is hardly possible under limited conditions and limited subject fields and even "international law is merely an epiphenomenon of interests or is only made effective through the balance of power".[627]

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[625] Hovi, Bretteville Froyn and Bang, p.445.

[626] Guzman, Compliance-Based Theory, p.1831; Downs, Rocke and Barsoom, p.385; Markus Burgstaller, **Theories of Compliance with International Law**, Martinus Nijhoff Publishers, Leiden, 2005, p.146 cited from Jonas Tallberg, "Paths to Compliance: Enforcement, Management, and the European Union", **International Organization**, Volume.56, 2002, p.612.

[627] See supra note 285. Robert H. Bork, "The Limits of 'International Law'" in **The National Interest on International Law and Order**, (Ed. James Woolsey), Transaction Publishers, New 2003, pp.35-45;

International law is effective on behaviors of states only if there are power and interest.[628] In these circumstances, it is not necessary to give some thought how compliance with international law commitments could be promoted. This case may be the reason why there is a small number of realism disposed international lawyers and thus a small number of supporters of enforcement approach.

2.3.3. Choosing Carrots and Sticks: Managerial Approach and Enforcement Approach in International Environmental Regimes

In every international treaty and international regime and certainly not only in the environmental ones, there are four types of states as it is figured below. The combinations of capacities and intentions of a state to comply vary and the degrees of intentions and capacities also differ in each box.

Figure 4: Compliance Diagram

High Capacity High Intention **Box 1**	High Capacity Low Intention **Box 2**
Box 3 Low Capacity High Intention	**Box 4** Low Capacity Low Intention

Resource: Prepared by the author.

Francis Anthony Boyle, "The Irrelevance of International Law: The Schism Between International Law and International Politics", **Case Western International Law Journal**, Volume.10, 1980, pp.193-219; Stanley Hoffmann, "The Role of International Organization: Limits and Possibilities", **International Organization**, Volume.10, Issue.3, 1956, pp.357-372; Raymond Aron, **Peace and War: A Theory of International Relations**, Robert E. Krieger Publishes, Malabar, 1981; Lassa Oppenheim, **International Law**, Longmans, Green and Co., London, 1912; Paul F. Diehl, "The United Nations and Peacekeeping" in **Coping with Conflict After the Cold War** (Eds. Edward A. Kolodziej and Roger E. Kanet), Johns Hopkins University Press, Baltimore, 1996, pp.147-65; Roger Fisher, **Improving Compliance with International Law**, University Press of Virginia, Charlottesville, 1981; Mielle K. Bulterman and Martin Kuijer (Eds.), **Compliance with Judgments of International Courts**, Martinus Nijhoff, The Hague, 1995.

[628] Liberalism and institutionalism also emphasize the interest but at least they also stress the importance of legitimacy of norms and rules, roles of agents and concern of states on reputation. Keohane, Two Optics, pp.489, 495-496.

The aim of compliance mechanisms and the condition of effectiveness depend on the aggregation of all parties in the Box 1; high intentions with high capacities. Since combinations and degrees of capacities and intentions differ for each state and for each treaty, mechanisms for the improving of compliance should be considered in accordance with these correlations. In a nut shell, for states in Box 1; transparency, reporting and monitoring are enough and beneficial to merge the states in one aim concertedly. For the states in Box 2; sanctions and enforcements are deterrent tools for non-compliance, while continuous observation with the help of sunshine mechanism is required to keep them under control. For states in Box 3; which are usually developing states, the first thing to do is capacity building and then to insure the compliance through sunshine mechanisms. The states in Box 4 require complex approaches which are the combination of capacity building, sunshine mechanisms and sanctions.[629]

It is clear that managerial and enforcement approaches are not in a competition to promote compliance. It is not a must to choose only one among two approaches. "The two models proceed from different, but not mutually exclusive, premises".[630] In every regime, predominant approach may change but it does not mean that the other is not necessary. Contrary, neither managerial approach denies requisiteness of sanctions, nor do enforcement approach claim unnecessity of assistance.[631] The main difference is the importance they attribute to sanctions and sanction mechanisms they prefer.[632] While enforcement approach sees enforcement mechanism as essential to push sates to compliance, management approach finds them rarely useful. On the other hand, enforcement approach recommends tit for tat and high cost sanctions[633], managerial

[629] Brown Weiss, Strengthening National Compliance, p.302.
[630] Bodansky, Art and Craft, p.238.
[631] Downs, Enforcement, p.344; Crossen, 2003, p.493; O.Young, World Affairs, p.80.
[632] Bodansky, Art and Craft, p.238.
[633] Even Downs himself accepts that these methods may be useless and even more jeopardizing in some systems like international environmental law. For these systems, he suggests "punish(ing) by the withholding of benefits generated by another agreement to which it is 'linked' (such as) trade agreement". Downs, Enforcement, pp.324-325.

approach argues that ruined reputation by publicizing and suspension of privileges are enough to coerce.[634]

Despite of severe differences in arguments and also in assumptions, there are still some reconciliation between managerial approach and enforcement approach. First of all, enforcement school accepts that international environmental law has a different aspect which trade and security agreements do not have. The dynamics and actors of international environmental law is quite different from many other international law fields. First of all, the subject of the international environmental law is common good while in the others its state interest. States usually accept the importance and urgency of cooperation on environmental protection and are ready to take responsibility whatever the cost is. Additionally, the MEAs are examined by both managerial and enforcement approaches show that there are deeper and gradually deepening and widening cooperation between states when it is compared with treaties signed in other fields. But, MEAs still reflect a technical and scientific cooperation but not deep political incentives. As both schools accept, these different aspects of MEAs are the reasons why there are much deeper cooperation in and high compliance with MEAs even without harsh enforcement.

Secondly, both managerial and enforcement schools accept that regulations of MEAs require technological, scientific and administrative background and financial resources which many states parties of MEAs do not have. Even with coercive sanctions, compliance cannot be achieved if a state does not have these capacities. So, in both approaches, it is accepted that for MEAs, non-compliances are mostly caused by incapabilities unwillingly. The reason of non-compliance and consequences of non-compliance should be relevant. In this circumstance, it is a widely held understanding among even the scholars of enforcement approach that, sanction mechanisms are less than enough for MEAs. If a state does not have enough capacity to comply, any deterrence could push the state to compliance.

[634] Crossen, 2003, p.493.

The result of the competition between these approaches is that none of them is solely successful to promote compliance.[635] Rather than choosing only one, it is better to use both of them at the same time for "persuasive continuum".[636] They both have reasonable and valid arguments for compliance processes and solely they both come short. Neither the argument of managerial school which claims that sanctions are rarely used and ineffective is valid anymore nor are the coercive sanctions alone enough for compliance with treaties which requires technological and financial capacity.[637] The balance depends on the relevant problem which is the subject of the regime. Some problems require smoother approaches while others require harder. For example, human rights regime requires and performs harder compliance mechanisms and enforcement mechanisms.[638] On the other hand, for MEAs, managerial school seems a bit better -and useful- approach than enforcement.[639] "Governance systems for shared natural resources are meant to have an indefinite life span and … arrangements featuring enforcement as a means of eliciting compliance are not of much use in international society…".[640] Like human rights regime, in environmental regimes too, things coming to sanctions after non-compliance are not desired things. This is a very critical point for environmental law as it is same in human rights regime, because when the results of non-compliance with MEAs come to light, it is usually hard to reverse the degradation which is caused by non-compliance. Preventive interventions are always better in international

[635] The compliance with the EU regulations is explained by the complementation of these approach one another. "The design and operation of the EU's system for inducing compliance challenges the anti- thetical positioning of enforcement and management strategies in the contemporary debate. In the EU, monitoring, sanctions, capacity building, rule interpretation, and social pres- sure coexist as means for making states comply." Burgstaller, p.145 cited from Jonas Tallberg, "Paths to Compliance: Enforcement, Management, and the European Union", **International Organization**, Volume.56, 2002, p.614.
[636] Brunnée, Fine Balance, p.269.
[637] Jutta Brunnée, "MEAs and the Compliance Continuum" in **Multilevel Governance of Global Environmental Change**, (Ed. Gerd Winter), Cambridge University Press, New York, 2006, (MEAs), p.406.
[638] Bodansky, International Law, p.203.
[639] The conclusion of Brunnée from treaties she evaluated -the Montreal Protocol, LRTAP, the Basel Convention and the Biosafety Convention- is that in these treaty-based regimes, promoting compliance by using incentives like capacity building as managerial approach suggests is adopted, as a better way than punishing non-compliance to be able to achieve regime targets. Brunnée, Enforcement, p.14.
[640] Young, International Governance, p.74.

environmental law; otherwise things would get seriously harmful.[641] After that point, when a non-compliance case happens, sanctioning the non-complier may bring her back in line but the damages are already done. So, the aim in these kinds of regimes must be to ensure the compliance initially. However, it does not mean that sanctions and enforcements are unnecessary.[642] A suggestion which approaches to a common ground is to manage the non-compliance case in a grace period under the shadow of pending sanctions. In grace period, state and compliance committee work and have dialogue on the case. After the grace period, if state continue to non-comply, pending sanctions enter into force.[643]

2.3.4. Practical Dimensions of Compliance in Environmental Regimes

Practical applications demonstrate as; most MEAs, despite of regulating behaviors related with global commons, have soft enforcement and hard managerial approach. The preferred sanctions are rarely stronger than exposing and disgracing a non-complier state. The approach to a non-compliance case is not to accuse a state with something, but to clear way for higher compliance. This non-adversarial approach makes states more reconciliatory for non-compliance procedures so that even the non-complier states express their non-compliance case initially. Neither the non-complier states hesitate to turn in nor embrace to get their situation analyzed in compliance

[641] Sand, Lessons Learned, p.273. 'The Precautonary Principle' of environmental law has a similar perspective. See: Phillippe H. Martin, "'If You Don't Know How to Fix it, Please Stop Breaking it!' The Precautionary Principle and Climate Change", **Foundation of Science**, Volume.2, Issue.2, 1997, pp.263-292.

[642] Xueman Wang and Glenn Wiser, "The Implementation and Compliance Regimes under the Climate Change Convention and its Kyoto Protocol", **RECIEL**, Volume.11, Issue.2, 2002, p.182.

[643] Brunnée, Fine Balance, p.257. This is the system used by ILO. ILO compliance committee and state work on case for two years to develop the states conditions. But, the sanction ILO conducts is to publicize the non-complier state in black list either in continued failure category or in willfull violator category. Chayes and Chayes, The New Sovereignty, p.232.

committees.[644] Even managerial scholars and legalists accept that this approach should be supported by coercive mechanism for intentional non-compliers.[645]

The observation made by the World Bank Vice President shows that the main reasons of non-compliance with MEAs are usually lacks in capabilities and fragmentations in transfer process of international regulations into domestic system both in legal and in practical manners. On the other hand, he emphasizes that weak enforcement mechanisms in MEAs are the other factors for non-compliance. He also stresses that enforcement mechanisms are reasons of non-compliance cases, too, but also underlines that intentional non-compliance cases are rare.[646]

Some international environmental law scholars accuse the UNEP for misjudging the real solution of the unstoppable environmental problems. They claim that instead of dealing with the implementation and compliance problems of current MEAs, UNEP rather made new MEAs to improve the international environmental law.[647] It is true that although there has been an intense academic query of compliance problems since the 1990s, UNEP has been late to catch this movement. Long afterwards, UNEP also entered to the fray. In 2002, Guidelines on Compliance and Enforcement of MEAs was accepted and in 2006 Manual on Compliance with and Enforcement of MEAs was published.[648] For the current MEAs and also for other international agreements on different fields, both documents are important guiding sources for practical implementation of compliance mechanisms. In Malmö Ministerial Declaration states are called for "speedy implementation of the political and legal commitments entered into by the international community"[649] but instead of strict determining mechanisms, the main points were defined in Guidelines and Manual, and determination of mechanism

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[644] Bodansky, Art and Craft, pp.227, 248; Brunnée, Compliance Control, p.383.
[645] Brown Weiss, Understanding Compliance, p.1588.
[646] Shihata, p.50.
[647] Elizabeth Maruma Mrema, "Implementation, Compliance and Enforcement of MEAs: UNEP's Role", in **International Environmental Law-Making and Diplomacy Review 2004**, (Ed. Marko Berglund), University of Joensuu UNEP Course Series 1, Joensuu, 2005, p.126.
[648] UNEP Governing Council, SS.VII/4, 2001, Guidelines on Compliance; UNEP, **Manual on Compliance with and Enforcement of Multilateral Environment Agreements**, Nairobi, 2006, (Manual).
[649] Malmö Ministerial Declaration, 31 May 2000.

was left to treaty organs by underlying that each treaty has its own circumstances and necessitates.[650] Although the mechanisms they recommend are advisory, they lead states to reconsider some important essentials.

On the other hand, to blame only UNEP for missing out the compliance problems is not fair. At that time, many MOPs of current MEAs also ignored the compliance problems. Maybe, because they are organically dependent on UNEP or maybe on practical and political concerns; they made the same mistake. They either gave insufficient emphasis to compliance mechanisms or performing put the compliance issues aside. Also, like UNEP, MoPs of MEAs have started taking initiatives on compliance problems by end of the 1990s.[651] Today almost all MEAs have a separate committee which has the task of observing and promoting compliance.

The existing non-compliance mechanisms in MEAs stand as a proof of necessity of the combination of management and enforcement approaches. Particularly in the new generation MEAs, which benefit from the experiences of previous ones[652], both managerial and enforcement approaches are equally assessed. Montreal Protocol's non-compliance procedures at the beginning were designed for amicable solutions, gradually they evolved to harder practices.[653] The very recent and most developed compliance

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[650] UNEP, Guidelines on Compliance; UNEP, Manual.

[651] Even compliance procedures was not regulated in LRTAP, in the following protocol in 1994 compliance procedure was adopted and in 1997 compliance committee was established. UNECE, "Implementation Committee Introduction", http://www.unece.org/env/lrtap/ic/welcome.html, (01.07.2014). In the Basel Convention compliance procedures were regulated in general in the Convention and compliance committee was established at 6th CoP in 2002. The Basel Convention, Article.15, Paragraph.5(e) and p.7, http://www.basel.int/Portals/4/Basel%20Convention/docs/text/BaselConventionText-e.pdf, (01.07.2014). In the Kyoto Protocol, the general provisions about compliance were regulated in UNFCCC and the Kyoto Protocol detailed procedures were regulated and committees were established in the Marrakesh Accord in 2005. UNFCCC, "The Marrakesh Accord", 24/CP.7, http://unfccc.int/resource/docs/2005/cmp1/eng/08a03.pdf#page=92, (01.07.2014).

[652] Especially CITES, LRTAP and the Montreal Protocol's implementation and compliance committees lead the way to new designing compliance systems by their theoretical, legal and practical experiences. For example, the Kyoto Protocol's compliance mechanism was inspired by Montreal Protocol's compliance system and was developed taking it as a basis. Raustiala, p.418.

[653] Brunnée, MEAs, p.404 cited from David Victor, "Enforcing International Law: Implications for an Effective Global Warming Regime", **Duke Environmental and Policy Forum**, Volume.10, 1999, pp.166-170; Ulfstein, pp.117-118.

mechanisms can be seen in Kyoto Protocol.[654] The compliance mechanism of UNFCCC started with "minimal compliance procedures" in a soft approach and gradually has been evolving into advanced procedures[655], so, maybe even more than managerial approaches, more enforcement-oriented approaches are to be used in Kyoto Protocol in the close future.[656] This may be a proof of enforcement approach scholars' argument that the deeper the cooperation is, the harder enforcement mechanism it requires.

[654] The Kyoto Protocol, via Marrakesh Accords, established compliance committee's bipedal mechanism consists from Facilitative Branch and Enforcement Branch. Facilitative Branch provides advice and technical and financial facilitation to states to promote compliance while Enforcement Branch carries out punitive consequences to non-complier states. The Kyoto's compliance mechanism is accepted as the most innovative, developed and effective mechanism in MEAs even though there are critics about its weakness and limited capabilities. Scott Barrett, **Environment and Statecraft The Strategy of Environmental Treaty-Making**, Oxford University Press, New York 2003, pp.385-386; Hovi, Bretteville Froyn and Bang, pp.435-449; Wang and Wiser, p.182.
[655] Wang and Wiser, p.184.
[656] Brunnée, MEAs, p.405.

CHAPTER THREE

CASE STUDY: THE MEDITERRANEAN SEA REGIME

The compliance and regime effectiveness issues were analyzed with their features in the previous chapters, and different mechanisms to promote compliance were introduced in a general theoretical perspective. Effects of these mechanisms and combinations of them may result different outcomes in each case. In a perfect world, these theoretical assumptions of compliance mechanisms would result with the highest compliance of all states parties with any regime. However the real world is different from theories, and causes and effects of each mechanism in a particular case may result unexpected outcomes. Furthermore, in the real world there are always possibilities of political interests and effects that could overwhelm the desired outcomes. Thus, the real cases cannot be match with these ideal constructions.[657] Therefore, theoretical hypothesizes should be tested on a real case, even though just one case is not enough to affirm or falsify the theories, it could give clues on their validity and imply their practical highlights.[658] Hence, it is time to test how mentioned mechanisms have been using in a real regime. Since its 40th year of the Mediterranean Action Plan, the Mediterranean Sea regime was chosen as the case study in this study for this testing.

In the following titles first the Mediterranean Action Plan which is the official name of the Mediterranean Sea regime is introduced and then the compliance mechanisms that have been already studied in the previous chapter are analyzed in the Mediterranean Action Plan in a manner how they have been using and which outcomes have been achieved so far for the aim of promote compliance with and effectiveness of the regime.

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[657] Arild Underdal, "Conclusions: Patterns of Regime Effectiveness" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles, Arild Underdal, Steinar Andresen, Jørgen Wettestad, Jon Birger Skjærseth and Elaine M. Carlin), MIT Press, Massachusetts, 2002, (Conclusion), pp.438, 450.

[658] P. Haas, Saving the Mediterranean, p.xxi.

3.1. THE MEDITERRANEAN ACTION PLAN

In this section, features of the Mediterranean Sea and its basin, the historical background of the regime which was established to protect the Mediterranean Sea environment and the legal documents of this regime are introduced to be able to understand the Mediterranean Action Plan (MAP) better.

3.1.1. The Mediterranean Sea and the Basin

The Mediterranean Sea is almost an enclosed sea, attached to the Atlantic Ocean through the Strait of Gibraltar, to semi-closed Black Sea through the Turkish Straits and to the Red Sea through the Suez Canal. The coastal zone[659] line is 46.000 km long. From the west to the east, it is about 4000 km and the greatest distance from shore to shore is 900 km, between France and Algeria.[660] It is one of the largest seas with 2.523.000 km^2 surface area and 3.708.000 km^3 volume. Beside of very slow exchange of waters which make renewing process very hard[661], supply of fresh waters into the sea from rivers and ground waters is very low. As well as unfortunate oceanographic features of the sea, the Mediterranean basin has intensive industrial and agricultural basins and high population in coastal regions historically, addition to high touristic popularity. The population in the basin states, coastal places being in the first place and it continuously increases. It is expected that in the mid-21st century, the Mediterranean basin states' population will be

[659] The coastal zone, according to Protocol on Integrated Coastal Zone Management in the Mediterranean Article.2(e), is "the geomorphologic area either side of the seashore in which the interaction between the marine and land parts occurs in the form of complex ecological and resource system made up of biotic and abiotic components coexisting and interacting with human communities and relevant socio-economic activities".

[660] UNEP/MAP, **State of the Mediterranean Marine and Coastal Environment**, Athens, 2012, (UNEP/MAP, State of the Mediterranean), p.19.

[661] Change of waters completely takes almost 80-100 years. Dorit Talitman, Alon Tal and Shmuel Brenner, "The Devil is in the Details: Increasing International Law's Influence on Domestic Environmental Performance -The Case of Israel and the Mediterranean Sea", **New York University Environmental Law Journal**, Volume.11, 2002-2003, p.416 cited from Silvio De Flora et al., "Genotoxic, Carcinogenic, and Teratogenic Hazards in the Marine Environment, with Special Reference to the Mediterranean Sea", **Mutation Res**., Volume.258, 1991, pp.285-297.

approximately 600 million. Even today, one third of the basin population is settled at coastal area. The population live along the Mediterranean shore is over 150 million. Beside of denizens, every year over than 300 million tourists figure in this number.[662] The Mediterranean is highly popular touristic destination and 50% of total tourists are mainly concentrated on coastal attractions and bathing. This number is as high as 90% in some basin states.[663] Inner population in the basin settles mostly close to rivers and wetlands which eventually transfer their pollution to the sea. These numbers of population, both denizens and visitors, refer more demand for seafood, more pollutants like municipal sewage, more agricultural wastes, more marine traffic, and naturally more consumption of marine resources and more pollution in the sea. Moreover, industrialization in the coastal states is improving, hence more industrial wastes, chemicals and inorganic compounds are contaminating to the Sea, directly and indirectly through ground and underground waters and sewages. Development and improving living standards are also harmful elements for environment by their own, such as increasing oil consumption, energy need, more food demand, plastics, etc. Furthermore, highly polluted international watercourses like the Nile, the Ebro, the Po, the Rhone, the Arno and the Tiber which flow into the Mediterranean add more pollution to the sea. Additional to heavy land-based pollution in the sea, there is intensive maritime traffic; almost one third of the world international cargo traffic[664], and 20-25% of the world oil transport traffic[665] which have high risks of accidents and accidental pollutions of oil spills.

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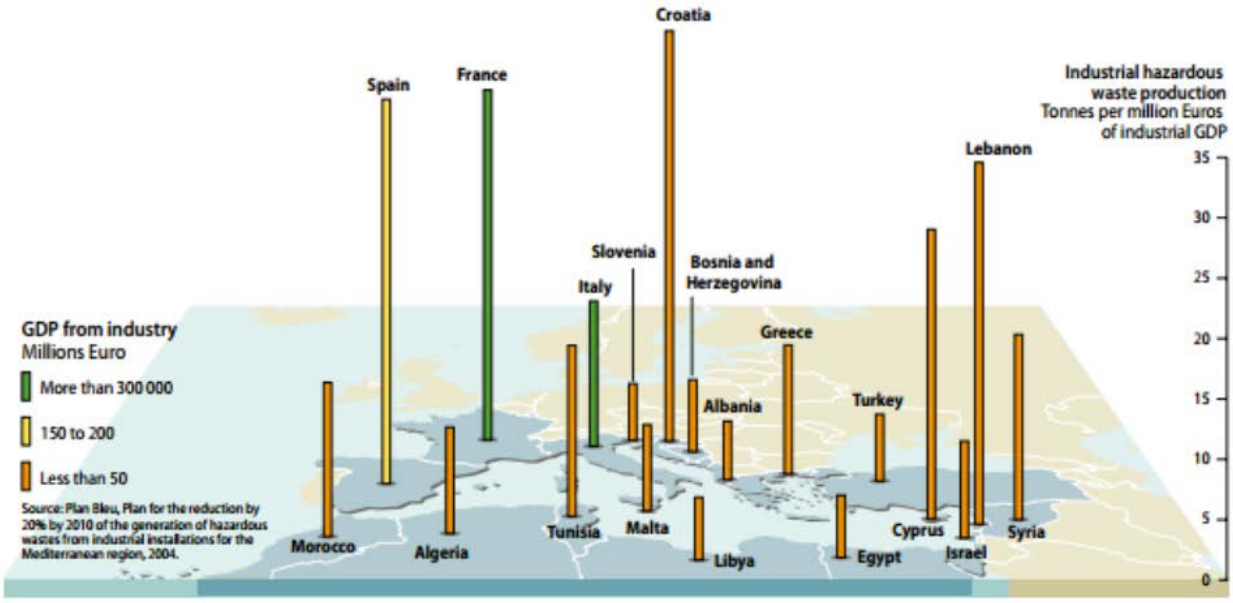
[662] According to 2011 statistics. Frédéric Pierret, "Key Notes", **International Conference of The Future of Tourism in the Mediterranean**, the World Tourism Organization and the Government of Tunisia, Djerba, 16-17 April 2012, pp.8-10.

[663] Francesco Saverio Civili, "The Mediterranean Marine Environment: Pressures, State of Pollution and Measures Taken (The Barcelona Convention and the Mediterranean Action Plan)" in **Marine Issues From a Scientific, Political and Legal Perspective**, (Peter Ehlers et al.), Kluwer Law International, 2002, p.165.

[664] The Bluemassmed Project, "The Mediterranean Sea", http://www.bluemassmed.net/index.php?option=com_content&view=section&layout=blog&id=7&Itemid=70, (01.11.2014).

[665] UNEP/MAP-Plan Bleu, **State of the Environment and Development in the Mediterranean**, UNEP/MAP-Plan Bleu, Athens, 2009, p.18.

Figure 5: GDP and Industrial Hazardous Wastes of the Mediterranean States



Resource: UNEP/MAP, State of the Mediterranean, p.28.

Contrary to claims that 'the Mediterranean Sea is dying' in the early 1970s, different parts of the sea has different levels of degradation and different kinds of problems, although degradation in marine environment is a general problem. The most problematic parts are mostly at the northern-west coasts, the Adriatic Sea in the first place and then French and Spanish coasts, and the Eastern Mediterranean. Common problems are eutrophication, endangered species and lately algal blooms.[666]

In the MAP regime, border of the sea is limited with the Strait of Gibraltar and southern entrance of the Dardanelles.[667] The Suez Canal is not included into the regime. Until the 1995 revision, only territorial waters were under jurisdiction of regulations; all gulfs and inner-regional seas were included but not the internal waters.[668] In 1995,

[666] Joseph F.C. DiMento and Alexis Jaclyn Hickman, **Environmental Governance of the Great Seas**, Edward Elgar Publishing, Cheltenham, 2012, p.86 cited from Roberto Danovaro, "Pollution Threats in the Mediterranean Sea: An Overview", **Chemistry and Ecology**, Volume.19, 2003.
[667] The Barcelona Convention, Article.1(1).
[668] Gerald Blake, "Combating Pollution in the Mediterranean Sea: An Evaluation of Coastal State Cooperation" in **International Boundaries and Environmental Security Frameworks for Regional Cooperation**, (Gerald Blake et al.), Kluwer Law International, London, 1997, p.71.

jurisdiction area has been extended to all maritime areas like exclusive economic zones where coastal states have limited jurisdiction rights. Thus, all marine areas in the Mediterranean Sea except high sea are now in under jurisdiction of the MAP regime regulations. Furthermore thanks to LBS Protocol, hydrologic basin of states parties which means all ground and underground watercourses flow into the Mediterranean Sea are under the jurisdiction of the MAP, but limited with LBS protocol provisions.[669]

The Mediterranean basin is bordered by 23[670] states of which some of them have bilateral and/or multilateral conflicts on very important political and maritime issues including recognition, territorial sea, continental shelf etc.[671] Despite of these problems, it is good news that all current basin states are parties to the regime to heal the sea.[672]

3.1.2. Historical Background of the Mediterranean Sea Regime

The Stockholm Conference on the Human Environment, organized in 1972, recommended creation of an environmental organization which would work within the body of the United Nations. Accordingly, the UNEP was established by the UN General Assembly, through the mission of "to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations".[673] In the same conference the Mediterranean Sea, the Baltic Sea, the Black Sea and the Caspian Sea were categorized as "particularly threatened bodies of water".[674]

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[669] DiMento and Hickman, p.99; The Barcelona Convention, Art.3(d), Art.12.2.
[670] Including Turkish Republic of Northern Cyprus, except Palestine.
[671] For example Aegean conflicts between Greece and Turkey, dispute of exclusive economic zone between south Cyprus and Turkey, recognition of Turkish Republic of Northern Cyprus, post-colonial problems between Algeria and France, possession claim over West Sahara between Algeria and Morocco, Israeli and Arab conflicts, and of course the North-South division in general.
[672] Except Palestine and Turkish Republic of Northern Cyprus who have recognition problems.
[673] UNEP, "About UNEP".
[674] Jon Birger Skjærseth, "The Effectiveness of the Mediterranean Action Plan" in **Environmental Regime Effectiveness: Confronting Theory with Evidence**, (Eds. Edward L. Miles, Arild Underdal, Steinar Andresen, Jørgen Wettestad, Jon Birger Skjærseth and Elaine M. Carlin), MIT Press, Massachusetts, 2002, (The Effectiveness), p.312.

In 1974, shortly after its establishing, UNEP decided the 'Regional Seas Programmes' for protection and development of regional seas, bearing in mind that each region has different needs and consequently requires different approaches to deal with its own problems by engaging neighboring countries. In practicing each regional sea programs; assessment, management, legal, institutional and financial components of a plan are particularly and comprehensively described so that both protection and improvement of environment could be reached and also national interests and concerns could be protected. Today UNEP carries out 13 regional sea programs: Mediterranean (1975), Pacific (1976) ROPME Sea Area (Persian Gulf) (1978), South-East Pacific (1981), Western and Central Africa (1981) Wider Caribbean (1981), East Asian Seas (1981), Red Sea and Gulf of Aden (1982), Eastern Africa (1985), Black Sea (1992), Northwest Pacific (1994), South Asian Seas (1995) and North-East Pacific (2002), and 5 joined programs: Baltic Sea (1972), North-East Atlantic Regions (1972), the Antarctic (1982), Arctic (1991) and Caspian Sea (1999).[675] Each of these regional sea programs functions through a tailor made action plan accordingly to their problems, needs and possibilities.

The Mediterranean Action Plan, shortly called as the MAP, was the first regional sea plan adopted by UNEP. In the late 1960s, concern about condition of the Mediterranean Sea had started to voice increasingly, when the pollution arising from escalating oil and commercial tanker traffic added to industrial pollution became clear and distinct. The debris, tar balls, oil films, sewage or smell were the physical evidence of the pollution.[676] The pollution and danger were clear but the Mediterranean states did not have real information about reasons and the consequences of this pollution, and could not take necessary measures and thus, they asked help from UNEP to develop a research and solution plan. In 1971, a preparatory meeting was held and participated states agreed on urgency of a regional agreement to prevent pollution of the

[675] UNEP, "The Regional Seas", http://www.unep.org/regionalseas/about/default.asp, (01.11.2014).
[676] Kütting, Case of MAP, p.25 cited from Baruch Boxer, "The Mediterranean Sea: Preparing and Implementing a Regional Action Plan" in **Environmental Protection, The International Dimension**, (Eds. David Kay and Harold Jacobson), Allansheld, Osmun & Co. Publishers, New Jersey, 1983 p.274.

Mediterranean Sea.[677] By helping and leading of UNEP, sixteen states including European Community adopted the MAP in 1975. In 1976, the first step aiming at the marine pollution control was taken by these parties and a framework convention and two protocols were signed.

In 1995, the 20th year of the regime, the MAP was revised and a new era of the regime, "Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean" i.e. "the MAP Phase II" started. In this phase, more emphasis was laid on sustainable development which was a confirming call after 1992 UNCED.[678] Amendments to protocols were signed; some protocols were replaced by new ones, including the 1976 Barcelona Convention itself. Even though the main focus was 'pollution in the sea' at the beginning, accordingly to changed environmental concerns, more importance was started to be given historical sites, marine live and land-use in the Mediterranean basin after second half of the 1990s.

Today, the MAP has three-pronged approach: First, defining of pollutants and environmental problems of the sea; second, to take an action to protect and enhance the sea through common and cooperative actions by the Mediterranean states; third, to improve comprehensive programs for development plans of the basin states by protecting environment.[679] The goal within the process has been expanded from limited vision of 'to control and prevent of pollution in the sea' into comprehensive perspective of "integrated coastal zone planning and management" of the sea and the coasts, through a forecast of gradually more utilization of the sea in the future. Accordingly, number of the states parties of the regime has increased from 16 to 22: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey and

[677] P. Haas, Saving the Mediterranean, pp.66-67, 86.
[678] The "MED 21" conference was held in 1994 to discuss how Agenda 21 would be adopted for Mediterranean region. Blake, p.71. The Mediterranean Commission on Sustainable Development was established. DiMento and Hickman, p.100.
[679] Gabriela Kütting, "The Consequences of Ignoring Environmental Effectiveness (I): The Mediterranean Action Plan" in **Environment, Society and International Relations**, (Gabriela Kütting), Routledge, London, 2000, (Consequences), p.62.

European Union. For this aim, the targets of the MAP are: "to assist the Mediterranean countries to assess and control marine pollution, to formulate their national environment policies, to improve the ability of governments to identify better options for alternative patterns of development, and to optimize the choices for allocation of resources".[680] The priorities of the MAP to be able to achieve these targets have been determined as follow for the decade ahead:

- "to bring about a massive reduction in pollution from land-based sources;
- to protect marine and coastal habitats and threatened species;
- to make maritime activities safer and more conscious of the Mediterranean marine environment;
- to intensify integrated planning of coastal areas;
- to monitor the spreading of invasive species;
- to limit and intervene promptly on oil pollution;
- to further promote sustainable development in the Mediterranean region".[681]

The MAP consists of a chain of legal documents; one convention and seven protocols which can be summed as the Barcelona Convention system which had been designed to complete each other in a bigger context but of which states could be party separately.[682] To be able be party of the MAP the convention and at least one of the protocols had to be signed.[683] Later in chapter the rings of this chain are introduced.

3.1.3. Legal Framework of the MAP

Legal framework of the MAP consists from an umbrella convention and seven issue-based protocols which are introduced below.

[680] The Mediterranean Action Plan, "The Action Plan", http://www.unepmap.org/index.php?module=content2&catid=001001002, (01.11.2014).
[681] The Action Plan.
[682] For example, Turkey has not became party of Offshore and ICZM protocols yet.
[683] The Barcelona Convention, Article.29.

3.1.3.1. 1976 Convention for the Protection of the Mediterranean Sea against Pollution (The Barcelona Convention)[684]

The Convention for the Protection of the Mediterranean Sea against Pollution[685] is a so-called umbrella convention which establishes a framework for general duties regarding particularly preventing the pollution of the sea. The aim of the Convention is "to prevent, abate and combat pollution of the Mediterranean Sea area and to protect and enhance the marine environment in the area" while "aiming at a better utilization of resources in the interest of the countries of the region and of their development".[686] The real implementation of this umbrella convention is ensured by seven protocols. "While the Barcelona Convention set broad goals for protecting the Mediterranean, the protocols addressed specific sources of pollution and set forth plans for remedial action."[687]

In 1995, the Barcelona Convention revised by the MoP and re-adopted as a new convention named the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, from now on the Barcelona Convention or the Convention.[688] Even though the concept and most of the articles are same, the revised convention is a new treaty and had to be signed and ratified to be able to enter into force.

Beside of a change in the name of the Convention, the geographical coverage of the regime was extended from only territorial waters to internal waters, and a possibility

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[684] Entered into force in 1978 and revised in 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the Barcelona Convention) - in force in 2004

[685] The Mediterranean Action Plan, "Convention for the Protection of the Mediterranean Sea Against Pollution", (1976 Barcelona Convention), http://195.97.36.231/dbases/webdocs/BCP/BC76_Eng.pdf, (01.11.2014).

[686] The Barcelona Convention, Article.4(1); Evangelos Raftopoulos, **The Barcelona Convention and Protocols**, Simmons & Hill Publishing Ltd, London, 1993, pp.21-22 cited from UNEP, **Mediterranean Action Plan and the Final Act of the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea**, United Nations, New York, 1978, pp.3-4, sec.I(3).

[687] Susskind and Ozawa, p.145.

[688] The Mediterranean Action Plan, "Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean", (1995 Barcelona Convention) http://195.97.36.231/dbases/webdocs/BCP/bc95_Eng_ p.pdf, (01.11.2014). As long as not to state otherwise, referrings imply the articles of 1995 Convention.

of extension to coastal areas if the related state wants (Article 1(2)). A provision about public information and participation was added (Article 15(1-2)). The scope of the regime about pollutant sources was also extended to transboundary movements and hazardous wastes (Article 9.B). Newly emerged international environmental law principles; the precautionary principle, the polluter pays principles and the environmental impact assessment provision are added to the Convention. The priority fields are re-defined. The need for time limits in regulations is emphasized. A balance between development and environmental protection is tried to be set by underlining the need of sustainable development.

3.1.3.2. 1976 Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft (The Dumping Protocol)[689]

The aim of this protocol is to prevent "pollution caused by the dumping or wastes or other matter from ships and aircraft".[690] Accordingly to these aims, two lists of substances were determined. The substances in the first list are prohibited for dumping. For the substances in the second list, a national permit is required for dumping was decided to require. All other substances excluding from any list are regulated with a general permit by national authorities. This protocol regulates dumping not only from ships and aircrafts of signatory states but also the ships and aircrafts of non-signatory states at which the territorial waters of the any of the states parties.

[689] Entered into force in 1978, amended as 'the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea' in 1995, not in force yet.

[690] The Mediterranean Action Plan, "Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft", http://195.97.36.231/dbases/webdocs/BCP/ProtocolDumping76_Eng.pdf, (01.11.2014).

3.1.3.3. 1976 Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (The Emergency Protocol)[691]

The aim of this protocol is to prevent the "pollution of the sea by oil and other harmful substances", "which requires emergency action or other immediate response".[692] Increasing marine traffic and hazardous cargo carriage in the Mediterranean Sea were required more detailed and appropriate interventions to emergency situations such as accidents. Timely notification, urgent intervention and co-operation for immediate cleans-up are features of this protocol. Accordingly to calls of provisions of the Emergency Protocol conforming to IMO regulations and other international regulations, the 'Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea' (REMPEC) which was established through this protocol is co-administered by IMO and UNEP.[693]

3.1.3.4. 1980 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (The LBS Protocol)[694]

At the beginning and during the launching process of the MAP, the focus was oil pollution in the Mediterranean Sea. Even at that time, land-based pollutants, as important as oil pollution but an ignored and more challenging pollution channel, had became debating. After successful achievements of the Barcelona Convention and results of the protocols on oil pollution had became clear, it was time for regulating

[691] Entered into force in 1978, replaced by 'the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency' in 2002, in force in 2004.
[692] The Mediterranean Action Plan, "Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency", http://195.97.36.231/dbases/webdocs/BCP/ProtocolEmergency76_eng.pdf (01.11.2014).
[693] DiMento and Hickman, pp.111-112.
[694] Entered in force in 1983, amended as 'the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities' in 1996, in force in 2008.

land-based sourced pollution which was considered 80-85% of pollution source of the Mediterranean Sea.[695] These were including agricultural and industrial wastes, transmissions from rivers and atmosphere, municipal wastes.[696] The protocol mostly followed scope and regulations of the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area, yet, the LBS protocol is accepted as one of the strictest of its precedents. Despite of it is hard to comply, the success is remarkable.[697] New challenges for compliance were added in the 1996 amendments accordingly to the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities.[698] In spite of some obstacles, this protocol was a cornerstone in the MAP history from the aspect of consensus between developed and developing states parties of the MAP, since industrial wastes are seemed as a natural and inevitable consequences arising from industrial activities which are driving force of economic development movement of developing states.[699]

The aim of this protocol is to prevent "pollution from land-based sources" arising from increased human activities "…particularly in the fields of industrialization and urbanization, as well as the seasonal increase in the coastal population due to tourism".[700] All kind of land-based emissions, industrial, agricultural and municipal flow into the Sea which contaminating for sea, including transmitting from rivers and

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[695] Talitman, Tal and Brenner, p.416 cited from UNEP, **Survey of Pollutants from Land-Based Sources in the Mediterranean Sea: Map Technical Report Series**, No. 109, 1996, p.3. For example researches on land-based sources of MED POL shows that, most of oil pollution in the Mediterranean sea is caused by not marine vessels but by automobile's oil pans which are drained into municipal sewages. Peter M. Haas, **Saving the Mediterranean: The Politics of International Environmental Cooperation**, Columbia University Press, New York, 1990, (Saving the Mediterranean), p.102.

[696] Untreated industrial wastes contain heavy metals and inorganic chemicals that are toxic for human and marine species. Agricultural wastes contain both organic and inorganic chemicals that cause human and marine species death. Untreated municipal sewages contain microorganisms and bacteria that cause epidemic diseases like typhus, hepatitis, typhoid, cholera etc which can cause death by contact with contaminated water and by eating contaminated sea food.

[697] Blake, p.73 cited from L. Jeftic et al., **State of the Marine Environment in the Mediterranean Region**, UNEP Regional Sea Reports and Studied, No.132, Athens, 1990, p.7.

[698] DiMento and Hickman, p.101.

[699] P. Haas, Saving the Mediterranean, p.67.

[700] The Mediterranean Action Plan, "Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources", http://195.97.36.231/dbases/webdocs/BCP/ProtocolLBS80_eng.pdf, (01.11.2014).

atmosphere have been limiting. The substances were mostly copied from the European Community's regulations and the Paris Commission for the Northeast Atlantic and two different categorizations were defined. The substances in the "black list"[701] of the protocol are all banned, and substances in the "grey list"[702] are put under a strict control. Nevertheless, there was neither how these elimination and limitation would managed were defined nor time-schedules were determined.[703] On the other hand, as a good news, the LBS protocol includes all hydrologic basin of the states parties into its implementation field. This was a progressive step for a better regulation since the rivers in the basin are highly polluted. Because of these rivers are mostly international watercourses that shared by at least two or more states, states parties must invite the non-party states with whom shared the watercourse to cooperate on protection of it according to the LBS protocol.[704]

3.1.3.5. 1982 Protocol Concerning Mediterranean Specially Protected Areas (The SPA Protocol)[705]

Even though the main scope of the MAP was initially pollution, the states decided to widen the scope by including protection of endangered species by creating marine parks. Only nine of sixteen attending states signed the SPA protocol immediately after its negotiation and today 18 of 22 states are party to the protocol. This protocol is important for showing the momentum of the MAP regime.[706] As it was said earlier, spillover effect of a regime is important for deepen and strength it. Although the states

[701] Such as organohalogen compounds, organophosphorus compounds, organotin compounds, mercury compounds, cadmium compounds, used lubricating oils, persistent synthetic materials, radioactive substances and substances that have carcinogenic, teratogenic or mutagenic effects…
[702] Such as various heavy metals, biocides, organosilicon compounds crude oils, cyanides, non-biodegradable detergents, pathogenic micro-organisms, thermal discharges…
[703] Kütting, Distinguishing, p.18.
[704] DiMento and Hickman, p.102; the LBS Protocol, Article.11(2).
[705] Entered into force in 1986, replaced by 'the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean' in 1995 (The SPA/BD Protocol), in force in 1999.
[706] P. Haas, Saving the Mediterranean, p.117 cited from **UNEP Press Release**, Press/82/37, 13 April 1982.

parties were in a debate on whether or not including land-based sourced pollution, which is the most important cause of the pollution in the sea, into the regime, in less a decade they were voluntarily ready to regulate a brand new area within the regime which is irrelevant to the pollution prevention.

The aim of this protocol is defined as "protecting and, as appropriate, improving the state of the natural resources and natural sites of the Mediterranean Sea, as well as of their cultural heritage in the region among other means by the establishment of specially protected areas including marine areas and their environment".[707] Although the sea covers only 0,7% of world's ocean area, the Mediterranean basin hosts 7,5% of world's marine fauna and 18% of world marine flora. Beside of being one of the richest marine life reservoirs, 28% of the world endemic species are unique to the Mediterranean Sea. Unfortunately, about 19% of its marine live is under threat of extinction. Approximately 500 endangered species and one fifth of these species are endemic including the Mediterranean monkseal and the caretta caretta which live only at the Mediterranean Sea and coastal area of the basin.[708] The urgent need of protection of this rich marine life in the sea underlines importance of this protocol. The Regional Activity Center for Specially Protected Areas of the MAP is responsible for monitoring of the marine life and implementation of the SPA/BD Protocol.

In its first implementation year, about 100 areas regarded as the 'Specially Protected Area'[709] while there were 122 SPA with 17.670 km^2 total sea area in 1995. Now, there are more than 800 SPAs with over than 144.000 km^2 area most of which at the northern shores. Today almost two third of the Mediterranean Sea coast is under protection of the SPA/BD Protocol.[710]

[707] The Mediterranean Action Plan, "Protocol Concerning Mediterranean Specially Protected Areas", http://195.97.36.231/dbases/webdocs/BCP/ProtocolSPA82_eng.pdf, (01.11.2014).
[708] Blake, p.73; RAC/SPA, "Biodiversity in the Mediterranean", rac-spa.org/biodiversity, (01.09.2014).
[709] Skjærseth, The Effectiveness, p.319.
[710] UNEP/THE MAP-Plan Bleu, State of the Environment, p.57.

3.1.3.6. 1994 Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (The Offshore Protocol)[711]

The aim of this protocol is to prevent "the pollution which may result … from exploration and exploitation of the Mediterranean seabed and its subsoil".[712] Using of the best available technology for mining and drilling techniques and cooperation in case of accident and pollution were decided by this protocol.

Although even at preliminary phases of the 1976 Barcelona Convention, regulations on exploration and exploitation of the seabed had came into the agenda, and even it was mentioned at Article.7, it was decided to suspend this issue until the UN Conference on Law of the Sea would result.[713] Negotiation process of the Offshore Protocol took almost ten years and even after signed, it took the longest time for ratification and the longest time for entering into force. These periods indicate how delicate and how complex this subject to regulate for the Mediterranean states.[714] When it is remembered there are rich natural gas and fossil oil reservoirs at the Mediterranean subsoil, the importance of this protocol increases. Besides, there are rich hydrocarbon reservoirs especially at southern Mediterranean seabed.[715] To regulate of exploitation of these natural resources must have been seen as a step of the industrialized northern states to control their development by the developing southern states.[716]

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[711] Entered into force in 2011.
[712] The Mediterranean Action Plan, "The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil", http://195.97.36.231/dbases/webdocs/BCP/ProtocolOffshore94_eng.pdf, (01.11.2014).
[713] P. Haas, Saving the Mediterranean, p.97.
[714] Kütting, Consequences, pp.67-68.
[715] UNEP/MAP, State of the Mediterranean, p.33.
[716] Developing states are very doubtful of environmental policies are developed states' pawn to control or capture their resources. In 1971 IOC wanted to start a joint environmental research program but it was declined by majority of the Mediterranean states since it was considered as a Soviet Union's or USA's covered program of marine research for subsoil resources with hidden submarines. P. Haas, Saving the Mediterranean, p.87.

3.1.3.7. 1996 Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (The Hazardous Wastes Protocol)[717]

The aim of this protocol is to prevent the pollution "caused by the transboundary movements and disposal of hazardous wastes"[718] especially radioactive wastes. Thus, polluting substances that France and Italy were tried to exclude from the LBS protocol have been included to the regime through this protocol. Provisions of this protocol are applied to the materials that contain hazardous ingredients, and hazardous wastes drained into the sea and also transportation of hazardous materials and wastes.

3.1.3.8. 2008 Protocol on Integrated Coastal Zone Management in the Mediterranean (The ICZM Protocol)[719]

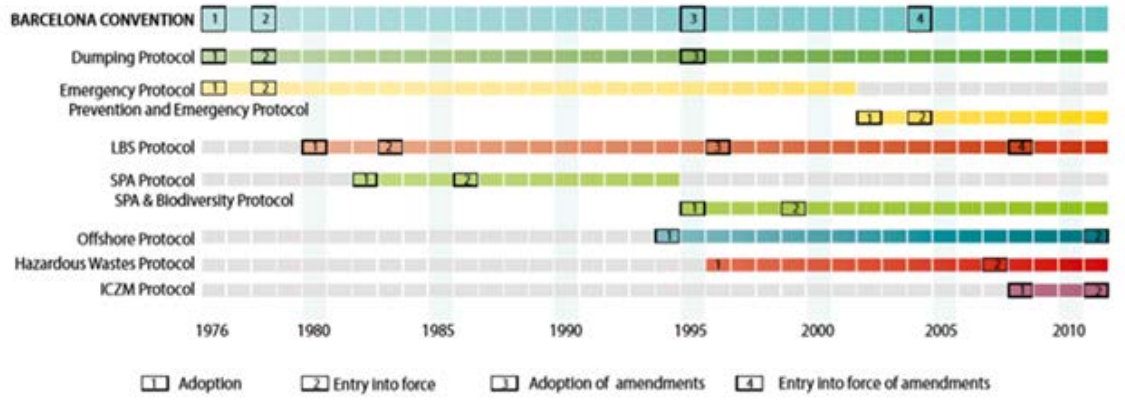
The aim of this protocol is to preserve and to use the Mediterranean Sea "judiciously for the benefit of present and future generations" by "…planning and management of coastal zones with a view to their preservation and sustainable development" to diminish the human resourced pressure on the Mediterranean coasts.[720] Planning of urban development strategies and socio-economic development plans according to not to exceed carrying capacity of the coastal zone is an important principle of the protocol.

The last protocol is an indicator of how the MAP developed itself from the aim of prevention of oil pollution in the sea to a more comprehensive protection and the sustainable management of the sea. This is also an innovative development for the

[717] Entered into force in 2008.
[718] The Mediterranean Action Plan, "Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal", http://195.97.36.231/dbases/webdocs/BCP/ProtocolHazardousWastes96_eng.pdf, (01.11.2014).
[719] Entered into force in 2011.
[720] The Mediterranean Action Plan, "Protocol on Integrated Coastal Zone Management in the Mediterranean", http://195.97.36.231/dbases/webdocs/BCP/ProtocolICZM08_eng.pdf, (01.11.2014).

Regional Seas Programs and also for the international cooperation on protection of the sea since this is the first treaty about coastal zone management.

Figure 6: Timeline and Coverage Map of the Barcelona Convention and Protocols



Resource: UNEP/MAP, State of the Mediterranean, pp.74-75.

3.1.4. Institutional and Financial Structure of the Mediterranean Sea Regime

Institutional structure of a regime is an important factor for its effectiveness. Thus, before exploring its effectiveness, it is beneficial to take a close look to the MAP's institutional structure. The MAP, rather than being a comprehensive and extensive international organization, has a relatively simple structure; the Meeting of Parties (MoP) and the MAP Coordinating Unit (MEDU). UNEP also is umbrella organization for the MAP as well as all other regional sea regimes. There are also different institutions functioning under this simple organization.

As in the other regional action plans of UNEP, the MAP has five components which are assessment, management, legal, institutional and financial which all have different institutional structure within the MAP. The Convention and the protocols are the legal components of the MAP. The Meeting of Parties and the Secretariat and also the MAP Coordinating Unit which was created to assist the Secretariat, are the institutional components. The Programme for the Assessment and Control of Marine Pollution in the Mediterranean Region (MED POL) is the assessment component while designation of the Blue Plans and Priority Action Programmes are a combination of assessment, financial and institutional components. The MAP does not have an exclusive financial component however the Mediterranean Trust Fund is a tool for financial component. Annually contributions of the states parties are re-distributed to the parties of the regime through the Mediterranean Trust Fund and as well as the Blue Plans and Priority Action Programmes.[721] UNEP, GEF and the World Bank are also external financial supportive organizations of the MAP.

From negotiation phase and after signing of the Barcelona Convention in 1976, organizational and institutional support to the regime was given by UNEP as a leading institution of the Regional Seas Programme. In Geneva, the Regional Seas Office was established as the coordination unit for states parties of regional seas programs and also

[721] Evangelos, pp.5, 21-22, 42.

between the states and UNEP and other related international organizations.[722] After creation of other regional sea programs, since burden of UNEP in managing and financing each of them had been increased, individual organizing of each program was established for a tailor made management. The Regional Seas Office was moved from Geneva to Nairobi where UNEP Headquarters is re-placed, and still acts as the coordination unit between the regional seas programs, and UNEP and other UN agencies.[723]

Today the MAP is an autonomous program of UNEP and has the execution office in Athens. The Meetings of Parties of the MAP decide policies and the MAP has a financial structure by its own. Nevertheless neither the MAP nor other regional seas programs are actually independent organizations. UNEP leads the programs and has the right to say final word about all the regional seas programs. This causes a multi-layered management of the programs which cause time-lags, lack allocation of budget, wrong planning of projects all of which are shortcomings for the MAP that may cause its ineffectiveness. MEDU, the execution office in Athens, is just a coordinating unit in real. This is also an advantage if managed well. There is always a driving force behind the regional seas programs even when the states parties' motivation decreases, budget distributions cannot be managed fairly, political decisions of MoPs surpass environmental requirements.[724] Since UNEP is "the voice for the environment"[725], it is UNEP's duty to defend the environment against states. The process of UNEP/MAP co-management shows that both these shortcomings and advantages have been occurring.

From the very beginning, the Meeting of the Parties (MoP) is the highest decision-making authority of the MAP.[726] All states parties participate in all sessions of the MoP and the MoP represents collective interest and collective consent of the all parties. The MoP meets every two years in ministerial level and extraordinary meetings

[722] P. Haas, Saving the Mediterranean, p.125.
[723] UNEP, Regional Seas Programme.
[724] Kütting, Consequences, p.78.
[725] UNEP, "The Voice for the Environment", unep.org/About/, (01.09.2014).
[726] The Barcelona Convention, Article.18 ff.

are deemed at any other time when necessary. Every states parties are represented with one vote[727] and decisions usually are taken by consensus; but for protocols, amendments annexes are adopted by a three-fourths majority. Beside of verification of implementation of the MAP treaties and review of the progress; general policy and strategies of the regime are defined; new decision are taken; new protocols and amendments are adopted; and budget and financial decisions are adopted by the MoP. If necessary, the MoP may create working groups and research centers. Additionally, for non-compliance procedures, the MoP considers national reports, if necessary, ensures recommendation for implementation to the states parties. The MoP is the final decision organ like an appeal.[728] The heading of the MoP is functioned by the Bureau which consists from six representatives of the states parties and representatives rotate in every six months.[729]

Executive branch of the regime was the Bureau.[730] In 1982, the Bureau has been replaced by the MAP Coordinating Unit (MEDU) in headquarter in Athens.[731] Contrary to the Bureau, MEDU is bigger and has a more professional structure. There are six representatives elected on a rotation for two years on a geographical distribution and economic development bases. Scientists and marine experts are invited to MEDU meetings and executive level of MEDU is more professional in governing and environmental regulating than the Bureau. MEDU is also the secretariat of the MAP and

[727] The member states of EU assigned their voting rights to EU. The EU has equal vote to number of its member states, currently 8. The Barcelona Convention, Article.25.

[728] UNEP(DEPI)/MED IG.17/2 "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", Annex V, Decisions of the 15th Meeting of the Contracting Parties, 2008, pp.26-27.

[729] The Mediterranean Action Plan, "Structure", www.unepmap.org/index.php?module=content2&catid=001017, (30.08.2014).

[730] The Bureau -or the Secretariat- was created by four representatives of parties for two-year term assignation at Regional Seas Office under the UNEP. Although France had offered an all parties represented bureau, a smaller bureau was created because of it would be bulky, so made it hard to function. Besides, all states' representatives would meet annually any way. The Bureau was meeting four to six times in a year. Instead of locating the Bureau at a state of parties, a rotating hosting in president's state was decided. Seats were distributed geographically and equally between developed and developing states. P. Haas, Saving the Mediterranean, p.126.

[731] In the auction, Spain and Greece competed for hosting headquarter and Greece won this competition with $ 450.000 offer per year. P. Haas, Saving the Mediterranean, p.127.

has an autonomous structure although it is closely tied with UNEP as being a part of its Regional Seas Programme. MEDU, is entrusted with operational implementation; performs diplomatic and political communications between states parties; supervises the Regional Activity Centres (RACs); organizes meeting; and monitors implementation of and compliance with the regime.[732] While MoP aims collective interest of the states parties and interest of the regime, MEDU endeavors to improve the MAP as an international community.[733]

The Programme for the Assessment and Control of Marine Pollution in the Mediterranean Region (MED POL) is the scientific and assessment component of the MAP. Formulation and coordination of pollution monitoring and research techniques, enhancing the capabilities of national research centers, analyzing of pollution and pollutants to guide to policies are the aims of MED POL.[734] In the first stage, Phase I, covering 1975-1980, MED POL could conducted only -seven- pilot projects due to lack of facilities and local scientists and ,unfortunately, only two of them were successfully completed.[735] In this stage, initial conditions of the sea and the common problems were tried to be detected and also MED POL created a base to launch a concerted cooperation and communication between parties, and required technology was transferred to whom need.[736] At the Phase II, between 1981-1990, data collection, sharing and verification were started. Also the courses of Phase I's pilot projects were started monitoring and evaluating. The sustainable ones were started generalizing into regional base and new plans were added. Meantime, scientific development, technology transfers and financial assistance kept continue.[737] Now, MED POL re-organized itself and focus on the 'Strategic Action Programme' (SAP MED) of regional and national activities to address land-based pollution and the 'National Action Plans'.[738]

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[732] The Mediterranean Action Plan, Structure.
[733] Evangelos, p.73.
[734] Kütting, Consequences, p.69.
[735] P. Haas, Saving the Mediterranean, p.100.
[736] Evangelos, p. 6.
[737] Evangelos, p.10.
[738] The Mediterranean Action Plan, "The MED POL",

The MAP was thought as a model for further regional sea programs thus it was carefully designeded in a manner of structure and functioning by taking care of political, social and economic dynamics of basin states and common interests. During the negations, despite disagreements, it was understood that protection of the environment by dealing with national pollutant emissions through limitations only is not possible. Pollution is a result of social and economic activities within the states. Therefore, without improving and planning social and economic activities in the states, trying to protect environment would be like trying to cure cancer with a band-aid.[739] This is why there were two different components in the plan; study-oriented Blue Plan and action-oriented Priority Actions Programme.[740] The Blue Plan (BP) aims to search effects of economic activities on the sea; collects data about them; and creates possible scenarios for future; while the Priority Actions Programme (PAP) manages legal regulations about thematic issues especially to be able to overcome socio-economic inequalities among states parties; and provides training and advice to states parties to ensure cooperation on the subjects of which BP indicates an requirement for immediate action.[741] Through BP, the sea has been continuously researching and monitoring, and these results give more and new data on what is needed to be done for protection of the sea, so that further policies and management of the regime could be defined. BP also creates a base for contact of the epistemic community with political processes.[742]

The MAP Regional Activity Centers (RACs) are expert research centers. The MAP has six RACs, each of them has different area of expertise and each is based on different states parties.[743] Each RAC's plan was delivered a participated Mediterranean

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http://www.unepmap.org/index.php?module=content2&catid=001017003, (30.08.2014).

[739] Evangelos, p.22.

[740] Salvino Busuttil, "Preface" in **The Barcelona Convention and Protocols**, (Evangelos Raftopoulos), Simmons & Hill Publishing Ltd, London, 1993, p.iii.

[741] For detailed information on Blue Plan and the Priority Actions Programme, including their preliminary negotiations see P. Haas, Saving the Mediterranean, pp.120-123 and 123-125, Evangelos, pp.23-32; Kütting, Consequences, pp.75-77.

[742] Blake, p.74.

[743] The Mediterranean Action Plan, "RACs", www.unepmap.org/index.php?module=content2&catid=001017004, (30.08.2014).

country to supervise as a rewarding of participation to the MAP.[744] The Blue Plan RAC (BP/RAC) is in Sophia Antipolis, France, and works on data-collecting, dissemination of knowledge and development of database about the MAP and sustainable development of the Mediterranean Sea and basin. Training of national experts and working on environmental scenarios are also accomplished by BP/RAC.[745] The Priority Actions Programme/Regional Activity Centre (PAP/RAC) is in Split, Croatia. PAP/RAC is extension of the Priority Actions Programme which was launched in 1977. In the first phase, PAP was established to pursue ten action plans in six different fields which were requiring urgent action. As long as the MAP developing, the character of PAP developed too. Today, PAP/RAC particularly focuses on sustainable development of coastal areas and work accordingly to the ICZM Protocol.[746] The Regional Activity Center for Specially Protected Areas (RAC/SPA) was established in 1985 in Tunis, Tunisia. The main duty of RAC/SPA is to assess and to protect natural heritage like habitats, ecosystems, sites and species in the Mediterranean Sea basin and to assist the states parties on implementation of the SPA/BD Protocol.[747] The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) was established in 1976 as formerly the Regional Oil Combating Centre-ROCC in Malta. The aim of ROCC was to develop national capacities to respond oil pollution in the Mediterranean Sea and to collaborate technical, financial and scientific exchange. With this aim, IMO and ROCC work jointly in implementation of the 1976 Emergency Protocol in the Mediterranean Sea. In 1989, ROCC was replaced by REMPEC and its administration was delivered to IMO. The missions of REMPEC are to prevent pollution of the sea from ships; to combat with pollution in case of emergency; to improve the national capacities in responding to accidents and emergency situations in the sea; and to assist states parties in implementation of the 1976 Emergency Protocol, the 2002 Prevention

[744] P. Haas, Saving the Mediterranean, p.79.
[745] Plan Bleu, "Plan Bleu", www.planbleu.org (30.08.2014).
[746] PAP/RAC The Coastal Management Centre, "About PAP", www.pap-thecoastcentre.org (30.08.2014).
[747] The Regional Activity Centre for Specially Protected Areas, "Presentation", www.rac-spa.org, (30.08.2014).

and Emergency Protocol.[748] The Regional Activity Centre for Information and Communication (INFO-RAC) was established in 2005 to replace the Regional Activity Centre on Environment Remote Sensing (ERS-RAC). The role of INFO-RAC is "to establish a common information management infrastructure to facilitate and support information and communication activities across MAP".[749] INFO-RAC is hosted by Italy in Rome, and it was merged with the Italian Central Institute for Applied Marine Research.[750] The Regional Activity Centre for Sustainable Consumption and Production (SCP/RAC) was established in 1996 as the Regional Activity Centre for Cleaner Production to help the states parties on sustainable consumption and production. SCP/RAC is located at Barcelona and administered by Spain.[751]

RACs are well-intended but ill-institutionalized organizations. All RACs except REMPEC are administered by its host country and most of its personnels are locally employed. REMPEC is the only one which administered internationally and hence more professionally. IMO is responsible for administration of REMPEC and this may be the reason of why REMPEC is regarded as the most effective and successful RAC of the MAP.[752] This proves that for a better effectiveness of the MAP, RACs' institutionalizations should be reconsidered.

Financial institution of the MAP is the Mediterranean Trust Fund. The budget of the Trust Fund that is used to finance the MAP activities and financial aid to the states parties' projects, is composed by annual contributions of the states parties which are defined accordingly their economic situation. Contributions, especially by the European

[748] REMPEC, "Mandate", www.rempec.org (30.08.2014).
[749] Information and Communication Regional Activity Center, "INFO-RAC in the MAP", http://www.info-rac.org/en/about-us, (30.08.2014).
[750] Information and Communication Regional Activity Center, "INFO-RAC in the MAP", http://www.info-rac.org/en/about-us, (30.08.2014).
[751] The Regional Activity Centre for Sustainable Consumption and Production, "About Us", http://www.cprac.org/en/about-us/scp/rac, (30.08.2014).
[752] Sofia Frantzi, "What Determines the Institutional Performance of Environmental Regimes? A Case Study of the Mediterranean Action Plan", **Marine Policy**, Volume.32, 2008, p.622.

Union, UN subsidiary programmes, UNEP and GEF are also important income sources of the MAP.[753]

3.2. ACTORS IN COMPLIANCE MECHANISMS OF THE MAP

Both international and institutional actors have roles in the compliance with the MAP in different ways and levels. In this section, the actors that were identified in general in the previous chapter are analyzed this time according to their roles in promoting compliance with the MAP in particular.

3.2.1. International Organizations

The MAP does not have an exclusive international organization to manage and implement the regime. This can be considered as a shortfall for effectiveness of the regime, since as it was argued that, the most successful regimes are mostly the ones that have its own international organization.[754] However, UNEP as being founder of the MAP and as well as other regional seas programs is the driving force behind them. The regional sea programs are the strategies which were organized, planned and launched by UNEP, thus UNEP monitors and manages the functioning and implementation of all of them, including the MAP. However the role of UNEP in these programs is gradually limiting with co-ordination and monitoring. Moreover, UNEP does not have a major role in the MAP's compliance mechanism.

Being a program of UNEP which is itself a program of UN gave the MAP the chance to easily and productively collaborate with other UN subsidiary programmes. Collaboration between international organizations is important in environmental regimes because environmental protection and regulations have multi aspects and interlinkages

[753] The Mediterranean Action Plan, Structure.
[754] Chayes, Chayes and Mitchell, p.58.

of which different necessities should be taken to account and require expertise, and financial and technical aid. Even though how developed and well organized an environmental organization, it could have only partial grasp for protection. Since its establishment, the MAP has common activities with FAO, IMO, WHO, the International Oceanographic Commissions (IOC), WMO and UNESCO which all have different and specific concerns and focuses. Financial and technical deficiencies of the MAP also force it to get help from other international organizations such as the World Bank and GEF. These international organizations' collaborations are of course not limited to the MAP. UNEP is an umbrella structure for all environmental regimes so that integrates all international environmental activities and attempts to develop wider programs that support each others as partial plans for a "broader rubric" and IGOs collaborate within[755] hence they enhance compliance with the MAP.

3.2.2. Transnational Actors

Transnational actors within the MAP are not different from main actors in international environmental law. Non-governmental organizations (NGOs) and multinational companies (MNCs) are the main actors in the MAP too. Furthermore, public and MNCs are specifically focus group of the MAP policies. Distribution of information, creation of public awareness, enhancing in-state capabilities are also aims of the regime. Information campaigns, special activities, environmental educations are the policies to be able to involve public and economic actors into protection of the Mediterranean Sea and environmental policies in general. Education on the importance of using clean production technologies; environmentally sound techniques; waste management and treatment are regularly given to the in-state economic actors. These projects are also financed by GEF beside of the Mediterranean Trust Fund.[756]

[755] P. Haas, Saving the Mediterranean, p.74.
[756] Civili, p.175.

In 1996, the Mediterranean Commission on Sustainable Development (MCSD) was established to bring together the states parties with the transnational actors within the Mediterranean basin. MCSD is made of 46 members, 22 of them are states parties of the MAP and permanent members of MCSD. The other 24 members are the representatives of the environmental community in the Mediterranean basin like local authorities, business community, NGOs, scientific community, intergovernmental organizations and eminent experts who rotate every two years. MCSD is a bridge between states parties who are formal members and decision-makers of the MAP, and the other institutions and actors who are the community of the Mediterranean environment. Through MCSD, environmental actors in the Mediterranean Sea present recommendations to states parties; monitor national and regional implementations; and helps determining environmental agenda for further strategies.[757]

Although transnational actors are focus group of the MAP, and a cooperation has been trying to create between transnational actors and the states, their role in shaping the MAP's strategies and policies are not powerful. They are not as effective in the MAP as they are in the international environmental law in general. First of all, how far NGOs are allowed to participate into the Compliance Committee procedures and meetings is a controversial issue. During an investigation of non-compliance case, Article 26 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols says; "the Committee shall take into account all the available information" gives the Committee an implicit authority to cooperate with NGOs to gather information about the states' compliance.[758] Further debates on the Compliance Committee were concluded in a way that, at least the NGOs that have been registered as the observers could submit related information about a non-compliance case which is under

[757] UNEP, "The Mediterranean Commission on Sustainable Development", http://www.unepmap.org/index.php?module=content2&catid=001017002, (01.11.2014).

[758] Irini Papanicolopulu, "Procedures and Mechanisms on Compliance under the 1976/1995 Barcelona Convention on the Protection of the Mediterranean Sea and its Protocols" in **Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements**, (Tullio Treves et al.), T.M.C. Asser Press, The Hague, 2009, p.164.

examining[759], but such an information by the NGOs does not necessarily trigger an investigation. However, if the state, that her compliance is in question, objects the observers' involving, that means even the NGOs which have been already registered as partners, cannot participate in the Committee's meeting about this non-compliance case.[760] It seems that states parties are voluntarily ready to cooperate with NGOs as long as they do not stick their nose in states' business. For example, in 2011, at the fourth meeting of the Compliance Committee, opportunity for NGOs to be able to submit a non-compliance case was opened up for discussion. This would enable for more effective following of NGOs to the MAP and thus the monitoring of the compliance could be pursued more strictly, and hence, the states parties would feel under more pressure to comply with the regime. But the debate ended with a disappointing decision. According to the Compliance Committee, NGOs' submission of a non-compliance case would bring more burden to work-load of the Compliance Committee albeit its being a new non-compliance procedure triggering mechanism. Therefore, the Committee decided to think this mechanism later.[761] Thus, an opportunity for a more effective and more transparent compliance procedure and also a chance for better globally governed the MAP was missed.

Furthermore, there is no evidence about how strong the roles of NGOs in participation are, even if they are allowed to participate in the complaince procedures as observers. On the other hand, NGOs including the environmental oriented ones are already ineffective and suppressed in most of the Mediterranean states. In these circumstances it is a vain hope to expect an active participation of NGOs in the MAP, even in the near future.

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[759] UNEP(DEPI)/MED CC.7/6, "Power of Initiative of the Compliance Committee", Seventh Meeting of the Compliance Committee, 18 June 2013, p.4.

[760] UNEP(DEPI)/MED IG.17/2, "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", Article.13(b), Decisions of the 15th Meeting of the Contracting Parties Annex V, 2008, p.24.

[761] UNEP(DEPI)/MED CC.4/7, "Report of the Third Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 5-6 July 2011, p.3.

Even so, NGOs' effects on the MAP are stronger nowadays than it was. Originally, the MAP designation had not allowed NGOs or civil societys' participation into regime in any way. In 1989, a change in the rules of procedure was made and according to this change, at least the registered NGOs are accepted as the MAP partners, thus they could attend the meetings and conferences except if the meeting is about a non-compliance investigation of which the party concerned decides otherwise. The MAP partners are only the registered NGOs, thus they have the observer status; therefore they could attend meetings, submit reports and give recommendation, make suggestion for policies.[762] The MAP partners, in theory, have a very strong position that they have almost equal rights to states' but voting. Thanks to this change made in 1989, many NGOS participated in MoPs as partners and made some significant contributions. However, direct effects and influence of the NGOs on the MAP progress is not clear. In spite of the high numbers of registered MAP Partners, only few of them actively and effectively participate in and fewer of them are taken notice by states parties.[763]

3.2.3. Epistemic Community

The recognition of epistemic community and its pushing a political action for the MAP had been very early when compared with other regional environmental cooperation[764] so that the MAP was considered as the prove of epistemic communities' effect in regime effectiveness. As long as interaction between national epistemic communities developed, they allied with each other and with UNEP, thues they created an international epistemic community concerned about the Mediterranean environment. As also their capacity improved, they produced more concordant advices for their

[762] As of October 1999, there are 81 NGOs both national and international registered as the MAP Partners. UNEP/BUR/56/Inf.3, Directory of Non-Governmental Organizations MAP Partners, 18 September 2000.
[763] Jon Birger Skjærseth, "The 20th Anniversary of the Mediterranean Action Plan: Reason to Celebrate?" in **Green Globe Yearbook 1996**, (Eds. HO. Bergesen and G. Parmann), Oxford University Press, Oxford, 1996, (Anniversary), p.49.
[764] P. Haas, Saving the Mediterranean, p.11.

governments; insisted on more comprehensive policies and naturally became more effective in the regime.[765]

Even before the environmental regulations related with the Mediterranean Sea were started, the epistemic communities' concerns on pollution of the sea had already started to speak out. There was a widening but unfocused concern, both scientifically and politically, on the pollution in the Mediterranean Sea. National scientific researches had been conducting by both governments and independent researchers, of course if there were any research facility in the states. There was a need to focus these researches on and to expand those into the whole basin. The first international conference about the Mediterranean Sea was held in 1968 in Rome by invitation of Italy. Since at that time the most important concern on marine environment was oil pollution in seas, thus the Conference's name shows the main concern at that time: 'International Conference on Oil Pollution of the Sea'. The second meeting was held in 1969 and shows widening concerns and scope: 'International Conference on the Protection of the Sea'. In 1971, political concern was merged on pollution of the sea and it was agreed to make an international treaty on preventing pollution in the sea. Scientists tried a draft text for treaty to submit participated states to the next meeting nevertheless scientific concerns were still far away from the political agenda which remained ineffective for environmental protection. Similarly, in the political negotiations states' views were limited to think the pollution as consequences of only oil spill and marine traffic.[766] They were also narrow to think that partial regional regulations were enough to prevent the pollution. But the further independent researches showed that there were wide varies of pollutant sources in the basin and unless regulating the entire basin; it would be a useless attempt to make sub-regional agreements.[767]

[765] P. Haas, Saving the Mediterranean, p.217.
[766] Because of the Mediterranean Sea is the shortest and most convenient route between northern Atlantic Ocean and northern Indian Ocean, the marine traffic in the sea is one of the busiest ones beside of one fourth of the world's oil marine traffic. DiMento and Hickman, p.90.
[767] P. Haas, Saving the Mediterranean, p.88.

Concerns on marine pollution had been gradually increasing until 1974, and the necessity to merge the different originated but same concerned scientific researches was understood since they were unverified, incomparable and sometimes even conflicted. In the same year, UNEP, GFCM, IOC and ICSEM jointly held the 'International Workshop on Marine Pollution in the Mediterranean' to set an agenda for further international regulations. Forty independent working marine scientists from ten Mediterranean states prepared a full list of pollution problems in the sea and tried to identified the channels of pollutants including land-based sources, agricultural runoff, marine dumping, transmissions from rivers and atmosphere. Scientists also made a proposed plan for further research projects and monitoring fields which would be revised by RACs which were offered by scientists to establish. This workshop was not important only as being an epistemic contribution to regulation of the MAP, but it was also a submission of an international scientific consensus to the national governments which justifies the need of more comprehensive and stricter international regulations.[768]

In 1972, when a very popular name, Jacques Cousteau spoke before USA Congress and UN General Assembly about the pollution in the Mediterranean Sea and consequently disappearing marine life in the sea, media was also attracted to degradation of the Mediterranean Sea. The fear of turning the Mediterranean Sea into a dead sea had been started. Meantime, being hazardous of the sea for human life was also become visible. Some of the most attractive European beaches were closed because of the bacterial diseases.[769] Hence, public awareness, even though it was limited only in the northern shore, had been created.

UNEP was aware the importance of collaboration of national scientists to more accurate and more supported environmental protection. Since its creation, the MAP has been developed by the participation of national scientists and environmentalists. Many national projects were financed by UNEP and these projects were integrated into the MAP projects. For example, 20-25 percent of the cost of the coastal pollution

[768] P. Haas, Saving the Mediterranean, pp.91-92.
[769] P. Haas, Saving the Mediterranean, pp.83-84.

monitoring of the former Yugoslavia was supported by UNEP. Not only financial, technological support, training and equipment support were given by UNEP, also the MAP's RACs' national scientist have became the most important allies of UNEP for monitoring of and pushing of national governments in compliance with regulations. These collaboration was also important for UNEP's self-development. The MAP was the first regional sea program of UNEP, and that time, UNEP itself also had lack in information on the pollution in the seas. The sources, types and degree of pollution, and effects of pollution on marine lives should had been researched in detail, but even in UNEP proceedings, there were lack in scientific studies. Rather than organized a huge scale research in the Mediterranean Sea, collaboration with national professionals who were sharing the similar concerns with UNEP was more rational and more contributive. However, at the time of creation of the MAP only few states had experts who were studying either on pollution or on the Mediterranean Sea. These experts involved to the processes of the regime both before and after of establishment of it. Before the regime established, experts' and scientists' views were triggers for action and determination for necessary measures. After establishment of the regime, training of other parties' personnel, verifying and monitoring of condition has been the duty of experts. In these processes, interdisciplinary scientific contributions have been made by such as marine biologists, oceanographers, geologists, microbiologists, public health experts, chemists, etc. These scientific contributions were usually independent from their nations' directive.[770] Scientific approach to the Mediterranean Sea made possible the establishment of the Blue Plan and then BP/RAC, thus scientific background in a vast scale has been remain independent from political and economic concerns of the states.

The case of the MAP proves that, the stronger the epistemic community, the higher the compliance with the MAP. The stronger connection the epistemic community has with national policy makers, the more comprehensive and broader environmental regulations the state has. According to Peter Haas's survey in the 1975-1986 period, in states where UNEP-marine scientists' alliance could work more effectively, the national

[770] P. Haas, Saving the Mediterranean, p.73.

legislation and policies of the MAP were stronger. In this sense; France, Israel, Greece, Algeria and Egypt in which epistemic communities were the strongest, were at the first five ranks in success at the regime. In these states, epistemic community already had some connections with domestic policy-making channels, hence they could affected states' view into being party of the regime. These states are also the first ones that established environmental ministries between the MAP parties. Establishment of environmental ministries is an important factor for activation of national epistemic community and connects the community into domestic policy processes. These states' environmental ministries' representatives were as effective as foreign ministry representatives to push stronger international measures in the MAP meetings.[771]

In case of Algeria which was opposed to idea of the MAP at the beginning, the effects of epistemic community in policy making are quite clear. As a state chasing economic development, Algeria was strongly opposed to any environmental regulation that might affect her development plans. Despite of invitations and efforts to convince her, she had never attended to the MAP's meeting. First warning for Algeria to be more open-minded about a regime which work on the protection of the Sea, came from fishery yields which were diminishing, fish kills, discoloration of the water, tar balls on coasts because of coastal pollution. Until the epistemic community started to bring these signs into view and warned the government to take measures against pollution, government was strictly against to environmental regulations. The collaboration between international and national epistemic communities is also important in Algerian case. UNEP gave equipment to research centers in Algeria and trained local scientists for monitoring of the pollution. The results created a concern on effects of marine pollution on human and after the 1980s; environmental policies for Algerian governments became as important as developing policies. The epistemic community attached bureaucracy and started pushing government for more protective regulations for environment. Scientists took place in ministerial meetings and in policy-making process as well as they attended the MAP meetings within Algerian ministerial teams. In 1981, Algeria signed the 1976

[771] P. Haas, Saving the Mediterranean, pp.130, 132, 155.

Barcelona Convention and its protocols and became an ardent supporter of the MAP even for more comprehensive measures.[772]

Egypt has a similar phase to Algeria. Scientists had no connection with the government, but the National Academy for Scientific Research and Technology was their only chance to make their selves heard. During negotiations of the MAP, Egyptian government's focuses were on possible technology transfer and financial aid rather than environmental protection. Since there were no interest in pollution control regulations, government needed of consulting to the National Academy to figure out whether these international commitments were worth of prospected technology transfer. This was a chance for the Academy which was trying to declare to government about pollution alerting since the 1960s like typhoid epidemics on coastal villages, fish kills, diminishing fish stocks, even water buffaloes kills. The answer of the Academy warned the government about the urgent necessity of pollution control mechanisms which UNEP were trying to convince the Mediterranean states. The Environmental Affairs Agency was established within the prime minister's office to search pollution and evaluate the MAP's plans. The Agency's members were also the members of UNEP's epistemic community which would advocate the MAP's immediate ratification. And they also have been very effective persons in development of environmental execution of UNEP in general and the MAP in particular. Mostalpha Tolba, a microbiologist, for example, was a member of the Agency who had been also the Academy's president and also head delegate of Egypt to UNCHE and the executive director of UNEP. Another member of the Agency, Mohammed Kassas, the Academy's chairman, would be the general director of International Union for the Conservation of Nature.[773] The epistemic community in Egypt had worked two ways in first years of the MAP. They simultaneously push national government to adopt more strong regulations on environmental protection and to adopt the MAP protocols. In the same time they became powerful members of the international epistemic community of UNEP and of the MAP,

[772] P. Haas, Saving the Mediterranean, pp.156-159.
[773] P. Haas, Saving the Mediterranean, pp.159-161.

hence they accelerated the development of process of the MAP to convince other states parties.

Although meetings of the MAP are closed to scientists' individual participation, UNEP has been holding technical meeting for scientists. Especially ICSEM and IOC's biannual workshops on pollution of the Mediterranean Sea aim to promote individual capacities of professionals who work on the Mediterranean environment and to develop the ties between scientific community and the organizations.[774] However, unofficial participation and collaboration of epistemic community into the MAP is not enough for success of the regime.[775] As be the same in NGOs' more effective participation, epistemic community also should participate more strongly. As it was said earlier, the presence of scientific knowledge on a subject issue does not initially and necessarily affect the policy making process which seen in the MAP example. The lack in the MAP is that, there is no linkage between scientific data and political decisions. The political action in the MAP accordingly to scientific data is either late or lack, in spite of well-intended MED POL. Despite it was aimed to create a science-based approach to the regime policies through MED POL, the acquired data could not use to create science-based political actions. IMO conventions and IMO-UNEP based experiences gave the required scientific base for the Barcelona Convention and the Dumping Protocol. MED POL Phase I projects indicated necessity of regulation of land-based polluting sources and led to sign of the LBS Protocol. But acceleration has continuously diminished and finally MED POL and PAPs have become two different and unconnected organizational structures. Further protocols are either more political rather than being science-based or science-based by UNEP experiences but not driven by MED POL. Lack in connection between science and political action which means failure in political action necessary to deal with environmental problems of the Mediterranean Sea is one of the reasons of ineffectiveness of the MAP[776] both in problem-solving and behavioral manner.

[774] P. Haas, Saving the Mediterranean, p.81.
[775] P. Haas, Saving the Mediterranean, p.82.
[776] Kütting, Consequences, p.80.

3.2.4. The Compliance Committee

Like many other regime, the MAP has its own structures that have the task of monitoring and promoting compliance. The main organs of the MAP in compliance procedures are the Compliance Committee and the Meeting of the Parties. The Secretariat has limited roles in compliance, mostly in collecting reports and transferring information about non-compliance case which will be referred when the occasion arises.

The Compliance Committee was established in 2009, as a subsidiary organ of the MAP[777], and also the 'Rules of Procedure' in the 'Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols'[778] about functioning of the Committee was accepted. Being not an independent organ limits autonomy and power of the Committee, and prevents initiating a proceeding in case of non-compliance; taking binding decisions and enforcing non-compliers, consequently diminishes its effectiveness in compliance mechanism.[779]

The task of Compliance Committee is to advice and assist the states parties for better implementation of the provisions of the Convention and its protocols. During accomplishing its tasks, the procedure the Committee adopted "is non-adversarial, transparent, effective, preventive in nature and oriented in the direction of 'helping' Parties".[780] The working for compliance should be not critical, sanctional but "non-conflictual, transparent, effective in comparison with its cost and preventive in nature"[781] in an assisting and facilitative manner which focuses on ensuring states parties to implement their commitments arising from the Convention and its protocols. In this

[777] Decision IG.17/2 at 15th MoP in 2008, Decision IG.19/1 at 16th MoP in 2009.
[778] UNEP(DEPI)/MED IG.21/1, "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", (Consolidated Text of Decision IG.17/2), Decisions of the 18th Meeting of the Contracting Parties, 2013.
[779] Papanicolopulu, p.168.
[780] UNEP(DEPI)/MED CC.5/4, "Draft Guide Brochure for Contracting Parties on Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols", Fifth Meeting of the Compliance Committee, 28 September 2011, p.1.
[781] UNEP(DEPI)/MED CC.4/3, "Draft Guide Brochure on Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols", Fourth Meeting of the Compliance Committee, 7 June 2011, p.2.

direction the Committee should advice and help states while considering their special circumstances.[782]

The Committee holds once in a year, additional meetings may be held if necessary. The Committee is composed seven regular members and seven alternate members. The members act in their personal capacity and do not represent their states. The Committee members impartially and independently try to promote compliance and to make implementation of the Convention and its protocols. This is a consequence of creation of an impartial body as many states parties stressed in Working Group meetings and in the MoPs.[783] Even though they act in their personal capacities, still in selection of members, geographical distribution is especially paid attention. Members should be citizens of nationals of states parties, however they nominated by any of the states parties but not only by their states. It is taken care of that the members of the Committee are the recognized persons in the expertise fields such as scientific, technical, socio-economic, and legal which dealt with by the Barcelona Convention. (Article 8) The Committee makes decisions by consensus, if all efforts exhaust for consensus then the decisions are taken by at least a three-fourth majority of the present and voting members. (Article 16).[784]

[782] UNEP(DEPI)/MED IG.21/1, "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", Article.1, 32(a-b), 33(a), Decisions of the 18th Meeting of the Contracting Parties, 2013, pp.1, 4-5.
[783] Papanicolopulu, p.158.
[784] UNEP(DEPI)/MED IG.21/1, "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", Chapter V, Decisions of the 18th Meeting of the Contracting Parties, 2013, pp.4-5.

Figure 7: The Compliance Committee Members of 2009-2011 Biennium

GROUP 1 Algeria, Egypt, Lebanon, Libya, Morocco, Syria, Tunisia

Name of the members	Nationality	Regular/alternate	Expertise	Period of mandate	End of mandate
Mr Joseph Edward ZAKI	Egypt	Regular	Legal	4 years	2011
Mr Larbi SBAI	Morocco	Regular	Legal	4 years	2013
Mr Hawash SHAHIN	Syria	Regular	Legal	4 years	2011
Mr Ali ABUFAYED	Libya	Alternate	Technical	4 years	2011
Mr A. BEGHOURA	Algeria	Alternate	Technical	4 years	2011
Mr Hedi AMAMOU	Tunisia	Alternate	Legal	4 years	2013

GROUP 2 Cyprus, European Union, France, Italy, Greece, Malta, Slovenia, Spain

Name of the members	Nationality	Regular/alternate	Expertise	Period of mandate	End of mandate
Mr Nicos GEORGIADES	Cyprus	Regular	Technical	4 years	2013
Ms Ekaterini SKOURIA	Greece	Regular	Legal	4 years	2011
Ms Daniela ADDIS	Italy	Alternate	Legal	4 years	2011
Mr Louis VELLA	Malta	Alternate	Technical	4 years	2013

GROUP 3 Albania, Bosnia-Herzegovina, Croatia, Israel, Monaco, Montenegro, Turkey

Name of the members	Nationality	Regular/alternate	Expertise	Period of mandate	End of mandate
Ms Selma CENGIC	Bosnia-Herzegovina	Regular	Technical	4 years	2013
Mr Osman Atilla ARIKAN	Turkey	Regular	Technical Scientific	4 years	2011
Mr Martina VAZDAR	Croatia	Alternate	Legal	4 years	2011
Mr Novak CADJENOVIC	Montenegro	Alternate	Technical	4 years	2013

Resource: UNEP(DEPI)/MED CC.5/Inf.3, "Table of the Compliance Committee Members 2009-2011 Biennium", Fifth Meeting of the Compliance Committee, 11 October 2011, p.1.

The Committee is responsible for the compliance with the MAP however it cannot act *proprio motu* in case of non-compliance. A triggering mechanism is required for intervention of the Committee. According to Decision IG.17/2 Compliance Procedures and Mechanisms, there are three ways for Committee to intervene to a matter:

1. Self-Trigger: (Article 18-a) A party could submit its own non-compliance situation either it is potential or actual. In such this case, the party may ask for help for compliance, particularly if it is not able to fulfill its contractual obligations in spite of its best endeavors. As it mentioned above, one of the most important duty of the Committee is to assist the contracting parties.

2. Party to Party Trigger: (Article 18-b) A party could complain another party's alleged non-compliance. Before the Committee deal with this situation, parties have to consult via the Secretariat. If the matter cannot be resolve in three months -at most six months if there are special circumstances-, only then the party could submit a complain about the non-compliance of other. In this case, state should submit all information about non-compliance case and the relevant provisions of the Convention or the protocols with which non-complied.

3. Submissions by Secretariat: (Article 23) In case of the Secretariat awares a non-compliance case or difficulties of compliance of a party through reports or through a submission a complaint by another party, notifies the concerned party and discuss how these difficulties could be overcome. In such a situation, the Secretariat and the concerned party discuss and make a plan to alter the difficulties. If party cannot overcome the difficulties or they cannot make a plan to do so after three months, then, party concerned shall submit the situation to the Committee. If the party concerned does not submit within six months, the Secretariat submits the case to the Committee.

4. Referral to the Committee on its own Initiative: (Article 23.bis) If the Committee find a situation of non-compliance or difficulty of compliance on the basis of reporting or on the basis of any other information, it examines the case on its own. The Committee asks the party concerned all information and she has to respond it in two months.

As a fifth way, since the MoP is the main body for promoting compliance, beside of it could take any required measures for a non-compliance case or promoting compliance in general, the MoP may request from the Committee a general consideration of compliance or may submit any particular non-compliance case to the Committee for investigation.[785]

Second phase after a situation is submitted to the Committee is to gather information and to deliberate the findings. The party concerned may participate in

[785] The Barcelona Convention, Article.18.2, 27; UNEP(DEPI)/MED IG.21/1, "Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols", Article.17(c), Decisions of the 18th Meeting of the Contracting Parties, 2013, p.2.

meetings of the Committee's relevant sessions and could present information, comments or responses at every stage of proceeding, besides, the Committee could ask further information. If the party concerned consents, the Committee may gather information on-site. After the completion of the draft report, the Committee notifies the party concerned. The party concerned gives its comment for this draft within determined period. Final report including comments and recommendations of the Committee and responses of the party concerned is submitted to the MoP and/or to the Secretariat if it is necessary.

In the case of decision of non-compliance, the Committee takes incentive and further measures, depending on the cause, nature, type, degree and frequency of the case. The Committee also has to take into account the capacity of the party concerned. The Committee may provide advice and/or assist the party concerned; or could invite the party concerned to work out on a plan or could assist her to make her own action plan within a time frame agreed upon together. Additionally, the Committee asks the party to report its progress on compliance. (Article 32) If the Committee thinks this case should be handled by the MoP, then it reports the case to the meeting with or without its own recommendations. (Article 32(d)) Such a transfer is very important for cases if there is a structural problem which could cause more non-compliance cases, such as ambiguity of the provisions of the Conventions or the protocols, lack in scientific data or need of technical and financial aid.

If the case is transferred to the MoP after assessment of the Committee, the MoP determines measures on the basis of the reports of the Committee. These measures are to make recommendations; to assist for capacity-building and technical infrastructure; to request the party concerned to report its progress regularly. If the non-compliance is serious, or the party concerned repeats non-complying, the MoP may caution the party or publish a report about the situation. As a last resort the MoP may take any steps which deemed appropriate. (Article 33-34) No matter which measures the Committee and the MoP take, they have to consider the capacity (such as whether she is a developing country) of the party concerned in each case.

Apart from inquiring alleged non-compliance cases, the Committee submits regularly reports to the MoP before every meeting, as a main duty to ensure the highest level of compliance. These reports contain determination of state, facts and findings, recommendations for measures, proposals for promoting compliance.

The Compliance Committee is a relatively new organ of the MAP which was established in 2009. At the first meeting of the Compliance Committee, four headings were determined as the major agenda issues. They were "individual cases of non-compliance, reviewing general issues of compliance, drafting rules of procedure for the Committee, including operating procedures, and promoting compliance and implementation".[786] Because of there was not any submitted non-compliance report at that time, the Committee asked the Secretariat to submit a compliance report based on regular reports of the states parties and also a general analysis until their second meeting.[787]

The Secretariat's analyzing report on compliance in 2009 was not pleasant. First of all, there was a lack in regular reporting of the states parties, furthermore submitted reports were not in a standard shape which makes harder to examine. Second, it was not clear that how the line could be drawn to determine whether a situation is a non-compliance case or just a difficulty to fulfill of an obligation. It means that there were no clear criteria to determine the non-compliance and difficulty in compliance. There was an urgent need to establish criterias of non-compliance.[788] This critic of the Secretariat shows that, at that time, there was not even any description of non-compliance within the MAP so that non-compliance cases could be identified and be investigated. Even almost 30 years from its establishment, not having a criteria about non-compliance was a huge gap in promoting of compliance with the regime. It is a clue which shows until

[786] UNEP(DEPI)/MED CC.1/5, "Draft Report Of The First Meeting Of The Compliance Committee", First Meeting of the Compliance Committee, 11 July 2008, p.6.
[787] UNEP(DEPI)/MED CC.1/5, p.6.
[788] UNEP(DEPI)/MED CC.2/7, "Report of the Second Meeting of the Compliance Committee", Second Meeting of the Compliance Committee, 6 April 2009, p.6; Annex III, p.1.

establishment a compliance committee, compliance issue had not been considered as a problem.

Therewith analyzes of the Secretariat, it had been decided to ask to consultant at the third meeting that how the distinction between a non-compliance and a difficulty in compliance could be done, pursuant to the Secretariat's criticism.[789] At the fourth meeting of the Committee, the consultant's answer was discussed. According to consultant's view which also would be accepted as the criteria of a non-compliance by the Committee, there are two different situation of compliance. One is that *formal compliance* which means "the identification of the legal measures taken by a Party in its internal legislation for the purpose of implementing a particular provision of the Barcelona Convention or its Protocols", and the other one is that *substantive compliance* which means "the practical application of a provision to specific cases".[790] The consultant additionally suggested that the first priority of the Committee should be examining and improvement of formal compliance[791], so that a legal base would be ensured at internal level which makes the compliance enabling and facilitating.

The Committee also had asked the Secretariat to make an analyzing on compliance report based on regular reports of the states parties. At examination of the reports of states parties, four factors were determined by the Secretariat: "inappropriate administrative procedures, insufficient financial resources and technical capacity, and lastly ill-adapted administrative management".[792] The result according to the Secretariat was that there were several problems which states parties have difficulties to deal with all. And cumulative characters of these problems makes gradually much harder to solve them. These problems should, recommended by the Secretariat, listed in order of importance and hence be considered one by one on a preferential basis. And, according

[789] UNEP(DEPI)/MED CC.2/7, "Report of the Second Meeting of the Compliance Committee", Second Meeting of the Compliance Committee, 6 April 2009, p.7.
[790] UNEP(DEPI)MED CC.4/7, "Report of the Fourth Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 13 October 2011, pp.5-6.
[791] UNEP(DEPI)MED CC.4/7, p.6.
[792] UNEP(DEPI)/MED CC.4/7, "Report of the Third Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 5-6 July 2011, p.6.

to the Secretariat, these problems were problematic in the medium term, so there was time to examine each of them carefully and find satisfactory solutions.[793]

Since its establishment in 2008, there is not any achievement of the Committee for promoting compliance except determining the criteria of non-compliance and calling the states parties to submit their reports on time. For seven years, the Committee has been trying to organize itself, "getting into its stride".[794] For example, 'the Procedures and Mechanism on Compliance' was amended twice in seven years. As long as practical experiences in implementation of the Procedure and Mechanism shows its lacks, this helps to make it better. Even today there are debates at the Committee's meetings on procedure of the Committee's working. There are lacks and wrong formulations in procedure which are hard to ignore, harder to correct. One reason of that is that, the Procedure and the Mechanism of Compliance was adopted by the MoP not by the Committee, even before the Committee started functioning. Over time, the Committee finds and corrects the deficiencies which needs to be correct. The development of the compliance mechanism of the Montreal Protocol has been exemplified by the Committee to cherish the hope that the compliance mechanism of the MAP also will be more effective in future, as time goes by.[795] The disadvantage of the Committee is that it is one of the first compliance committees of regional seas programs.[796] As well as there was no example and model during the MAP's establishment since it is the first regional sea program of UNEP, again it is the first example for descendents for establishing of a compliance committee and its effective functioning.[797]

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[793] UNEP(DEPI)/MED CC.4/7, "Report of the Third Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 5-6 July 2011, p.6.

[794] UNEP(DEPI)/MED CC.3/5, "Draft Report of the Compliance Committee for the 16th Meeting of the Contracting Parties", Third Meeting of the Compliance Committee, 12 October 2009, p.3.

[795] UNEP(DEPI)/MED CC.3/3, "Proposal on Minimum Measures to Achieve Compliance with the Barcelona Convention and its Protocols", Third Meeting of the Compliance Committee, 12 October 2009, p.4. The compliance mechanism of the Montreal Protocol is also exemplified by the Compliance Committee of the MAP with its "facilitative manner" and "resort[ing] to 'stronger measures' as a last resort". Ibid, p.5

[796] Only the MAP and the Antarctic regime (which is actually a joined program) have a compliance committee.

[797] For example, for examining of the compliance with the SPA Protocol, the Compliance Committee is complaining about not knowing how to determine a substantial non-compliance. When they tried to

The Committee members also complain about slowness of process, as it was understood from reports. The meetings of the Committee are once in a year, even though there are a lot of lacks in compliance mechanism. It seems like that their expertise and idealism caught in the trap of political and economic interests of states parties. As a subsidiary organ of the MAP, the Committee has to follow the procedures that states parties accepted at the MoP. For example 'The Procedures and Mechanisms on Compliance' accepted by the MoP not the Committee. The Compliance Committee does not have the authority to take binding coercive decisions on a non-compliance case. Even its examination a non-compliance case by its own initiative was tackled on the Procedure and Mechanisms in 2013. Even now, their ability is limited to give recommendation to the MoP for measures and to make a plan with non-complier state to assist her. They define their limited role on compliance with as "no jurisdictional function and that its role was not to pass judgement or issue orders but to adopt all measures and recommendations that could assist a Contracting Party to comply with its obligations, whether in the form of advice or, for example, helping the Party concerned to develop an action plan in order to fulfill its commitments, or simply making recommendations".[798] "[T]he only body empowered to decide on any follow-up needed" is the MoP[799] which mostly act politically.

Functioning capacity is also another shortcoming of the Committee. They admit that in their current position, it is more possible to follow the formal compliance as a starting point and substantive compliance in future.[800] The Committee has the task of verify of the states' reports but do not have any verification capability. It is

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exemplify similar conventions' compliance mechanisms they also could not find any model since the Biodiversity Convention had not established compliance mechanism yet and the Cartagena Protocol's compliance mechanism remained ineffective. UNEP(DEPI)/MED CC.3/3, "Proposal on Minimum Measures to Achieve Compliance with the Barcelona Convention and its Protocols", Annex I, Third Meeting of the Compliance Committee, 12 October 2009, p.8.

[798] UNEP(DEPI)/MED CC.3/5, "Draft Report of the Compliance Committee for the 16th Meeting of the Contracting Parties", Third Meeting of the Compliance Committee, 12 October 2009, p.4.

[799] UNEP(DEPI)/MED CC.3/5, p.4.

[800] UNEP(DEPI)/MED CC.3/3, "Proposal on Minimum Measures to Achieve Compliance with the Barcelona Convention and its Protocols", Third Meeting of the Compliance Committee, 12 October 2009, p.5. This also arises from characteristics of provisions of the Convention and protocols which mostly emphasizes formal compliance. Ibid.

presumptively thought that the states are humble and honest in their reports. Even though a legal non-compliance is relatively easier to detect, technical non-compliance is mostly possible if a denunciator submits it which is not a politically correct step for states. Since the NGOs as civil initiatives are not allowed submitting a non-compliance case, the only way to detect a non-compliance is to promote the capability of the Committee by technical and legal verification of reports. To be able to do this, first, technical and legal working groups of expertise should be established for the background of the Compliance Committee which holds once in a year. These permanent groups work year round and; examine and verify the previous year's reports by on-site visiting; work on reasons of non-compliance and difficulties of compliance; determine the agenda for the Committee's next meeting. This is also helpful for reducing the Secretariat's burden as well as promoting effectiveness of the Compliance Committee. However this is also very hard to organize since the budget of the Compliance Committee is not enough for such a supportive working group. For example, the annual budget of the Committee for 2010-2011 biennium was only 70 thousand euro, including administrative expenses, examining of submitted non-compliance cases if any, and also "assistance to the concerned Contracting Parties to implement the recommendations of the Committee and or Contracting Parties meeting related to non-compliance situations".[801] Second, the Procedures and Mechanisms on Compliance under the Barcelona Convention and its protocols should be revised and stricter and more effective procedures and mechanisms should be regulated. As it was underlined, it is inefficient, ineffective and not helpful for promoting compliance. For example, more transparent procedure and more participatory triggering mechanism should be designed. Even though it may be still early for NGO triggering, at least support from NGOs in monitoring and verification of reports should be received. Third, the meetings of the Committee and non-compliance investigations should be transparent and meeting and

[801]UNEP(DEPI)/MED CC.2/6, "Draft Programme of Work of the Compliance Committee for the Biennium 2010-2011", 9 March 2009, p.1.

non-compliance investigation reports should be publicize as well as states' annual reports. The confidentially rule diminishes the effectiveness of procedure.

In a nut shell, the actors' role in promoting compliance with the MAP is not strong enough that it should be. There is a lack in linkages between transnational actor and policy-makers within the MAP. States consider other actors as interveners, not supporters. The main actor who has the task of monitoring and promoting compliance is the Compliance Committee which still has some obstacles that blockade it doing its duty effectively. Before dealing with compliance issue, the Committee should solve its institutional problems and should determine its working procedure. It seems that the Committee has its own compliance problems with its task since it is still trying to put the procedure and mechanism in order. Only after then promoting compliance with the MAP could be tackled by the Committee.

3.3. COMPLIANCE MECHANISMS IN THE MAP

The Meeting of the Parties has the task of observing of and taking required action for compliance in the MAP regime. Both in the 1976 and 1995 Conventions regulate the task of MoP in compliance procedures.[802] Besides, in some of the protocols, compliance procedures are regulated in a similar way to the conventions. Later in this title, procedure of the compliance mechanism of the MAP by comparing to the generally accepted compliance mechanisms which have been introduced in the previous chapter are analyzed according to their regulatings and functioning within the MAP. To be able to compare the compliance mechanisms which are used in the MAP with compliance mechanisms of international law in general, the same order which was used in the previous chapter is used here too, irrelevantly from their importance and effectiveness in the MAP. At the end of the chapter an overall assessment of compliance with the MAP

[802] Article.27 of the 1995 Barcelona Convention and Article.21 of the 1976 Barcelona Convention.

is done. By doing this it is tried to evaluate the legal-effectiveness of the MAP and so that to reach an assessment about effectiveness of the MAP in general.

The Article 27 of the 1995 Barcelona Convention gives the authority to take any measure to enhance highest level of compliance, to the MoP. According to this provision, the MoP established Working Group of Legal and Technical Experts (from now on Working Group) in 2004. The Working Group started working on mechanism and procedures to promote compliance. Accordingly to results of the Working Group's recommendations, the MoP adopted 'the Procedures and Mechanisms on Compliance Under the Barcelona Convention and Its Protocols' (hereinafter Procedures and Mechanisms)[803], and decided to establish the Compliance Committee (hereinafter the Committee).

In the first meeting of the Working Group on Implementation and Compliance under the Barcelona Convention, the MAP's compliance mechanism is defined as "non confrontational, non judicial, transparent, cost effective and preventive in nature, simple, flexible, and oriented in the direction of helping parties to comply".[804] In this manner the compliance mechanism of the MAP is the managerial approach more than being the enforcement approach. Nevertheless, it is regarded as "state-friendly"[805] rather than being 'environment-friendly'. The principles of mechanism in acting, stressed either explicitly or implicitly, are due process, common but differentiated responsibilities and impartiality.[806] Below this mechanism is introduced and analyzed.

[803] 15th meeting of MoP at 18 January 2008 with Decision IG.17/2 and amended with Decision IG.21/1 in 2013.
[804] UNEP(DEC)/MED WG.260/4, "Draft Report of the First Meeting of the Working Group on Implementation and Compliance under the Barcelona Convention", 21 December 2004, p.6.
[805] Papanicolopulu, p.168.
[806] Evangelos, p.8; Papanicolopulu, p.158.

3.3.1. Regime Building

As it was said in the previous chapter, regime designing is an important factor for its effectiveness. In this section of the study, it is analyzed that how the MAP was designed and how this designation affects compliance and its effectiveness.

3.3.1.1. Regime Negotiation

There was (and unfortunately still there is as seen in the North-South division) a difference in perception of framing of required environmental regulation between the developing and developed states. The North-South division in international policies is literally valid in the MAP case. The states at the northern coast of the Mediterranean basin are developed states with developed industries and strong political power while the states at the southern coast are mostly developing states with no or less political influence in international relations, who have weak economies and low-tech industries.

During the negotiations, the developing states argued that the real problems in the region were housing condition, poverty and starvation which results to the environmental problems, while the developed states were emphasizing the importance of land-based sources of pollution and integrated planning.[807] Furthermore, while the developed states argued that the undeveloped conditions in the developing states were the reasons of the pollution in the Mediterranean Sea, contrary, the developing states argued that developed industry in the developed states caused the pollution in the sea. This difference of perception of the causesof the environmental degradation was partially disappeared thanks to sustainable development plannings and financial aids, and also by the scientific proves of researches on cause and effects of the pollution.

[807] As an example of the developing countries' perception of an environmental regime in early 1970s, Algerian president said "if improving the environment means less bread for the Algerians, then I am against it" while Egyptian representative said the need of "consideration of the true problems facing developing countries, not the 'imported' ones from developed countries". P. Haas, Saving the Mediterranean, p.72.

Nevertheless, the economic preferences, priority of development and economic asymmetry in the states parties have always been a shadow on the MAP.[808] Since pollution is regarded by the developing countries as a natural conclusion of industrialization process, consequently, it is an inevitable result rather than being a something to be avoided. Prevention of pollution efforts means, for them, prevention of their industrialization.[809]

This debate showed itself during negotiations of the LBS Protocol for example. The developed states wanted emission standard, while the developing states were objecting to aggravate of production by limiting substances. The developed states had more seriously polluted coasts and had the technical and financial capacity to implement emission standard. They also argued that it would be easier to monitor and prevent the pollution at source. But the developing states insisted on ambient standards that means lower costs for them and also less negative effects on their industries. However, once pollution occurred, it is almost impossible to trace it in their preferred standards. Bargaining on subject resulted with both sides' compromises. The most serious pollutants were prohibited through a short 'black list' as the developed states wanted, and for other pollutants ambient standards were defined such as national permit and general permit as the developing states wanted.[810]

Compromising during negotiations are good for cooperation, but not for environment. Compromising in regulations creates moderate commitments and may result with high rate of compliance but it means that urgent requirements may be ignored. States sacrificed environmental necessities to leave the table with satisfied representatives at the end of MoP which will be examined more detailed under title of Legalizing the Regime.

UNEP is an important actor for the MAP's negotiation. It acted as a buffer between the North and South division in the MAP since its creation. Rather than being an outsider politically, in creation process of the regimes and during negotiations, UNEP

[808] Skjærseth, The Effectiveness, pp.314, 322.
[809] P. Haas, Saving the Mediterranean, p.53.
[810] P. Haas, Saving the Mediterranean, pp.112-113, 115, 109.

behaves as an actor which represents the environment itself and defends environmental priorities. It succeeded because it did not take side of neither the North nor the South and but because of chasing the sea's benefit. Besides, persons from the Southern countries at UNEP and UNCHE like Egyptian Mostalpha Tolba, had been very effective in UNEP's earning trust of the South.

3.3.1.2. Regime Creation

According to the hegemonic stability theory, there is a need of hegemon who pursues its own interest by creating or leading a regime while compelling others to comply with the regime. In the case of the MAP, the hegemon of Mediterranean basin was France who had the biggest power, the highest technology and the highest financial resources in the region during establishment period.[811] She also had economic ties with regional states which made them highly sensitive to France's economic decisions. In these circumstances, it was normal to expect that France as the hegemon would have been the leader of the regime.[812] Certainly she did, at least she tried to be. Especially in the period of 1972-1980, when France's power was peak in the region[813], she did her best to shape the MAP accordingly to France's interests in the environmental[814] and economical policies. However, it is still not correct to define France's role in this period as a hegemon which is described in the hegemonic stability theory. And it is also hard to

[811] The next biggest economy after France in the region was Italy with almost half per capita GNP of France's in 1978. Suh-Yong Chung, "Is the Mediterranean Regional Cooperation Model Applicable to Northeast Asia?", **Georgetown International Environmental Law Review**, Volume.11, 1998-1999, pp.367.

[812] For France's role as a leader in the first phase of the MAP see Chung, pp.366-370.

[813] P. Haas, Saving the Mediterranean, pp.166-167.

[814] Before launching the MAP, France had already been parties of international environmental treaties such as 1972 London Convention, 1972 Oslo Convention, 1974 Paris Convention, 1973 MARPOL Convention and also European Union legislation which limits her polluting actions in the Mediterranean. French interests in the MAP was to protect the sea by enforcing other basin states to make similar commitments while to prevent extensions of commitments to new polluting channels from her preexisting commitments. In this sense although France had benefit from the MAP, her role as a hegemon -if she was- in this regime was malevolent rather than benevolent. This was the reason of French effort to keep hold of Blue Plan. P. Haas, Saving the Mediterranean, pp.175, 179, 223.

say that France got everything she wanted but it is also hard to say that she failed. By beginning of the 1980s, even though France still had scientific, technological and political superiority in the region, influence of France started diminishing, since her economic dominancy replaced by Italy over the region. Besides, thanks to technology transfers, equipment aids and trainings of national scientists by UNEP, states parties enhance their national abilities and there were no longer need of France's scientific and technological aid and information transfer.[815]

It will be more explanatory to take a close look to France's role in the MAP. In the first years of the MAP, France used its financial, technical and scientific resources to direct the MAP according to her own will. She paid almost half of the annual national contributions by her own and additionally donated more money and equipment than any other the states parties. As reward, she expected to be accepted her wills on the construction of the regime in the MAP meetings until middle of the 1980s. However, she never threat states to compel to be her side nor used sanctions against non-compliers, except decreasing or blocking her annual contribution payment. For example, France blocked the budget of MED POL projects which were researching the pollutant substances with the fear of gained data on pollutants would damage its position during the LBS Protocol negotiations. However, as a hegemonic power, France remained ineffective when compared UNEP who had more influence on the MAP functioning. Despite of France's oppositions, UNEP insistently tried to diverse the regulations into more comprehensive manner and it in deed succeeded. France also had high compliance rate with the MAP although the regulations were not conforming her wills.[816] The case of the MAP is an evidence of that, there is not necessarily a need for hegemon to develop and pursue a regime.

Moreover, after hegemon declines, it is expected regime will collapse. In the MAP case, aftermath France hegemony relatively declined after 1980s, the MAP could survive; furthermore, it has been much more developed and became more

[815] P. Haas, Saving the Mediterranean, pp.170, 172.
[816] P. Haas, Saving the Mediterranean, p.101, 176-178, 180.

comprehensive. It is possible to say the MAP is not a good example for the hegemonic regime theory.

On the other hand, the MAP seems a better example for the liberal institutional regime theories. States involved and remained in the regime not because of compelled by a hegemon, because they understood the need to take action against pollution. Financial aid for enhancements, equipment support, technology transfer, expert training and laboratory establishments developed the states parties' capabilities. Diplomatically, direct negotiations between the states' representatives reduced transaction costs. Even the states who had conflicts (Algeria and France's conflict on post-colonization period, Greece and Turkey's over Aegean Sea and Cyprus, Israel and Arab states…) sit around the same table, and negotiated, and created collaboration and a relatively confident international environment at least for protection of the Mediterranean Sea. Epistemic communities of different states had an opportunity to create a common international movement for the Mediterranean Sea and strength itself to be able to affect decision-making process. Although the MAP started as a regime against pollution, particularly oil pollution, its domain has been widen to land-based pollutants and special protected areas. Moreover, jurisdiction area of the MAP has been widening from territorial waters to internal waters and to high seas, despite jurisdiction authority is valid for very limited circumstances. This shows that; if states get benefit from a regime, spillover effect ensures its improvement. However, it is still not possible to agree with Haas who said that states remained in and complied with the regime because they internalized the regimes rules.[817] He is right on emphasizing that there is not fear of sanction at their compliance since there is not a coercive enforcement mechanism in the MAP. However, despite of high compliance rates, the situation of the Mediterranean Sea shows there is not internalization of rules, since only the regulated environmental protection measurements are barely regarded.

[817] P. Haas, Saving the Mediterranean, pp.186-188.

The motivation of basin the states for participation into the MAP regime was mostly geo-political rather than being ecological, as it is seen in Israeli case[818] or it was arisen from the expectation of to get technological and economic benefit as in case of Tunisia. Only after the importance of water quality of the Mediterranean Sea for public health; tourism income; and marine species were recognized, the ecological motivation in making of and compliance with further protocols and amendments increased as well.[819] Nevertheless, there are still lacks in understanding on linkages between socio-economic factors, which are industrial, agricultural, municipal actions, and environmental degradation; severity of degradation of the sea; and also on consequences of this degradation which are the main topics that the MAP tries to regulate. Nevertheless, for 40 years, the MAP could have not achieved these aims. The situation of the Mediterranean Sea shows that, there is still a lack of internalization of necessity of protective environmental regulations since many of the Mediterranean experts and academicians are complaining about the loose commitments of the MAP.

3.3.1.3. Regime Interactions

The MAP is one of UNEP's environmental programs and naturally it has important interactions with other UNEP leading regimes, particularly with the Regional Seas Programmes. Beside of UNEP regimes, IMO and the European Union's environmental policies have important influence on the MAP.

IMO already had two important conventions for protection of seas before launching of the MAP: 'the International Convention for the Safety of Life at Sea' (SOLAS) signed in 1974; the 'International Convention for the Prevention of Pollution from Ships signed in 1973 and modified by the Protocol of 1978 and the Protocol of 1997 which all consist the MARPOL regime. It is hard to say that there are interactions between IMO and the MAP since IMO regime is more developed than the MAP. It is

[818] Talitman, Tal and Brenner, p.416.
[819] Talitman, Tal and Brenner, p.477.

obvious MARPOL was considered as a model for the Dumping and the Emergency protocols but this interaction is mostly undirected and not mutual. Similarly, the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area was taken as an example for the LBS Protocol.

The European Union is another regime of which environmental policies affect the MAP. For example, even at the issue of influencing regime's policies, the EU may have more influence than France. The Northern states' of the Mediterranean, almost half of the whole states parties, whom are either member of or candidate to the European Union[820], so EU has an important effect on functioning of the MAP.[821] Considered financial contributions of these states to the regime funding, they have a superior position in leading policies. (See Figure.10 Distribution of Benefits from MED POL Phase I, at page.258) They have the chance to blockade funding of certain projects which they do not approve, by suspending their annual contribution payments. This was experienced in the first years of the regime, when France and Italy tried to prevent land-based pollutant researches of MED POL. Their position in the table is to support the regulations that bring commitments same or similar to their commitments arising from EU policies. On the other hand, if regulations bring new or stricter commitments than EU environmental policies, they try to blockade or at least delay their acceptance. In fact, EU has a more developed environmental policy than the MAP therefore the effect of EU on the MAP is not a puller, contrary a pusher factor for the MAP.[822]

[820] 8 of the 21 MAP states parties are already members of EU, three states are candidates and one more is potential candidate to EU membership as of April 2015. The EU, "Countries", http://europa.eu/about-eu/countries/index_en.htm, (02.04.2015). Keep in mind that, member states of the EU assigned their voting rights to EU.

[821] DiMento and Hickman, p.122.

[822] For a detailed analyses on the effects of EU environmental policies on protection of the Mediterranean Sea see: Oriol Costa, "Convergence on the Fringe: The Environmental Dimension of Euro-Mediterranean Cooperation", **Mediterranean Politics**, Volume.15, No.2, 2010, pp.149-168; Pamela Lesser, "Greening the Mediterranean: Europe's Environmental Policy toward Mediterranean Neighbors", **Mediterranean Quarterly**, Volume.20, No.2, 2009, pp.26-39.

3.3.1.4. Regime Legalization: Treaty Design

It is thought that, the Barcelona Convention created the MAP regime. However, as it was briefly stated in the historical background of creation of the regime, the states parties and UNEP had already launched a program for planning of protection of the Mediterranean Sea before signing the Convention.[823] The Convention has been the legal document of the regime which gave it a legal basis and a vertical dimension. With this convention and further protocols the MAP was designed as a full-blown regime.[824] Additionally, the states parties are obliged to comply with not only provisions and regulations of the MAP but also with the general norms and principles of international environmental law[825] and of course with the general norms of international law.

It was said under the title of legalizing of regime at previous chapter, sometimes the legal documents intentionally remain ambiguity and flexible. Even though it can help to reach high compliance rates, problem-solving effectiveness of regime may remain lower than expected by environmentalists. The critics against especially the Barcelona Convention and its protocols are mainly targeting their ambiguity and imprecision, even they are tried to alter these problems with amendments. Even the Compliance Committee itself admits this situation and its negative effects on compliance: "The provisions of the Barcelona Convention are worded in a very broad manner. Thus, a lot of flexibility is given to the Parties in implementing their provisions on the domestic level. Therefore, it will be very difficult to establish that a Party is in non-compliance with its obligations."[826] These shortcomings at legalization of the regime make think that

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[823] Blake, p.71.

[824] Marc A. Levy, Oran R. Young and Michael Zurn, "The Study of International Regimes", **European Journal of International Relations**, Volume.1, No.3, 1995, pp.267-330.

[825] For example 'the principle of prevention of harm', the precautionary principle', 'the polluter pays principle'. The principles of 'sustainable development' and 'common but differentiated responsibilities' are frequently underlined in the Convention, the protocols and the Procedures and Mechanism of Compliance.

[826] UNEP(DEPI)/MED CC.3/3, "Proposal on Minimum Measures to Achieve Compliance with the Barcelona Convention and its Protocols", Annex I, Third Meeting of the Compliance Committee, 12 October 2009, p.2.

the regime might have been initially designed to be participated by more states and to be complied highly but not for effective solutions of environmental problems of the sea.

Legalizing of the MAP started with a framework convention, the Barcelona Convention and two protocols, the Dumping Protocol and the Emergency Protocol. The choice to regulate dumping problems in the Mediterranean was an interesting choice for basin states since there were already international treaties about this topic; The 1972 London Dumping Convention, the 1973/1978 MARPOL Conventions. However there are some reasons that show this is not an arbitrary choice of Mediterranean states. First of all, at the time making these protocols, not all of Mediterranean states were parties of these convention. At that time, Albania, Algeria, Cyprus, Egypt, Israel, Malta, Syria and Turkey were not the members of the London Dumping Convention; and Albania, Algeria, Libya, Malta, Monaco, Morocco, Syria and Turkey were not the parties of the 1973 MARPOL.[827] To make pressure on them to sign the London and the MARPOL conventions would be redundant effort. Instead, states chose to create their separate legal text in the Mediterranean context. Secondly, both UNEP and IMO, and also the London and MARPOL conventions encourage regional initiatives for a better regulation by taking account of regional features accordingly to its special needs.[828] Rather than general regulations for general problems, to tackle with real issues of a region by regional states and actors, and to analyze and solve the problems appropriate to region's characteristics create more effective and rational outcomes.[829] Making regional treaties which overlapping with international treaties is not solely the MAP's practice. Like cooperation between same-oriented international organizations is an important factor in creation a synergy to achieve common targets, interlinkages between commitments arising from different treaties are too. Today 149 states are party of regional sea

[827] Kütting, Case of MAP, p.18.
[828] The MARPOL Convention, Article.VIII, http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx, (01.12.2014).
[829] It is written at the Convention that: "…existing international conventions on the subject do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and do not entirely meet the special requirements of the Mediterranean Sea Area". The 1976-1995 Barcelona Convention, Preamble.

programs besides their being party to global marine protection treaties.[830] Thirdly, the regulations styles were also very different from each other. While the London and MARPOL conventions direct to all shipping community; flag states, port states and coastal states, and even the ship constructing companies, the Dumping Protocol of the MAP directs to only coastal states parties. The jurisdiction area of the London and MARPOL conventions are all maritime areas while in the Dumping Protocol it is limited in territorial waters of states parties.[831] Additionally, the London and MARPOL make a distinction between discharging and dumping and prohibit both, while the Dumping Protocol regulates only dumping. Discharges are operational oil spilling which routinely occur during loading and unloading, while dumping is intentional or accidental evacuation. To prevent discharging, special equipments need to be affixed to ships particularly during construction of ship and special port facilities need to be structured. The Dumping Protocol directs to states not to shipping community so that ship construction is out of its coverage area. And extra port facilities mean extra cost for states parties. It is a debated issue that whether states consciously excluded discharging from the Dumping Protocol or omitted it during negotiating.[832] Since they were reluctant to become party of the London and MARPOL conventions, it is highly possible that they consciously ignored this kind of oil pollution in spite of their main aim was prevent oil pollution in the sea.

Even though by making a regional treaty, Mediterranean states aimed more appropriate approach for the Mediterranean, limited jurisdictional authority in regional seas programs is an important obstacle to do this. For example the MARPOL and the London conventions give jurisdictional authority to states parties even at high sea areas, while regional seas programs give coastal states jurisdiction only at their territorial waters and maritime areas in which coastal states have limited jurisdiction rights like exclusive economic zone. On the other hand, as an exception, if regional sea has a high sea area which is enclosed from all sides by exclusive economic zones of states parties,

[830] DiMento and Hickman, p.21.
[831] Kütting, Case of MAP, p.18; Talitman, Tal and Brenner, p.432.
[832] Kütting, Case of MAP, p.18.

high sea area also is given to regime's jurisdiction. However this exception is seen only in Wider Caribbean and South Pacific regional seas programs. For a better and more effective regulation many regional seas programs decided to extend its jurisdiction area to 200 nautical miles from baselines but not the MAP.[833] Even though all of Mediterranean states are parties to the MAP so the Mediterranean Sea has an enclosed high sea area from all sides, neither the mentioned exception was applied in the MAP nor it was decided to extent jurisdiction area to 200 miles.[834] These may be because of states mostly did not establish their exclusive economic zones in the Mediterranean.[835] Whatever the reason is, limited jurisdiction area is a big lack for effectiveness of the MAP due to there is a big high sea area swath beyond the jurisdiction area of the regime.[836] Either states should solve their territorial problems and establish their exclusive economic zone which is very hard option to success, or jurisdiction area should extent to high sea and it should be regulated how jurisdiction and implementation will be performed in high sea area.[837] As a good news, there are few regulated areas accordingly to the SPA Protocol given to the MAP states' jurisdiction even though they are beyond national jurisdiction limits of states parties.[838]

In 1995, the Barcelona Convention signed in 1976, was re-vised and "the Convention for the Protection of the Marine Environment and the Coastal Region of the

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[833] DiMento and Hickman, pp.24, 25 cited from Stjepan Keckes, "The regional Sea Programme-Integrating Environment and Development: The next Phase" in **Ocean Governance: Sustainable Development of the Seas**, Peter B. Payoyo, United Nations University, New York, 1994.

[834] If all Mediterranean states established their exclusive economic zone in which states have environmental protection and preservation jurisdiction within 200 nautical miles from the baselines, there would be no high sea areas in the Mediterranean, already. DiMento and Hickman, pp.94-95.

[835] Only seven states at the Mediterranean established exclusive economic zone: Morocco, Egypt, Syria, Cyprus, Tunisia, Libya, Lebanon. Four states; France, Slovenia, Italy and Croatia (including fishing) established 'ecological protection zone' only. DiMento and Hickman, pp.93-94.

[836] It was clear that without regulating the Black Sea, trying to protect the Mediterranean from pollution is hard and ineffective. However, since the effective participation of USSR was undesired, the Black Sea and even the Sea of Marmara and Turkish Straits were left out of scope. This also left the highly polluted European, Asian and some Anatolian rivers feed into directly or indirectly the Mediterranean out of scope. P. Haas, Saving the Mediterranean, p.99.

[837] DiMento and Hickman, p.125.

[838] DiMento and Hickman, p.25 cited from Robin Warner, **Protecting the Ocean Beyond National Jurisdiction: Strengthening the International Law Framework**, Martinus Nijhoff Publishers, Netherlands, 2009, p.185.

Mediterranean" was adopted as a new treaty. It is confusing that why states needed of this new convention since both 1976 and 1995 convention have almost same provisions. In fact, the later is not a brand new treaty but only an amended version of the previous. In same period the Dumping, LBS and SPA protocols were also amended, and the Offshore and the Hazardous Wastes protocols were adopted. This renewing and expanding attempt of the regime is not a coincidence. There are two reasons in this renewing progress. First, the year 1995 was the 20th of anniversary of the MAP and after two decades, it was time to soul-searching for states parties. Similarly environmentalists, scientists and academicians also had started making an overall assessment of the MAP from outside from beginning of the 1990s. The MAP was a popular research field in the mid-1990s as it can be seen in this studies bibliography. The second reason of renewing is a trend that 1992 Rio United Nations Conference on Environment and Development (UNCED) created. The MAP renovated itself accordingly to new emerged principles, such as precautionary principle, the polluter pays principle and environmental impact assessment, new topics and new priorities which emerged after UNCED.[839]

[839] Kütting, Case of MAP, p.20.

Figure 8: Convention and Protocols: Parties, Date of Signing and Entering into Force

	Barcelona Convention		Dumping Protocol		Emergency Protocol		LBS Protocol		SPA Protocol		Offshore Protocol	Hazardous Waste	ICZM Protocol
Date of Signature	1976	replaced in 1995	1976	amended in 1995	1976	replaced in 2002	1980	amended in 1996	1982	amended in 1995	1994	1996	2008
Date of Entering into Force	1976	2004	1978	not yet	1978	2004	1983	2008	1986	1999	2011	2008	2011
Contracting Parties													
Albania	X	X	X	X	X	-	X	X	X	X	X	X	X
Algeria	X	X	X	-	X	-	X	-	X	X	-	-	-
Bosnia and Herzegovina	X	-	X	-	X	-	X	-	X	-	-	-	-
Croatia	X	X	X	X	X	X	X	X	X	X	-	-	X
Cyprus	X	X	X	X	X	X	X	X	X	X	X	-	-
European Union	X	X	X	X	X	X	X	X	X	X	X	-	X
Egypt	X	X	X	X	X	-	X	-	X	X	-	-	-
France	X	X	X	X	X	X	X	X	X	X	-	-	X
Greece	X	X	X	-	X	X	X	X	X	-	-	-	-
Israel	X	X	X	-	X	X	X	X	X	-	-	-	-
Italy	X	X	X	X	X	-	X	X	X	X	-	-	-
Lebanon	X	X	X	-	X	-	X	-	X	X	-	-	-
Libya	X	X	X	-	X	-	X	-	X	-	X	-	-
Malta	X	X	X	X	X	X	X	X	X	X	-	X	-
Monaco	X	X	X	X	X	X	X	X	X	X	-	-	-
Montenegro	X	X	-	-	-	X	X	X	-	X	-	X	X
Morocco	X	X	X	X	X	X	X	X	X	X	X	X	X
Slovenia	X	X	X	X	X	X	X	X	X	X	-	-	X
Spain	X	X	X	X	X	X	X	X	X	X	-	-	X
Syria	X	X	X	X	X	X	X	X	X	X	X	X	X
Tunisia	X	X	X	X	X	-	X	X	X	X	X	X	-
Turkey	X	X	X	X	X	X	X	X	X	X	-	X	-

Resource: Prepared by the author.

Revision of the Barcelona Convention in 1995 brought two contrary comments to the MAP. As it is seen in the assessments of 20th year of the MAP, there are critics of ineffectiveness of regime in general. Positive critics consider this renovation as a refreshment of the MAP and a chance to alter obstacles against effectiveness since the regime's spirit would revivify and it accelerated the regime. "The Barcelona Convention had exhausted its capacities and these changes [would] keep up the regional environmental effort in the Mediterranean area by keeping the institutional cooperation alive." New principles, new priorities enriched the regime hence this would motivate states parties. On the contrary, negative critics emphasize that the need to revise the convention indicates that the Barcelona Convention completed its life if not the MAP. Rather than revising the old convention to make almost same documents, new annexes or brand new protocols, which took long time and intensive effort to do, which also needed ratification process; that time and energy could be invested to either reshape the regime wholly or to enhance compliance with current protocols and policies so that the MAP would be more effective. It would be better to define certain time schedules,

substances lists, stricter and clearer rules. Furthermore even the old ones were not implementing and complying duly then, let alone the new ones would. "If the energy of this effort had been spent on the implementation of actual policy programmes and refinement of existing protocols, this would have been more environmentally effective given the time dimensions involved."[840] After two decades signing of revised convention, when the covered distance in protection of the sea and especially the revised convention entering into force after almost ten years show that spirit of the Mediterranean Action Plan regime has exhausted its capacities. This subject will be examined in the 'effectiveness of the MAP' title below.

3.3.2. Confidence Building Mechanisms

There are some mechanisms accepted as compliance promoting mechanisms which examined previous chapter. Even though they are theoretically necessary and so recommended for compliance, different combinations of them in different MEAs have different effects on compliance since every case has its own circumstances. In this section of study, these compliance mechanisms are analyzed in a manner that which of them are used in the MAP, how they are functioning and what results are gained thanks to these mechanisms for compliance with the MAP.

3.3.2.1. Transparency

The transparency as a mechanism of compliance is regulated in Article 28 of the 'Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols'. It is regulated that the Committee shall work fairly and transparently guiding by the principle of due process. There is not any complaining by states parties about transparency in functioning of the MAP however, the biggest gap of the MAP

[840] Kütting, Case of MAP, p.20; Kütting, Consequences, p.68.

compliance mechanism is the absence of being transparent to public. Article 15 of the Convention about public information and participation allows to the public access to information on application of the Convention and the protocols in a very general expression. As long as it is not confidential, public could access to reports of the meetings of MoP and the Committee, and to all other relevant information about the MAP. However the meetings of the Compliance Committee about investigation of non-compliance cases are confidential. Furthermore the meetings are close to public access, annual reports of states are not publishing. The only way to get information about what states do for Mediterranean and how much they comply is the comments of MED partner NGOs which are allowed to observe meetings. This is also not helpful for full transparency because the meetings are confidential and it is forbidden to publicize discussions of the meetings. Minutes of the proceedings and decisions of the MoP and the Committee are published on the official web site of the MAP[841] but not the annual reports of states and non-compliance cases' investigations. So, what happens in the MAP, stays in the MAP. This is an obstacle for academicians who want to evaluate compliance with the MAP since we cannot reach to the Compliance Committee's official reports on a non-compliance case, nor states' annual reports on compliance. The only thing we know from the Committee's report that there are difficulties on compliance and few formal non-compliance cases which have not been investigated yet since they have seen non-significant and unintentional.

Additionally some states did not want to release MED POL's research reports on pollution in the coastal area to public because it would affect their tourism incomes and images.[842] To overcome this, in the MED POL reports, the Mediterranean Sea divided into ten regions and an overall assessment has been doing for each. It is not possible to target a particular state's non-compliance even if there is a huge degradation in the sea because of this non-compliance. The aim here seems like that to protect state's reputation

[841] See UNEP/MAP, "Documents and Publications", http://www.unepmap.org/index.php?module=content2&catid=001011.
[842] Kütting, Consequences, p.71.

as being a clean region especially for fishing industry and touristic destination is regarded more significant than being an environment-protector state.[843]

3.3.2.2. Reporting

From the very beginning of the MAP, reporting has been accepting as the main mechanism for compliance. According to Article 20 of 1976 Convention, every states parties should report to organization legal, administrative and all other measures about their implementation of the Convention and the protocols, even though the form and interval of reporting had not decided yet. Article 26 of the 1995 Convention confirms this provision. The Secretariat and the Compliance Committee regard that "only the information provided in the periodic reports or submissions by Contracting Parties could trigger the compliance mechanism".[844]

Reports are admitted as the main sources of information about the implementation of the Convention and its protocols, compliance of states parties and difficulties in implementation and compliance.[845] According to the 1995 Convention, states parties shall report "the legal, administrative or other measures taken by them for the implementation" and "the effectiveness of the measures … and problems encountered in the implementation of the instruments". It was also regulated that the MoP would determine a form and an interval for report submission. These reports would be assessed by the MoP to determine compliance of states parties, and measures and recommendations would be suggested states if necessary to promote compliance.[846]

In 2008, when the MoP established the Compliance Committee, delegated its authority on report assessment to the Committee but saved for its authority on final decision on a non-compliance case. To be able to perform its task, the Committee asked

[843] P. Haas, Saving the Mediterranean, pp.96-107, 285.
[844] UNEP(DEPI)/MED CC.1/5, "Draft Report of the First Meeting of the Compliance Committee", First Meeting of the Compliance Committee, 3-4 July 2008, p.7.
[845] Papanicolopulu, p.164.
[846] The Barcelona Convention, Article 26.(a-b) and 27.

an analyzing from the Secretariat on reporting of states parties from beginning of the MAP to that day and asked its recommendation for enhance reporting obligation. The Secretariat's analyzing on reporting was not pleasant. First, there were lacks in regular reporting of the states parties; not all of the parties had been submitting annual reports. Second, the submitted reports were not in a standard shape in the aspects of both format and also content which makes harder to examine. Thereon the analyses of the Secretariat, the Committee decided to standardize the reports and asked states parties to submit their reports regularly.[847]

There has not been an improvement on states' reporting despite of this request. In 1990 only four states parties had submitted their annual reports.[848] Number of the reports submitted by states was fourteen in 2006-2007 biennium[849] and sixteen in 2008-2009[850], the biennium the Committee was established and the new reporting system was launched. The assessments of the Secretariat of the annual reports for 2010-2011 term, the following biennium of establishment of the Committee, shows that there were still a huge lacking in the annual reporting obligation of the Contracting Parties. Only fourteen of 22 contracting parties had been sent their reports in this term. Furthermore assessment of these reports shows that there were several formal non-compliance cases. This situation would be helpful for both the Committee and the Secretariat because of the aim of the these assessments is not to punish the non-complier states but to determine the

[847] UNEP(DEPI)/MED CC.2/7, "Report of the Second Meeting of the Compliance Committee", Second Meeting of the Compliance Committee, 6 April 2009, 2009, p.7; UNEP(DEPI)/MED CC.3/5, "Draft Report of the Compliance Committee for the 16th Meeting of the Contracting Parties", Third Meeting of the Compliance Committee, 12 October 2009, p.5.
[848] Skjærseth, The Effectiveness, p.317.
[849] UNEP(DEPI)/MED WG337/3, "Progress Report by the Secretariat on Activities carried out During the 2008-2009 Biennium", 22 June 2009, p.4.
[850] In different reports of the Secretariat and of the Committee the numbers of submitted reports in a particular year are changing. This problem is arising for two reason. First, late submissions has been adding to the number given in the previous report, which is actually a shortcoming for examining of non-compliance since the late submission itself also is a non-compliance. Secondly, each of the Convention and the protocols require separate reporting. So, number of the submitted reports depends on which legal instrument you choose.

factors disrupter or make harder to transform the provisions of the Convention and protocols into the internal legislative and administrative system.[851]

Figure 9: Submitted National Reports as at July 2013

No	Contracting Parties	2002-2003 Biennium	2004-2005 Biennium	2006-2007 Biennium	2008-2009 Biennium	2010-2011 Biennium
1	Albania	●	●	●		
2	Algeria	●	●		●	
3	Bosnia&Herzegovina	●	●	●	●	● (Online)
4	Cyprus	●			●	● (Online)
5	Croatia	●	●	●	●	
6	European Union	●	●	●	●	●
7	Egypt		●		●	●
8	Spain	●	●	●	●	● (Online)
9	France	●	●	●	●	●
10	Greece	●	●	●	●	● (Online)
11	Israel	●	●	●	●	● (Online)
12	Italy	●	●		●	● (Online)
13	Lebanon					
14	Libya	●		●		
15	Malta		●			
16	Moroc	●	●	●	●	●
17	Monacco	●	●	●	●	
18	Montenegro	●		●		● (Online)
19	Slovenia	●	●	●		
20	Syria	●	●	●	●	
21	Tunisia	●			●	
22	Turkey	●	●	●	●	●
Total of reports submitted per Biennium		19	17	15	16	12

Resource: UNEP (DEPI)/MED WG.387/4, Annex I, p.1.

The assessment of the Secretariat clearly pointed out that, lacking of reporting is caused by insufficient resources but not by unwillingness of the contracting parties.[852] And this result remarks a situation which still continues. Particularly in developing countries there are technical problems and shortcomings caused by insufficient economic resources and absence of trained personnel. As one of the purposes of the

[851] UNEP(DEPI)/MED Compliance Committee 4/7, "Report of the Third Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 5-6 July 2011, p.6.
[852] UNEP(DEPI)/MED CC 4/7, "Report of the Third Meeting of the Compliance Committee", Fourth Meeting of the Compliance Committee, 5-6 July 2011, p.6.

Committee is to assist states which have technical problems, a financial and technical assists should be provided to these developing countries. But at the incoming chapters the financial shortcomings of the Committee's budget will be dealt and then it is tried to be explained that the budget of MAP is not quite enough to assist to the developing states in order to overcome the insufficient resources which lead to unwillingly non-compliance including reporting.

About reporting, not submitting of reports is not the only problem. The evaluation of reports, since there was not a standard form, was hard to analyze them, almost impossible to compare and hard to find required information about compliance and implementation. It seems like that this reporting system was "designed to make it difficult … to verify the accuracy and completeness of required reports".[853]

In 2008 a new reporting format was adopted by the MoP.[854] Contrary to previous one, this system is more appropriate for comparing national performances of states, for making quantitative analysis since it requires substantive data filling while limits irrelevant information with its ticking boxes and question-answering format. It could also be submitted on-line even though it requires a little bit more technical proficiency and higher technology which could be diminished via training and technical assistance given by the Secretariat to whom asks for. On the other hand, this new reporting system focuses on information about implementation rather than compliance and effectiveness. To collect data on effectiveness of their implementation was put over to further revisions of reporting mechanism.[855] Nevertheless, despite of new format, there are still unanswered questions, lack in given information, and ambiguity in comments even the reports have been submitted.[856]

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[853] P. Haas, Saving the Mediterranean, pp.96-107, 285.

[854] UNEP(DEPI)/MED, IG17/3, "New Reporting Format for the Implementation of the Barcelona Convention and its Protocols", Decisions of the 15th Meeting of the Contracting Parties, Annex V, 2008, pp.29-131.

[855] UNEP(DEPI)/MED CC.2/Inf.3, "Analysis and Synthesis of Reports Submitted by Contracting Parties, in Accordance with Article 26 of the Barcelona Convention and its Protocols, During the Biennium 2004–2005", Second Meeting of the Compliance Committee, 9 March, 2009, p.3.

[856] See UNEP(DEPI)/MED CC.5/3, "Summary of National Reports Submitted by the Contracting Parties for the 2008-2009 Biennium", Fifth Meeting of the Compliance Committee, 27 October 2011;

Another shortcoming of reporting of the MAP is absence of a mechanism to verify accuracy of reports. The Committee has to trust states parties on their honesty and good-will since it tries to a transparent and trustful environment for states parties by emphasizing the aim of the Committee is not to punish the non-compliers but to help them to alter their difficulties. The only chances to verify reports, the comments of NGOs about national compliance of a particular state or about situation of the sea in general if they are allowed to participate into meetings. As it was said, meetings of the Committee are open to MED partners only, and the meetings are confidential. There is not a chance for outsiders to reach states' reports and to verify them since the national reports are not released to public which is a big obstacle for transparency.

3.3.2.3. Monitoring

The MoP, the Compliance Committee and the Secretariat are legal and implementational monitoring organs of the MAP while scientific monitoring is conducted by the MED POL and the Regional Activity Centers. However monitoring mechanism does not focus on states' compliance. The MoP, the Committee and the Secretariat mostly focus on formal compliance which means whether the state make required legal and administrative proceeding in their national legal system or not. The MED POL and the Regional Activity Centers also focus on physical condition of the sea. For compliance no organ makes monitoring, neither on-site nor legal. This is mostly caused from low budget of the organs. Additionally according to the Convention, the Compliance Committee could make on-site monitoring and investigation only if the party concerned allows. In a case of intentional non-compliance it is obvious that any non-complier states would give such permission. So this provision results only if state is

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UNEP(DEPI)/MED CC.4/5, "Status of Implementation of Article 26 of the Barcelona Convention on Reporting During the Biennium 2008-2009", Fourth Meeting of the Compliance Committee, 16 June 2011.

unwillingly non-complying, and financial and technical assistance would derive from such an on-site monitoring.

3.3.3. Capacity Building Mechanisms

The contribution of the MAP to capacity building in states parties may be its most important contribution to environmental protection of the Mediterranean. From its very beginning, technical and scientific development of states parties both in the manner of monitoring and preventing of pollution in the sea have been the main aim and most succeeded feature of the MAP. Know-how technologies, national research centers, scientific equipments, trained experts and officers are gained especially to southern Mediterranean states.

3.3.3.1. Administrative Assistance and Education

The training of national experts and officers has been keep going from launching of the regime to be able to enhance national capabilities of states parties. Now, trainings are given more comprehensive and more modern way. Hardcopies and software form of courses, online seminars and working groups are used for regional and national trainings. Series of training courses are funded by the GEF and given in any Mediterranean languages by consideringly to create a common scientific and organizational language.[857]

For some, administrative assistance of the MAP to needed states were not successful as much as its technical contributions.[858] Administrative assisting is one of the features of capacity building projects, thus many national experts and officers were trained by UNEP via the MAP. All organs of the MAP also, such as POPs, RACs, MED

[857] Civili, p.175.
[858] Frantzi, p.621.

POL, give issue-based trainings for "human infrastructure". By thinking of " [t]raining and development is an on-going, cyclic process"[859], number of training courses and participants are gradually increasing. For example, MED POL Phase I was the training period for national experts for using equipments, lab-techs, standardization of data collecting, data commenting and verification.[860] (See Figure.10 Distribution of Benefits from MED POL Phase I at page.258) Four training courses were given by the MAP in total in 1985[861] while 28 courses were given only by REMPEC between 1983 and 2001.[862] For example one of the last training was given to the personnel of states whom needed when on-line reporting system was adopted.

As Franzti said, to employ these trained personnel in relevant jobs is the task of national authorities. It is not the failure of the MAP that states parties do not continuously employ the personnel according to their merits and expertises even if the MAP offers states training and administrative assisting. Additionally many states parties do not bother to send personnel to these trainings even the UNEP and the MAP offer regular training seminars.[863]

3.3.3.2. Technology Transfer

For launching MAP, technological inabilities were a big deficit. The national technical and scientific capabilities were far from to meet the necessities of launching

[859] UNEP(DEC)/MED WG.242/4c, "Reference Handbook on Environmental Compliance and Enforcement in the Mediterranean Region Part III Human Infrastructure", Meeting of the Informal Network on Compliance and Enforcement, 19 November 2003, p.35.
[860] P. Haas, Saving the Mediterranean, p.103.
[861] UNEP/IG.74/Inf.8, "Survey of Training Programmes", Fifth Ordinary Meeting of the Contracting Parties, 22 May 1987, p.6.
[862] UNEP(DEC)/MED WG228/7, "Evaluation of the REMPEC Including the Management Performance Audit of the REMPEC", Meeting of MAP National Focal Points, 25 July 2003, p.72.
[863] Frantzi, p.621 cited from UNEP/THE MAP, "Evaluation of MED POL Phase III Programme (1996-2005)", UNEP(DEC)/MED WG.270/Inf.10., Athens, 2005.

such a program.[864] The laboratories and research centers were lack in equipment to test and monitor the pollution and even in the experts who collect and evaluate data.[865]

"[E]nvironmental consciousness can only develop with the establishment of a scientific base and this scientific base can only develop through a monitoring programme as a training stage. … Once this research capacity has been established, routine work will be done by junior members of staff and senior scientists can focus on more innovative research. … The stronger the scientific basis, the more likely it is to have an impact on policy-making, following the epistemic community approach." The MAP pursued these ideas to create scientific and technical infrastructure within states parties.[866] The first step has been to give policy-makers a route was to develop a scientific capacity. To be able to do this environmental researches and training of national experts and officials were started, research centers were built, monitoring equipments were transferred, and research projects were planned and financed synchronously.

Although the researches on pollution were started even before the signing of the Barcelona Convention, these researches were conducted by states individually. Even though it was convenient to improve individual research abilities of states, not to create cooperative and merged actions. For cooperation and to create a common language and style, joined studies are more helpful. However, in part due to there were some deep conflicts between states parties such as Turkey and Greece or Israel and Arab states which made a joint action impossible, in part due to it was very beginning of a cooperative action, they still needed of time to trust and to regulate joint researches. They exchanged their data any way and started expert exchange for training under the frame of the MAP.[867] As long as their technical capacities and knowledge on pollution

[864] Except of The European Economic Community (now; EU) countries, only Egypt and Lebanon had the pollution monitoring center at that time. Beside of not having any monitoring facility, the others were even not aware of their coastal pollution. P. Haas, Saving the Mediterranean, p.84.
[865] For example Italy, Greece, Yugoslavia, Tunisia, Egypt, Morocco, Libya, Lebanon and Syria did not have any degreed marine scientists. P. Haas, Saving the Mediterranean, p.85.
[866] Kütting, Consequences, p.73.
[867] P. Haas, Saving the Mediterranean, p.100.

in the sea increased, their believe in necessity to take action against pollution increased and their compliance enhanced.

Especially for developing states, the MAP was an opportunity to improve their marine science facilities which they barely had at that time. During negotiation process, developing states insisted on a "regional operational center". This center would be a research and information center and also would have coordinative power. Beside of its information transfer, data pooling and other executive duties, it would also directly responsible for technical assistance and technology transfer to developing states. However developed states especially France, Spain and Italy, since they already had effective marine research center and abilities, wanted more flexible and mostly subregional centers with weak organizational structures which would have the task of information exchange. According to their arguments further responsibilities such as technology transfer and technical assistance should be voluntary and bilateral, if it was really necessary. Technological and financial abilities were on developed states' side but voting majority were on developing states' side. At the end of the negotiations at the MoP, a compromise was reached. Regional operational center's structure was organized strongly and powerfully as developing states wanted but the issue of technical assistance and technology transfer duties were left a side for further negotiations.[868]

'The Programme for the Assessment and Control of Marine Pollution in the Mediterranean Region'-MED POL is the scientific and technical component of the MAP which has been started in 1981. MED POL was designated to provide information which will be necessary for further decisions and to organize a continuous technological transfer and assistance.[869] Standardization of used methods and technology is accepted an important process for cooperation and concerting of national workings. To be able to extend the works of MED POL, Scientific and Technical Committee and the Socio-Economic Committee were established with wider and more comprehensive

[868] P. Haas, Saving the Mediterranean, pp.98-99.
[869] Evangelos, pp.12-13.

strategies.[870] Even though these committees are thought as instrumental tools rather than being regulative, they are certainly helpful for regulations and implementation of decisions as they provide scientific and technological background for them.

By signing the Barcelona Convention and MED POL, scientific researches at the sea were started for determination of initial condition of the Mediterranean so that to be able to watch before-and-after development thanks to the MAP. However there was not any national scientific research center in the region that could collect, submit or comment data about the sea. When the technological circumstances that the states parties had were reconsidered, the best strategies were to start pilot plans in relatively more developed regions of the Mediterranean while for others to start technology transfer and to create a scientific common language for communication in general. This was the plan for Phase I of MED POL.[871] To build and to develop scientific research centers in the region and to make them cooperate and communicate through a common scientific language were other targets in the Phase I of MED POL. Hence degree of pollution and its sources would identify and required political action would be able to decide in the further phases.[872] For this aim, training of national experts through international contributions were started; present national research centers were re-designed and developed; new ones were opened; technology were transferred and financial aid were subsidized by international financial organizations and by relatively more developed states parties. Expert laboratories and research centers for monitoring pollution in the Mediterranean Sea were held in Algeria, Egypt, France, Italy, Malta, Turkey and former Yugoslavia. Even though France was the technological leader of the states parties, due to participated states had not the required high technology, the equipments of these centers were mostly distributed by USA who had relatively higher technology.[873] The estimated

[870] Evangelos, p.17.
[871] Evangelos, p.7.
[872] Evangelos, p.8; Skjærseth, The Effectiveness, p.316 cited from UNEP, 1995.
[873] P. Haas, Saving the Mediterranean, p.79.

total cost of MED POL Phase I was $ 17,4 million and most of it spent for training, technology transfer and technical assistance and also data collecting.[874]

Figure 10: Distribution of Benefits from MED POL Phase I (1975-1982)

State	Total Assistance in $US	Trainees Sent to Other Labs	Number Of Research Contracts Signed Between UNEP and National Institutions
Yugoslavia	249.616	21	23
Egypt	201.566	20	12
Turkey	186.657	21	12
Algeria	129.905	3	4
Israel	128.275	7	12
Malta	107.883	5	8
Italy	80.700	8	19
Greece	80.621	15	24
Cyprus	77.925	4	5
Tunisia	54.505	11	5
Morocco	53.585	5	5
Spain	49.113	10	13
Lebanon	38.210	7	4
France	25.560	0	15
Monaco	6.635	0	1
Syria	0	0	0
Libya	0	0	0
Albania	0	0	0
TOTAL	**1.470.756**	**137**	**162**

Resource: P. Haas, Saving the Mediterranean, pp.106-107.

The Priority Actions Programme aimed to training of national experts from very beginning of the MAP. Although in first years it was hard to accomplish, especially after 1987 when the training policy was accepted in the Fifth Ordinary Meeting, training of

[874] P. Haas, Saving the Mediterranean, p.104.

experts via seminars and courses; consultations, workshops and sending national experts to other parties have became a continues and steady policy of the MAP.[875] To improve the quality of collected data, to develop capabilities of national research centers and to concert national workings Data Quality Assurance Programme was started in 1988 as a pilot project to be able to keep collected national data as valid, comparable and concerted.[876] Now it joined to the MED POL.

Authors who assesses the MAP's institutional structure highly prize MED POL but nevertheless complaining about the missing interlinkages between MED POL's ascertains and political decisions. They point the MoP comes short in using relevant data to define the MAP's environmental strategies and regulations.

3.3.3.3. Financial Aid

As much as technology transfers, financial aid was an important hook for prospected participated states. For example Egypt and Algeria at the beginning had been party of the MAP not because they intimately accepted the UNEP's long-term environmental policies but because of they accepted the necessity of urgent intervention to land-based pollution in the short term and more importantly they would get benefit from financial aid in long term which would be delivered if they immediately become party to the MAP.[877]

Financial aid was cleverly used as a reward for good members; to be able to get the benefits states should have been attended to negotiations. Using the financial policies as a carrot made developing states participate in the process, and thus they easily became open to effects of synergy created by more enthusiastic states and to epistemic community's influence who also attend meetings within the state teams or as members of

[875] Evangelos, p.30.
[876] Evangelos, p.11.
[877] P. Haas, Saving the Mediterranean, p.79.

UNEP.[878] The condition to get benefit from financial aid was regular and active participation to meetings and actions of the MAP. For example even though Syria, Libya and partially Israel initially became members, since they did not participate in meetings regularly and actively they did not get any benefit from being member.[879] (See Figure.10 Distribution of Benefits from MED POL Phase I at page.258)

In 1973-1975 period, the MAP took the 7,2% of UNEP fund among all environmental programs. After launching other regional sea programs in 1979, the MAP still got the biggest share of fund among all other regional sea programs even so that the UNEP's executive director was started criticizing by UNEP Governing Council because of this unfair proportioning of funding.[880] After signing of the 1976 Convention, states parties started developing the MAP's own funding structure. Until establishing its own funding structure, UNEP remained the main financer of the MAP with support by France.[881]

The exclusive financial assisting institution of the MAP is the Mediterranean Trust Fund which has been established in 1979. Every state of parties was contributing to the Mediterranean Trust Fund according its economical capabilities and also UNEP and other UN agencies also have been contributing.[882] In turn, each part equitably and accordingly its economic conditions get benefit fiscal contributions from the Fund for costs of activities in each biennium's planning.[883] The sharing of financial benefits was well distributed to developing states. In first years, least developed countries paid $222.000 as annual contribution in total, in turn got almost $300.000 as direct financial aid, which means not including equipment and technology transfer.[884]

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[878] P. Haas, Saving the Mediterranean, p.218.
[879] P. Haas, Saving the Mediterranean, pp.79-80.
[880] P. Haas, Saving the Mediterranean, p.125.
[881] P. Haas, Saving the Mediterranean, p.125.
[882] From beginning through 1986, the share of the UNEP and other UN agencies in the MAP funding was $US 14,4 million while state contribution was $US 13,3 million. The biggest state participation was belong to France with 48%. P. Haas, Saving the Mediterranean, p.125 cited from UNEP, "Assessment of UNEP's Achievement on 'Oceans' Programme Element (1974-1985)", 1986.
[883] Evangelos, p.65.
[884] P. Haas, Saving the Mediterranean, p.196.

Figure 11: Status of Contributions to Trust Fund as at 2009

Country	Unpaid pledges as at December 2008	Deferred Income as at December 2008	Pledges for 2009	Collections in 2009 for prior years		Collections in 2009 for 2009	Deferred Income in 2009	Unpaid Pledges for 2009	Unpaid Pledges for 2009 and Prior years
	EUR	EUR	EUR	EUR		EUR	EUR		EUR
Albania	0	0	3.877	0		0	0	3.877	3.877
Algeria	236.610	0	58.163	0		0	0	58.163	294.773
Bosnia & Herzegovina	0	0	16.619	0		0	0	16.619	16.619
Croatia	0	0	53.730	0		53.730	0	0	0
Cyprus	7.755	0	7.755	0		0	0	7.755	15.510
Egypt	132	0	27.143	132		27.143	0	0	-0
European Union	0	0	138.483	0		138.483	0	0	0
France	0	0	2.103.262	0		2.103.262	0	0	0
Greece	0	0	155.653	0		0	0	155.653	155.653
Israel	81.562	0	81.427	81.562		0	0	81.427	81.427
Italy	0	0	1.737.670	0		1.737.670	0	0	0
Lebanon	11.395	0	3.877	3.877		0	0	3.877	11.395
Libyan Arab Jamahiriya	339.883	0	109.124	0		0	0	109.124	449.007
Malta	3.877	0	3.877	0		0	0	3.877	7.754
Monaco	0	0	3.877	0		3.877	0	0	0
Montenegro	0	0	1.294	0		0		1.294	1.294
Morocco	31.022	0	15.511	13.904	2/	0	0	15.511	32.629
Slovenia	0	0	37.113	0		0	0	37.113	37.113
Spain	0	0	830.337	0		0	0	830.337	830.337
Syrian Arab Republic	15.511	0	15.511	15.511	3/	906	0	14.605	14.605
Tunisia	0	0	11.632	0		11.632	0	0	0
Turkey	0	0	124.634	0		124.634	0	0	0
TOTAL	**727.749**	**0**	**5.540.569**	**114.986**		**4.201.337**	**0**	**1.339.232**	**1.951.995**
Additional Contributions									
European Commission	0	0	598.568	0		598.569	0	0	-1
Host Country *	604.701	0	440.000	0		0	0	0	1.044.701
UNEP Env. Fund	0	0	15.000	0	1/	15.000	0	0	0
Grand Total	**1.332.449**	**0**	**6.594.137**	**114.986**		**4.814.906**	**0**	**1.339.232**	**2.996.694**

Resource: UNEP(DEPI)/MED IG 19/Inf.3, "Progress Report by the Secretariat on Activities carried out During the 2008-2009 Biennium", Annex II, 19 October 2009, p.1. (Encolouring is original.)

There is an other but black side of financial structure. Developed northern states, especially France in the first phase did not hesitate to use their financial superiority to affect the MAP's functioning. Especially negotiation for the LBS Protocol, France and Italy who were responsible almost half of the Mediterranean Trust Fund budget alone, reduced their contributions to blockade researches on land-based pollutants. Their fear

was that the search would indicated that their industrial wastes' polluting effects would be revealed and highly profit industrial actions, especially which produces mercury and radionuclide wastes, would had to be regulated accordingly to limits and thus new commitments would be added addition to they already have arising from EEC environmental regulations.[885] The chance of blackmail of developed states to be able to influence decisions of the MAP, gradually sharpened as long as external financial supporters of the MAP has increased and technical capabilities of other states have developed.

Beside of inside funding through the Mediterranean Trust Fund, outside funding has been an important financial support to the MAP. UNEP has always been the biggest contributor to the MAP as well as to other regional seas programs. As long as the international financial organizations have developed, financial contributors of the MAP also have become varied. 'The Environmental Program for the Mediterranean' (EPM) was established in 1988 by the European Investment Bank and the World Bank as a joined financial contributor for the MAP projects. The European Investment Bank and the World Bank had already provided almost $5.6 billion lending to the Mediterranean states for environmental protection in a general manner from beginning of the 1980s until 1990.[886] By establishing of the EPM this lending has been constructed in a MAP-focused manner which gives funds to special projects of Mediterranean states accordingly to the MAP projects, mostly projects about sewage constructions and port facilities.[887] However funding is limited to the projects that meet the World Bank's specifications and conditions which are very strict.[888]

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[885] P. Haas, Saving the Mediterranean, p.101; Kütting, Consequences, p.71.

[886] The World Bank and The European Investment Bank, **The Environmental Program for the Mediterranean Preserving a Shared Heritage and Managing a Common Resource**, Washington D.C., 1990, pp.5, 15.

[887] For protocol-based lending amounts see: The World Bank and The European Investment Bank.

[888] These fundings led to debtor crises in Latin America because of their long term loans, high annual interest rate and penalty for delay and harder conditions at dept-structuring. Thus these loans helped to alter funding problems of national MAP project as well as caused states to fall into dept spiral. So involvement of the World Bank into the MAP financial system must analyze carefully. Kütting, Consequences, pp.76-77.

The GEF also is an important supportive for the MAP. The states who develop their 'National Action Plans' (NAPs) for the MAP projects get financial assistance from the GEF. For example GEF contributed $6 million in 2001 for groundwork activities essential for realization of LBS Protocol commitments. Beside of GEF and World Bank, the EU and the European Commission are other financial supporters of the MAP projects. UN Development Programmes also established the Mediterranean Technical Assistance Programme (METAP) to support the MAP projects financially.[889]

Sustainable financial aid is an important factor in realization of the MAP plans so compliance with the MAP, especially for developing states. It is frequently emphasized in the Secretariat's and the Committee's reports that one of the reasons of difficulties in compliance is financial shortcomings. In this sense, financial aid is vital for developing states in their planning national projects and realization them. The past experiences show, most of the developing states' national projects for example sewage treatments would not be able to realized without financial contributions from UNEP, GEF, EPM and Mediterranean Trust Fund. It is mostly accepted that without financial aid, the MAP would not be as successful as it is now.[890] Nevertheless financial aid should be sustainable, well-planned and well-managed to be effective. The main proportion of the Mediterranean Trust Fund is state contributions and unfortunately it is seen that many of states parties do not regularly pay their annual contributions. (See Figure.9 Submitted National Reports as at July 2013 at page.250) As many environmental cooperation and even many international organization, late payments and even not payment at all are chronic problems of Trust Fund. Lack in budget causes programs running on inefficient budgets and permanent cash crises.[891] In a lack budget the Trust Fund is unable to funding planned projects. Unfinished projects results ineffectiveness in regime as well as failure in planning new ones. The financial vicious circle blockades proper compliance

[889] Frantzi, p.625.
[890] Civili, p.174.
[891] Kütting, Consequences, p.78.

with the MAP. For more accurate implementation and higher rate of compliance states "are asking more money"[892] while paying less contribution.

A shortcoming of multi-layered managing structure of the MAP shows itself in financial structure. Even though the MAP is an autonomous program, final decisions on distribution of financial resources of the Trust Fund to projects and between states are taken by UNEP rather than by MoP or Trust Fund. States complain about budget-cuts in decided allocations by Trust Fund and may cause doubts over UNEP decisions.[893] On the other hand this is not a surprise because of low budget and cash crises of Trust Fund. Besides, even the budget of the UNEP is downsizing because of voluntarily contributions from states to UNEP's Environment Fund is gradually decreasing.[894] A fine-adjustment on funding decisions is necessary for a more effective budget allocation.

When distributions of financial resources are examined it is seen that the share of MED POL projects are more than PAP projects. An accurate comment on this biased funding is that since MED POL projects are basically scientifically research projects, they are seen less political, less threaten and more neutral than PAP projects which necessitate political action that may threat states' interest. This is also another shortcoming of the MAP structure that causes failure in to connect scientific research results to specific political actions.[895]

3.3.3.4. Dispute Settlement Mechanisms

There is no binding dispute settlement mechanism in the MAP for disputes between states parties. According to Article 28 of the Convention, the states parties who have a dispute over interpretation or implementation of the Convention and its protocols "shall try to seek the dispute through negation or any other peaceful means of their own

[892] DiMento and Hickman, p.127.
[893] Kütting, Consequences, p.78.
[894] DiMento and Hickman, p.27 cited from Bharat H. Desai, "UNEP: A Global Environmental Authority", **Environmental Policy and Law**, Volume.36., Issue.3-4, 2006, p.142.
[895] Kütting, Consequences, p.78.

choice". If the dispute cannot be resolve by these methods the concerned will submit it to arbitration by a common agreement. They are free to design arbitration as they want or they could choose the arbitration procedure which is regulated in the Annex I of the Convention. However procedures and mechanisms of compliance and decision of the Compliance Committee and of the MoP are not subjects of dispute settlement mechanism of the Convention.[896]

According to Annex I of the Convention, in the request of setting an arbitral tribunal, all other states parties are informed about situation. Arbitral tribunal consists of three members: two of them are nationals of the concerned parties and one from other states parties who is also chairman of the arbitration. The decision of the arbitral tribunal is final and binding but only upon the parties to the dispute.[897]

As far as it was examined, there has not been any dispute between states parties nor has an arbitral tribune been set up yet. So it is not possible to make any comment how effective the MAP's dispute settlement mechanism effective. In a general assessment, having an arbitral tribunal mechanism is a positive step. Nevertheless it is optional not compulsory. States are free to decide how to settle their dispute and also what kind of arbitration mechanism they design. It is also positive that the decisions of the arbitration are final and binding. However it does not make any sense because it is a voluntary mechanism since the states do not choose a mechanism which makes binding decision if they have the option to choose because they cannot control the consequences.

3.3.4. Enforcement and Sanction Mechanisms

The compliance mechanism of the MAP is defined "as [not] a punitive or coercive one, but on the contrary as one of giving advice and assistance".[898] So it is not surprising that there is no enforcement mechanisms regulated neither in the Convention

[896] The Procedures and Mechanisms on Compliance, Article.36.
[897] The Barcelona Convention, Annex I, Article. 1-8.
[898] UNEP(DEPI)/MED CC.3/5, "Draft Report of the Compliance Committee for the 16th Meeting of the Contracting Parties", Third Meeting of the Compliance Committee, 12 October 2009, p.4.

nor in the protocols. The only provision about enforcement on a non-compliance case is to conduct "appropriate sanctions". According to Procedures and Mechanisms of the Compliance the heaviest sanction is to publish the state who is severely and continuously non-complying. Until now, there is not an application of enforcement and sanction since creation of the regime. Of course it is caused since there is not any non-compliance case yet.

While deciding on a non-compliance case the Committee and the MoP have to take account the capacity of the state accordingly to the principle of common but differentiated responsibilities and the characteristics of the each non-compliance situation such as cause, type, degree and frequency. The measures which will be taken are neither judicial nor sanctional but enhancing and helping the states who has difficulties.[899] In a non-compliance case:

1. "The Committee may give advice and, if necessary, facilitate the provision of assistance; this assistance could be through recommendations on the interpretation of legal texts or on technical or administrative methodology;

2. Depending on the case, the Committee may invite and/or assist the Contracting Party concerned to draw up a plan of action to bring the Party into compliance within a period to be agreed between the Committee and the Party concerned;

3. The Committee may invite the Contracting Party concerned to submit progress reports on its efforts to bring it into compliance with its obligations under the Barcelona Convention and its Protocols;

4. The Committee may make recommendations to meetings of the Contracting Parties on cases of non-compliance, if it considers that such cases should be handled by the meeting of the Contracting Parties."[900]

If the Committee transfers a non-compliance case to Meeting of the Parties:

[899] Papanicolopulu, p.165.
[900] UNEP(DEPI)/MED CC.5/4, "Draft Guide Brochure for Contracting Parties on Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols", Fifth Meeting of the Compliance Committee, 28 September 2011, p.3.

1. The MoP "assist[s] a particular Party to comply with the Committee's recommendations and provide assistance, including capacity-building, where appropriate;

2. Make[s] recommendations to the Contracting Party concerned;

3. Request[s] the Party concerned to submit progress reports on compliance with its obligations under the Barcelona Convention and its Protocols;

4. As a last resort, publish[es] cases of non-compliance."[901]

The basic instruments for non-compliance are advice and assistance, financial and technical aid accordingly to managerial approach. However, the power of authority of the Committee and of the MoP in deciding measures is quite different. The only binding measures that the Committee could decide is the concerned state's making an action plan, either with the Committee or by itself, to overcome the difficulties. It also could submit its recommendations of measures to the MoP. The MoP has a greater power to take more stringent and compulsory measures[902] like to advice a plan or to assist making one, and financial and technical aid for accomplishing this plan. However the only sanctional measurement in the MAP is to publish the state's non-compliance in case of serious, intentional and repeated non-compliance. The proposal to suspension of rights and privileges in case of non-compliance was not accepted "since that might lead to resentment".[903]

Since there is no sanctioning system in the regime, the only risk of non-compliance is "blame from international organizations or media and the related risk to some of their activities, such as tourism due to a bad image".

In spite of the MAP's legal texts are legally binding, since there is no sanctioning system in case of non-compliance, the MAP is almost a death-letter. It is obvious that non-compliance with the Convention and its protocols creates international

[901] UNEP(DEPI)/MED CC.5/4, "Draft Guide Brochure for Contracting Parties on Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols", Fifth Meeting of the Compliance Committee, 28 September 2011, pp.3-4.
[902] Papanicolopulu, p.165.
[903] Papanicolopulu, p.166.

responsibility of state but if there is neither a mechanism to judge nor a coercion to sanction her, what means the international responsibility of non-compliance. It seems that at creation of the MAP, managerial approach has been preferred rather than enforcement approach with the thought of that states comply with international law as long as they have capacity. But, are moral pressure or the rule of *pacta sund servanda* good enough to coerce states to abide international law especially in a region that is defined with "Mediterranean Syndrome" which means states are "the non-obedience of the law unless there is reason to fear some punishment"?[904] Furthermore if the only coercive mechanism is publishing and hence embarrassing, how possible is this in a confidential reporting system of the Compliance Committee? Reporting is an important resource of determining whether the state is complying and which obstacles cause non-compliance. Nevertheless even the reporting obligation itself is a non-complied provision of the MAP. According to overall reporting evaluation in 2010-2011 biennium, only 12 of 22 states parties submitted their reports with some blank sections and missing data.

At the absence of coercive enforcement mechanisms and sanctions, even the low rate of compliance with surprisingly higher than it is assumed to be.[905] The explanation of this surprisingly high compliance is that the regulations of the MAP and the provisions of protocols are weak for a proper protection of environment. There is not time-schedules for elimination of substances, the lists of eliminated substances are short, there are not deadlines for provisions and no one knows what to do, when and how. The cost of combination of weak commitments and weak enforcement mechanism is increasing pollution, endangered species, diminishing fish stocks, shortly "collapsing ecosystem in the Mediterranean".[906]

[904] Frantzi, p.645.
[905] Frantzi, p.625.
[906] Downs, Rocke and Barsoom, p.396.

3.4. COMPLIANCE WITH THE MAP

One of the definition of effectiveness is legal effectiveness or compliance with regime which also the subject of this study. Compliance, or legal effectiveness is the most obvious measurement of regime effectiveness and for its overall effectiveness to a certain point.

The only source to examine compliance within the MAP is the reports of states parties which either not submitted at all or submit but lack information and confusing. In this circumstance it is not possible to determine whether states really comply, as the Secretariat and the Compliance Committee frequently emphasize. As the Secretariat and the Committee said, the format of the reporting system and evaluation of the reports focus on formal implementation. Hence it is examined only whether the states parties made required national legislation accordingly to the Convention and protocols. The real compliance with and effectiveness of the regime has not been examined yet. Furthermore reports of states parties do not publish to public. Only a summed review of the Secretariat and the Compliance Committee over national reports and an overall assessment of compliance are publishing. Hence the real compliance with the MAP cannot be examined.

According to the Secretariat's first analyzing about compliance within the period from establishing of the regime until the year the Compliance Committee have been established, there had been not any specific case of non-compliance but some difficulties in compliance on the basis of reports of states parties. But the Secretariat added a comment that there were non-submission of reports and inadequate information in reports which were actually non-compliance by their own with reporting obligation.[907]

The further analyzings of compliance are parallel to this determination. Even though there had been not any non-compliance case yet, there were difficulties in compliance. According to the Secretariat analyzes and the Committee's comments in

[907] UNEP(DEPI)/MED CC.1/5, "Draft Report of the First Meeting of the Compliance Committee", First Meeting of the Compliance Committee, 3-4 July 2008, pp.6-7.

2009, "[m]any of the reports describe difficulties in applying the protocols, in particular lack of awareness, limited financial capacity, limited human resources and inadequate inter-sectoral coordination".[908] After two years, reports of the states parties still point "inadequate political and administrative framework, limited financial resources that do not permit large investment in the environment, as well as limited technical capacity, insufficient human resources, and a lack of horizontal cooperation among the various stakeholders" as reasons which they encounter in implementation of the Convention and the protocols.[909] These determinations are important since it shows how crucial the managerial approach to the MAP is. The only mechanism to alter these non-compliance reasons is capacity building.

The compliance with the MAP was surprisingly and interestingly high at its beginning.[910] It is expected that at the beginning compliance rate is usually low but gradually it increases as states parties gain enthusiasm and get awareness of their interest from complying with regime. Additionally as regime develops, it makes enhance states parties' capacities to be able to make them comply. In the case of the MAP, things are interestingly realized in a contrary way. However since the reports of states and minutes of the Compliance Committee about states' compliance are confidential, it is impossible to determine the exact rate of compliance but it is not hard to figure it out that the compliance rate is not good enough today, when it is compared with the first phase. Furthermore some of protocols or their renewed versions have still not ratified or entered into force. This shows that the spirit of the MAP is dying away.

[908] UNEP(DEPI)/MED CC.2/4, "Review of General Issues of Compliance by the Contracting Parties", Second Meeting of the Compliance Committee, 9 March, 2009, p.2.
[909] UNEP(DEPI)/MED CC.5/3, "Summary of National Reports Submitted by the Contracting Parties for the 2008-2009 Biennium", Fifth Meeting of the Compliance Committee, 27 October 2011, p.7.
[910] Haas defined France, Israel, Greece, Algeria and Egypt were the most enthusiastic and most supportive states for the MAP at the beginning. Accordingly, as well as they were actively participated in meetings, they took more effective national measures. P. Haas, Saving the Mediterranean, p.155.

3.5. EFFECTIVENESS OF THE MAP

As it was said in the first chapter, there are three different definitions of effectiveness: Legal effectiveness, behavioral change effectiveness and problem-solving effectiveness. Legal effectiveness points that compliance level of states parties with a regime and legal effectiveness of the MAP has been analyzed in previous title. Now, it is time to make an assessment the MAP's effectiveness for other two definitions of effectiveness.

The assessment of behavioral change effectiveness of the MAP is controversial. Its success changes from time to time, from state to state and from topic to topic. In an overall evaluation, it seems like it has been not good but medial. "(T)he institutional setting and decision-making process of the MAP does not currently reflect a sufficiently strong or flexible system to exert serious political influence to achieve behavioral change."[911]

Expanding the regime into new pollutants and new scopes indicates a behavioral change in states parties. In the early phase even including France, who was the leading defender of the protection of the Mediterranean, all states parties were opposed, boggling to expand the scope of the admitted pollutants into new channels. Furthermore the South, who was arguing that pollution problem of the Sea was caused by the industrialized states of the northwestern basin and since they were the responsible, they should have paid the cost of enhancing. However the researches showed that initially known pollutants were not the only problem, neither the only guilty of the pollution were the industrialized states. Hence as time goes by new pollutant channels have been included the regime, such as heavy metals, phosphates, mercury, cadmium; land based sources like municipal sewages, agricultural wastes; and addition to pollution, environmental protection areas and new topics such as endangered species, marine parks, public health have been considered as an integrated protection plan of the sea. Even though at the early phase, developing states, particularly Egypt, Morocco, Algeria

[911] Frantzi, p.624.

and Turkey, were suspicious about that the MAP was a "trick" to control their developing plans and to force them to share the cost of pollution control requirements which in deed the developed ones caused. However when the negotiations were reviewed it can easily be seen that most of expanding offers either surprisingly came from the developing states or offers of developed states did not deprecated by them. Developing states were supported and convinced by the UNEP which was directing by Egyptian Mostalpha Tolba, even though either new controlling substance were essential for industrial and agricultural sectors of their economies or controlling these substances were highly cost for them.[912]

Figure 12: Environmental Issues Covered by the Protocols

Issues covered	Protocols under the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention)							
	Dumping Protocol[1]	Prevention and Emergency Protocol[2]	LBS Protocol[3]	SPA & Biodiversity Protocol[4]	Offshore Protocol[5]	Hazardous Wastes Protocol[6]	ICZM Protocol[7]	Ecosystem Approach
Coastal ecosystems and landscapes	▪	▪	▪	■	▪	▪	■	■
Pollution	■	■	■	■	■	■	■	■
Eutrophication	▪	▪	■	▪	▪	▪	■	■
Marine litter	■	▪	■	■	■	■	■	■
Marine noise	▪	▪	▪	▪	▪	▪	▪	■
Non-indigenous species	▪	▪	▪	■	▪	▪	▪	■
Commercially exploited fish and shellfish	▪	▪	■	■	▪	▪	▪	■
Seafloor integrity	▪	▪	▪	■	■	▪	■	■
Hydrographical conditions	▪	▪	▪	▪	▪	▪	■	■
Marine food webs	▪	▪	■	▪	▪	▪	▪	■
Biodiversity	▪	▪	■	■	▪	▪	■	■

1. Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea
2. Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea
3. Protocol on the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities
4. Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean
5. Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil
6. Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal
7. Protocol on Integrated Coastal Zone Management in the Mediterranean

Resource: UNEP/MAP, State of the Mediterranean, p.76.

[912] P. Haas, Saving the Mediterranean, pp.199-200, 209. However, rather than to trust developed states' research reports in chance of their being manipulative policy, they had waited several years, until their own research centers showed the same alerting results about same substances.

It is also good news that states parties, especially southern states chose not to be free-riders. They rather to expand their commitments to new substances via LBS protocol, even it is very minor improvement. France and Italy already had some commitments to the European Economic Community (EEC - now EU) by limiting some pollutants. The other states parties knew that France and Italy had to comply with EEC decisions which also limits and eliminates some substances; hence they had to chance to be free riders of cleaner Mediterranean by rejecting the LBS Protocol. Instead, they chose to expand their commitments into new substances by making a new protocol. Later, EEC and then EU environmental standards developed and also numbers of members and candidate states of the EU increased. Almost all northern states are now subject to the EU environmental law which is much stricter and deeper and also more coercive than the MAP regulations. Southern states do not have the fear of sanction of non-compliance because of lack of coercive enforcement mechanism of the MAP. Still, the compared compliance rate of northern and southern Mediterranean states is not significantly different.

Establishment of environmental ministries in the MAP states is also an indicator of behavioral change. Environmental ministries are important actors at transferring of international environmental law into national legislation hence at promoting compliance. Before creation of the MAP, especially the southern Mediterranean states had not had environmental ministries nor governmental environmental agencies. After launching of the MAP states either established an environmental ministry or an agency within a related ministry.[913] However, environmental awareness was not an attribute of solely the MAP. After the 1970s, the period beginning with 1972 Stockholm Conference started a general tendency of creation of environmental ministries and creation of national environmental legislation. It is hard to distinct that whether states parties' environmental protection action by establishing environmental ministries was harmonized with this general trend or took place thanks to the MAP. The contribution and acceleration of the MAP is not deniable though it is not the only catalyst.

[913] P. Haas, Saving the Mediterranean, pp.140-131.

For environmentalists the most important effectiveness criteria is problem-solving effectiveness of environmental regimes. Nevertheless problem solving effectiveness of the MAP may be its worse part, in spite of the MAP's four decades of life-long. The problem which the MAP should have been solved is environmental degradation in the Mediterranean. Nevertheless, in the MAP, rather than re-formulate socio-economic actions in more environment friend manner, states tried to fit the environmental regulations into their pre-existing conditions.[914]

Problem-solving effectiveness is the easiest one among definitions of effectiveness of environmental regimes since examining of before-after physical parameters of environment is enough to determine whether the problem solved or not. However in the MAP it is not easy as it is seem. In his book published in 1990, Haas stated that there were no synoptic data on how the MAP had changed the condition of the Mediterranean. There was not any research center nor technical capacity to collect data on Mediterranean environment at the establishing period of the MAP. Since there had been no data on the pollution, water quality, fish stocks pre-MAP term, there was not any chance to compare before-after conditions of the sea. The only way to evaluate the success of the regime was not outcome but the process itself. And he continued by giving some examples to evaluate the process. Ten years before the MAP, %33 of beaches in the Mediterranean were closed because of unhealthy conditions, while only 20% of were still closed in 1986, and water quality of beaches were getting better. In Mediterranean ports, ballast reception facilities were started constructing. According to him biggest achievement of the MAP until then was construction of sewage treatment systems accordingly to LBS protocol. At that time being treated of 30% percent of municipal sewage is considered as effectiveness of the regime. According to Haas, the ROCC was very successful at oil spill emergency intervention planning. Before establishing of the ROCC, only 4 of 17 states parties had national oil spill contingency plan and one was preparing a plan. In eight years after establishing, all states except

[914] Kütting, Consequences, p.112. See ibid, pp.123-120 for socio-economic origins of environmental problems in the Mediterranean Sea.

Albania either developed or started to prepare their national plans. Also with help of the ROCC subregional collaborative plans were developed. In 1977, one year after the ROCC's establishment, 16 oil-spills were recorded which 8 of them were between 5-10.000 tons, while only 3 were recorded in 1985 and none of them over 1.000 tons thanks to plans, in spite of increasing marine traffic and oil transportation in the Mediterranean. And finally at the overall assessment, the MAP was accepted as the most successful regional seas program at that time and recommended as a model for others.[915]

Problem solving effectiveness of the MAP can be evaluated by comparing the parameters of the 1990s, mid-the MAP period to latest data. Thanks to the SPA/BD Protocol, today there are more than 800 Specially Protected Areas which covers 144.000 km^2 so almost 2/3 of the coastal marine areas of the sea, while this number was only 122 Specially Protected Areas which cover 17.670 km^2 in 1995. However, despite of the SPA/BD Protocol, 19% of Mediterranean species are still endangered of which four species of them are critically endangered, and 1% of species have already extinct. There are currently 925 alien species which have negative impact on local biodiversity.[916] Between 2007-2008, 454 potential illicit discharges were determined.[917] The average weight of solid waste like the number of plastic bags, caps and plastic bottles found in the sea has dropped from 511 g to 258 g, but still affect biodiversity negatively.[918] Only 60% of municipalities with over 2.000 inhabitants which means only 19% of total coastal population have wastewater treatment plants either prior, secondary or tertiary. Only 55% of coastal cities with over 10.000 inhabitants have secondary treatment plants. In some regions, still more than 90% of wastewaters flow into the sea without even a prior treatment.[919] Especially prevention of land-based sources of pollution, establishment of marine protected areas, planning development of the coastal zone and

[915] P. Haas, Saving the Mediterranean, p.xx.
[916] UNEP/MAP-Plan Bleu, State of the Environment, pp.55-57, 155.
[917] UNEP/MAP-Plan Bleu, State of the Environment, p.113.
[918] UNEP/MAP-Plan Bleu, State of the Environment, p.141.
[919] UNEP/MAP-Plan Bleu, State of the Environment, pp.147-148.

application of the ecosystem approach[920] are considered as the subjects need to more progress. Also the comments on fishery are not pleasant. Environmental impact assessment is weak. Dumping and discharging still continue at high sea area.[921]

Even though problem solving effectiveness of the MAP has been harshly criticized in this thesis as in many other studies, the general situation of Mediterranean is pretty good despite of raising population, off-shore activities, tourism, marine traffic etc. Tar pollution is decreasing, not all but at least certain pollutant emissions are decreasing.[922] Bathing water quality is improving, especially at northern coasts. 92% of sampling point conform national water quality.[923] In 1980-1990 only 22,5% of sewage in whole Mediterranean basin was treated, now almost 95% of sewage is treated before flowing into sea -even it is mostly prior and rarely secondary treatment.[924] According to reports some species have been saved from extinction thanks to SPA protocol and these projects. Scientists agree on that the Mediterranean is in a better condition than it would be if the MAP had been never launched. They also agree on that, even though there is not a complete healing in the pollution rate, at least polluting acceleration was prevented or at least could be kept in the same level thanks to the MAP, in spite of increasing industrialization and population which means continuously increasing pollution channels in the Mediterranean basin. If the MAP were not being signed, the Mediterranean could never handle with these burdens.[925] Additionally, the original 16 signature states remained in the regime moreover the number of states parties increased to 22 and the integrity of the regime was preserved, although some of the new or amended protocols have not signed by all of the states parties to the Convention yet.

Even though political effect is not a criteria for measuring of effectiveness of a regime, it is certainly an important factor in evaluation of a regime. Political effectiveness could be defined roughly as to be able to bring states to same table to make

[920] Integrated management of different ecological systems.
[921] DiMento and Hickman, pp.121-122. See UNEP/MAP, State of the Mediterranean.
[922] DiMento and Hickman, p.121.
[923] UNEP/MAP-Plan Bleu, State of the Environment, pp.70, 152.
[924] DiMento and Hickman, p.120.
[925] P. Haas, Saving the Mediterranean, pp.130-131; DiMento and Hickman, p.121.

them cooperate. In the case of the MAP, it can be said that it has been absolutely politically effective regime. The first political achievement of the MAP has been the success to bring traditionally conflicting states together. Israel and Arabic states, Greece and Turkey, France and Algeria were, and still are- polarized not only to cooperate even to negotiate.[926] The North-South division is also an important obstacle for cooperation in the MAP since the north and south shores of the Mediterranean is literally divided into polars which have religiously, culturally, politically, economically and beneficially different features. Some writers praise the MAP being a "peacemaking agency" for Mediterranean states[927] even it has not been remediate environmental problems of the Mediterranean sea.

3.6. THE MAP: AN OVERALL ASSESSMENT

It will useful to make an overall assessment of the MAP after its four decades. Academic interest to the MAP was started with the classic book of Peter M. Haas named 'Saving the Mediterranean: The Politics of International Environmental Coooperation' published in 1990. In this book Haas defined the MAP as an exceptional example for success of international cooperation.[928] From its establishment until beginning of the 1990s, it was the golden age of the regime so that Haas based the success of regimes onto epistemic community which had proved itself within the MAP. In this period "[s]tates showed a good deal of interest, treaties entered into force swiftly and a certain institutional framework was set up" which was "regarded as 'an exemplary case of

[926] Especially bilateral negotiations between Algeria and France during MoP were helpful for reducing their post-colonial conflicts. (P. Haas, Saving the Mediterranean, pp.184-185.) The MAP negotiation was one of the first international forum that both Israel and Arabic states' delegates participated in. Frantzi, p.621 cited from E. Weinthal and Y. Parag, "Two Steps Forward, One Step Backward: Societal Capacity and Israel's Implementation of the Barcelona Convention and the Mediterranean Action Plan", **Global Environmental Politics**, Volume.3, No.1, 2003.

[927] Frantzi, p.621.

[928] Haas explains this success by the active role of epistemic community and their influence on state behavior. Peter M. Haas, "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control", **International Organization**, Volume.43, No.3, 1989, (Regimes Matter), pp.337-403; P. Haas, Saving the Mediterranean.

interstate co-operation'" by Haas.[929] In many academic studies Haas's mentioned evaluation on the MAP's success and effectiveness were shared and confirmed. However these views were about the first two decades of the regime which was defined as the first phase of the MAP and after that, a downfall occurred in its performance so consequently the critics were started at the second phase. The effectiveness and the acceleration of regime have started to diminish after the 1990s in spite of renewing the Convention, signing of new protocols and amendments. Furthermore this period was the maturity period of the regime when it was supposed to be more effective and efficient than its constructing period.[930] This dissolution is described because of being "lack the necessary 'authority' to prompt and ensure its implementation" and "lack sufficient funding and political power". Besides, "its 'operation potential [is] rather small', and 'substantial action might be considered minor'".[931]After 1995 and in the 2000s, opinions about effectiveness of the MAP are controversial. Some still defend it as an effective regime; some criticize it because of being loose energy and low performance. Their expectations from the MAP are not satisfied by achievements of the MAP, success rate is gradually diminishing, critics against the MAP continuously increasing.

According to Skjærseth, since motivation in its creation of states parties were not the environmental concern but mostly political or material beneficial -training of personnel, technical assistance, financial aid- it might have been effective in these aims but not environmentally. In spite of vague and proper environmental targets neither states' motivation nor financial conditions were enough to achieve it. The MAP may be successful in increasing of environmental awareness, technological infrastructure and research equipments in states parties but states cannot mobilize these facilities to enhance environmental condition of Mediterranean Sea.[932]

Kütting is also critical about the MAP's effectiveness. According to her, even it was well-intended in creation and successful at the beginning, neither its environmental

[929] Costa, p.151; P. Haas, Regimes Matter, p.378.
[930] Costa, p.151.
[931] Costa, p.151; Kütting, Case of MAP, pp.15-33.
[932] Skjærseth, The Effectiveness, p.314; Skjærseth, Anniversary, p.51.

effectiveness nor its institutional effectiveness up to now are good enough to define it as an effective environmental regime.[933] According to Kütting the ineffectiveness of the regime is caused by legalization of the regime targets such as lack and/or wrong formulation of regulations, lack in pollutants taken into account and undefined substances limiting and time tables. For example, in the Dumping Protocol intentional and accidental oil spill and dumping were taken into account but not discharging which is totally different polluting actions. Special equipment for tankers and port facilities are needed for control of discharging which is regulated in London Convention. Probably UNEP trusted in London Convention and MARPOL which regulate dumping, discharging and accidental oil spill would deal with these problems in the Mediterranean too and did not see any harm to omit these subjects in the Dumping Protocol. Nevertheless it had been forgotten that most of the Mediterranean states were not the parties of MARPOL nor London Convention. Thus, first ineffectiveness of the regime was caused by the omissions of polluting resources or misconnected of pollution and pollutants because of lack of knowledge. Kütting claims that this intentionally lack formulation arises from ignoring of environmental benefit in favor of benefit of states parties.[934] However it is believed that since analyzes on pollution had not been fully understood at that time and since states are voluntarily ready to deal with pollution problem in the sea, it is a harsh critic against the Dumping Protocol.

Being a part of UNEP program may be the reason of congenitally disable of the MAP since "any UN system means … very laborious, very ineffective, very high administrative costs, very low impact".[935] As a continuation of this critic, the critics say if the MAP were an independent environmental organization, it probably would be more successful and effective in protection of Mediterranean. But the influence of UNEP on the MAP decision making process and functioning and even on budget is not powerful

[933] Gabriela Kütting, **Environment, Society and International Relations**, Routledge, London, (Environment), 2000, pp.62-82; Kütting, Case of MAP, pp.15-33.
[934] Kütting, Consequences, pp.64-68.
[935] Frantzi, p.621.

nowadays as much as it had been at regime's first years.[936] To blame the UNEP for failure of the MAP and its ill-institutionalization is not fair, at least for today. The decision-making authority of the MAP is states parties their own, by Meeting of Parties. If required decisions and enhancing in institutionalization cannot be done this is not the failure of UNEP but states' themselves. The failure in structuring the MAP was to create a massive regime with idealistic but hard-to-reach targets in spite of low budget, low-tech and low awareness. Instead, it should have been a regime with smaller frame but strict time-schedules, longer eliminated substances lists and more well-defined commitments.[937] It seems that the MAP is the one which have more protocol than any other regional seas programs however one of the least effective.

The final comment on the MAP is that it is a regime which horizontally expanding[938] but vertically not improving.[939] The general comments on the MAP effectiveness in the 1990s, two decades after its establishment, mostly disappointing but there were still expectation that it would be more successful in near future. In the course of time, experience had been gained, cooperation had been learned, institutional capacities of the MAP and national capacities of states parties had been developed, and new protocols had been signed. From then on, it had been expecting that the MAP would be more effective. The elapsed time unfortunately dashed the hopes. After the second two decades, the critics are still same, the problems are too:[940] The failures in structuring the MAP institutions, financial problems both in states and the MAP budget, mis/wrong-connections between cause and result relationship between socio-economic actions and environmental degradations, biased priorities in favor of economic and industrial development over environmental protection, lack in time framing of regulations, etc.

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[936] Frantzi, pp.621-622.
[937] Skjærseth, The Effectiveness, p.327; Skjærseth, Anniversary, p.51; Kütting, Consequences, p.80.
[938] Nowadays, UNEP is trying to make the MAP include climate change into its scope. DiMento and Hickman, p.95. See UNEP(DEPI)/MED IG.19/8, "Marrakesh Declaration", Sixteenth Meeting of the Contracting Parties, 3-5 November 2009.
[939] DiMento and Hickman, p.115.
[940] Blake, p.77; Skjærseth, The Effectiveness; Skjærseth, Anniversary; Kütting, Case of MAP; Kütting, Consequences; Frantzi; DiMento and Hickman.

When the threats for Mediterranean, degradation and pollution level of the sea, diversities and complex conflicts between states parties are considered, it is clear that the regime has achieved more success that it might have. But the main reason for this success is not well-designed regime structure, nor the effective institutional organizations. According to Gerald Blake, personal efforts of a few enthusiastic individuals who dedicated themselves to save the sea and consequently to success of the regime make the regime work such as Mostalpha Tolba.[941]

In spite of establishing of the MAP is a "hard case" since the high number of conflicting states, differentiation of political interests, variety of benefits expected from the regime, economic and scientific differences between parties and inexperienced scope of regional sea protection, still, it is a successful experience when expanding scope, sophistication in execution of the environment and achieved aims are considered.[942] However it is not possible to recognize a full success, or in a better word effectiveness. There are lacks in regulations, difficulties in compliance with the regime, ignored non-compliance cases even they are minor, and still much to be done. The latest stage where the MAP has came in forty years shows that states parties are ready to cooperate for protection of Mediterranean but not by sacrificing their economic and political interests. Their intention is good but political actions are not enough to realize it. As long as regime regulations are not required clear legal commitments, clear time-schedules, strict limitation lists, and especially high-cost measurements and compromise from their economic priorities they are ready to do what is necessary[943] which is a situation that conforming enforcement approach which says the compliance is high with MEAs since the cooperation is low.

[941] Blake, p.75.
[942] P. Haas, Saving the Mediterranean, p.214.
[943] Kütting, Consequences, p.82.

CONCLUSION

This study analyzed the role of compliance for effective international environmental regimes and how compliance may be promoted. As indicated earlier, IR and IL scholars have different terminologies and approaches on the question of what should be done for a successful regime. IR scholars address the issue of a successful regime as 'regime effectiveness', while IL scholars use the term 'compliance'. IR scholars believe that regime effectiveness is a broader concept and has three dimensions: 'behavioral effectiveness', 'problem solving effectiveness' and 'legal effectiveness'. In the study it is suggested that the term 'dimensions of the effectiveness' is more appropriate instead of the term 'definitions of effectiveness'. Accepting the term 'dimensions of effectiveness' led to a conclusion that compliance is one of the three dimensions of effectiveness.

Behavioral effectiveness means the success of changing a behavior towards a right direction. Problem solving effectiveness means the success of solving a problem. Legal effectiveness means the success of making states parties comply with regimes' requirements. On the other hand, IL scholars use the term compliance instead of what IR scholars call legal effectiveness. The linkage between compliance and effectiveness shows that there is a linear relationship between compliance and effectiveness. Namely, higher compliance makes a regime more effective.

For a better understanding of why compliance is important for environmental regimes' effectiveness and how compliance with environmental regimes could be promoted, compliance theories, complaince mechanisms and compliance approaches were examined and analyzed in detail. Findings were tested in the MAP as the case study of the thesis. The conclusions about compliance with international environment regimes and effectiveness of environmental regimes were reached both in general sense and in the case of the MAP. These conclusions are stated as well as recommendations on compliance with and effectiveness of environmental regimes below.

First, solutions of environmental problems require multi-dimensional changes in many areas such as in education, culture, life-style, economy and industry. It's difficult to imagine an environmental regime to be effective on problem-solving as long as major behavioral changes and environment friendly approaches put into practice. As these major changes require vertical and horizontal environmental awareness and behavioral change from household level to governmental level, this may be regarded as the hardest but also the most important condition of effective environmental regimes.

There is a debate whether greater numbers or limited numbers of states parties is better for regime effectiveness. Rather than the number of states parties, it is more important to include all related states into regime.

Environmental problems are global problems and require global solutions. Thus, global governance is more important in environmental regimes than any other international regimes. Consequently, environmental regimes ruled and governed by states parties could only be managed according to states' interests and priorities, not according to real environmental necessities. For this reason, non-state actors should be involved in every process of regime, officially and actively.

A dominant international environmental organization, which will determine macro environmental policies and strategies, co-ordinate regimes to increase cooperation and collaboration, harmonize different stakeholders' interests and finance regimes, should be established. These tasks have been assumed by UNEP in the current situation; however, it is not an IGO, just a UN program which has a limited budget, limited potential and low political effect. Since UNEP cannot be radically upgraded in this manner, it is better to establish a brand new international organization. This new IGO should not be limited to function just as a forum or as a coordinator. It is recommended for this new organization to have a semi-supranational character.

Second, regime effectiveness has three dimensions: Legal effectiveness, behavioral effectiveness and problem solving effectiveness. Environmental regimes should be built in a manner that enhances all of these. A regime that concentrates on only one dimension cannot be regarded as an effective regime. However, environmental

regimes should be particularly effective on problem-solving, since unsolved or unsolvable environment problems may cause irrevocable consequences. When the states of current environmental regimes are considered, their problem-solving effectiveness is insufficient. As environmental regimes require tremendous commitments and high burden for real solutions of environmental problems, regimes are either built to create shallow cooperation, or the process of even a simple task is extended over a long period of time. This shows the fact that regimes are created not to realize environmental solutions but to realize states parties' interests and intentions.

In environmental regimes, while problem-solving effectiveness is low, legal effectiveness is generally high. Behavioral effectiveness of these regimes, however, is relatively high on developed states, but low on developing states. This also indicates that there is a shallow cooperation in environmental regimes. As the thesis's case study on the MAP shows, the compliance rate is high but environmental degradation of the Sea still continues. Hence, the MAP cannot be regarded as an effective regime since the problem solving effectiveness and the behavioral effectiveness of the regime are low, even though the legal effectiveness is high.

The environmental regimes of which both developed and developing states are parties, remain less effective than homogeneous regimes because of perceptional, technological and financial capability differences. As regards to perception, there is a big difference between developed and developing states in perception of environmental problems. Developing states assume that current environmental problems are consequences of developed states' industrialization and enrichment processes, so they demand developed states to take more responsibilities and to finance environmental regimes. Furthermore, some developing states argue that they have the right to degrade environment equally until they reach to similar development level of developed states. Developing states do not internalize environmental norms because of this perception. Therefore, behavioral effectiveness of environmental regimes on developing states is low.

Environmental problems are considered as low politics by many states. Hence, the responsibilities that states are willing to undertake on environmental regimes are usually very low compared to other types of regimes. One of the main explanations of why provisions of environmental regimes create shallow cooperation could be found in this situation. States should come to point of realizing that environmental degradation is in fact a new security threat and without environmental protection, sustainable development and industrialization are not possible. Promotion of environment to high politics has the potential of making the states more enthusiastic about environmental regimes.

Third, for an effective regime, each set of principles, norms, rules and behaviors should be efficient and applicable. For an effective regime, the environmental problem should be fairly and correctly analyzed, cause-and-effect relation of environmental degradation should be well understood, appropriate problem-solving regulations should be regulated and required provisions should be regulated. Only after analyzing of cause-and-effect relation and determining correct solutions for the problem, a regime which has applicable and effective provisions and norms could be created. Set of principles, norms, rules and behaviors are constitutive elements of every regime. However, the set of principles, norms, rules and behaviors which are on paper only, if not coded correctly for solution of the problem and if not applicable by states parties are bound to be dead or remain as dead letters.

In the creation of regimes, right institutions and right structures should be used. For example, even though the hard law instruments are not attractive for states, they are more effective in regime effectiveness. The requirements become more strict and definite if they are clearly stated in provisions of the international treaty of the regime. It is not easy to convince states to make a hard law instrument for regime regulations though. This is actually a cost-benefit analysis for states to make a choice between soft and hard law instruments. Although it is a preferable method for states, soft law instruments limits the effectiveness of regime. Soft law instruments are neither binding nor do they have any compliance or enforcement mechanisms to enforce states parties.

In the absence of these mechanisms, states would prefer not to comply. In the same manner, as there is no definite path to follow for accomplishing the defined objective, soft law instruments are highly possible to lead to ineffectiveness.

The existence of an international organization is not always necessarybut has positive effects for regime effectiveness. With or without an IGO, the organs should be established which would make the regime dynamic, make it continued and even gradually improve it. It is not yet possible to make an environmental regime that covers unknown and unpredictable environmental problems or solutions. However, a regime that cannot respond to new needs is condemned to be eventually ineffective, despite of states of parties' compliance. An evolving regime could adjust to new conditions, improve continuously and satisfy the needs of both parties and the environment. Framework convention-protocol approach and regular and frequent meetings of Conferences of Parties and committees are the institutions that make regimes evolve. Efficient workings of these organs also increase cooperation and collaboration within the regime and with non-state actors and monitoring compliance of states parties.

Fourth, just being a part of an environmental regime does not necessarily mean that states would show enough effort to comply or states would have the capability to comply. States parties that do not have sufficient capability or sufficient enthusiasm cannot contribute regime's effectiveness. On the contrary, these would cause ineffectiveness. Capacity may be developed by capacity building mechanisms, while enthusiasm may be increased by laying barely the negative effects of environmental degradation on human life and relations between environment-human life, health and life quality.

Compliance of states parties of environmental regimes depends on correctly structured compliance mechanisms and the correct functioning of these mechanisms. Appropriate mechanisms for the structure of the problem, the desired solution, the internal conditions of states parties and the international structure should be determined and should be made to function effectively. Each compliance mechanism has different importance and effects on states and situations. For this reason, all mentioned

mechanisms should be used efficiently and correctly. If the mechanisms are just on paper, they cannot prevent intentional or unintentional non-compliance so they make the regime ineffective, even dead letter.

States usually do not trust each other. They want to know what others are doing in a regime but do not want to be monitored and controlled. For this reason, confidence building mechanisms of environmental regimes are built to be ineffective. Each states parties is obliged to report but basic features such as verification of reports and in-site monitoring are deficient. This causes cheating and free-riding especially if norm internalization and behavioral effectiveness are not strong enough, so legal effectiveness and problem solving effectiveness decrease.

Environmental regimes require high technology and financial support. Capacity building mechanisms are particularly essential for environmental regimes because of this. Developing states are more willing to be part of environmental regimes owing to attractions of these mechanisms. For this reason, it should be ensured that capacity building supports and aids -especially financial ones- are used for regime requirements. Additionally, a regime should be rendered more attractive for developing states by enabling the common but differentiated responsibilities principle until their capabilities reach the adequate level, while not harming the problem-solving effectiveness of the regime.

Negative effects of the shortcomings of enforcement and sanction issues of international law could be seen in environmental regimes as well. There are not coercive and deterring enforcement and sanction mechanisms in environmental regimes for non-complier states. Even if there were, these are not launched. In this situation, a state that does not have the capability or will for compliance, would not hesitate not to comply with the regime. From this point of view, Enforcement Approach cannot be regarded as the wrong approach for environmental regimes, even though the Managerial Approach is more accurate in general. Both of these approaches should be considered together for environmental regimes' effectiveness.

Finally, for further studies, it is suggested that each dimension of effectiveness could be analyzed case by case to see which of those is missing and how it could be promoted. Which enforcement and sanction mechanisms are appropriate for environmental regimes could also be examined in further researches. How a new international environmental organization could be structured more effectively could also be an important research question. The linkage between socio-economic orders in states and environmental degradation also must be investigated since many environmental regimes as well as the MAP ignore this cause-and-effect relation.

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