Chapter 3:
The Evolution and Role of Multilateral Environmental Agreements (MEAs) for Natural Resource Conservation

Till recently, environmental affairs were considered not important or significant enough for the high table of international diplomacy. The UN Conference on the Human Environment (UNCHE) organised in Stockholm in 1972 was the first world conference on the environment ever and in this sense a trail blazer as it placed such concerns at the forefront of global attention.

In the same year, the United Nations Environment Programme (UNEP) was established. The UNEP has been described as “the voice for the environment within the United Nations system”, It is considered to be a catalyst, advocate, educator and facilitator to promote the wise use and sustainable development of the global environment. (http://www.unep.org/About/ accessed on 25th September 2013). The United Nations Environment Assembly (UNEA) is the UNEP’s main governing body with universal membership. It was re-designated in March 2013 from a 58-member Governing Council to reflect the full and future participation of all 193 UN member states in UNEP.

Since then, several global conferences on various environmental and sustainable development issues have been held from time to time. These include the United Nations Conference on Environment and Development in Rio de Janeiro, in 1992, also known as the Rio Earth Summit, the United Nations World Summit on Sustainable Development (WSSD), also known as Earth Summit II or Rio +10, in Johannesburg, South Africa in 2002 and the United Nations Conference on Sustainable Development (UNCSD), also known as the Rio+20 Conference in Brazil in June 2012.

This series of world conferences and the mission of UNEP form two components of a system that is commonly referred to as global environmental governance. Yet its third and most predominant component is the fast and ever expanding grid of Multilateral Environmental Agreements (MEAs), a multitude
of inter-state treaties and conventions of either regional or global scope (Desai 2006).

The fundamental principle of international law is *pacta sunt servanda* ("agreements must be observed") (UNEP 2006).

An International Environmental Agreement (IEA) is defined as "an intergovernmental document intended as legally binding with a primary stated purpose of preventing or managing human impacts on natural resources" (Mitchell 2017).

The 1969 Vienna Convention on the Law of Treaties' defines a treaty as "an international agreement concluded between States in written form and governed by international law" in which states express a "consent to be bound" [Articles 2(1)(a) and 11 through 17].


The willful “consent to be bound” is considered the most crucial component of such agreements.

The term agreement as used above closely corresponds to this definition of “treaty”.

Agreements are the documentation of legally binding arrangements among two or more states, regardless of whether they are designated as treaties, conventions, accords, or modifications of such arrangements (Aust A. 2000).

Agreements are identified to include:

- instruments which may be designated as convention, treaty, agreement, accord, or their non-English equivalents, and protocols and amendments to such instruments;
- instruments, regardless of designation, establishing intergovernmental commissions;
• instruments, regardless of designation, identified as binding by reliable sources (e.g., by a secretariat, UNEP, or published legal analysis); or
• instruments, regardless of designation, whose texts fit accepted terminologies of legally-binding agreements (after Mitchell 2017)

A Multilateral Environmental Agreement (MEA) is a legally binding agreement between two or more countries containing commitments to meet specific environment-related objectives (Bowling 2008).

Multilateral Environmental Agreements (MEAs) have emerged as a unique technique containing flexibility, pragmatism, in-built law making mechanism as well as a consensual approach to norm-setting. They have also been regarded as part of a broader trend of an “increasingly more complex web of international treaties, conventions, and agreements” (Desai 2010).

The world has currently a very large number of multi country environmental agreements and non-instruments in place. These include:

i. 1598 Bilateral Environmental Agreements
ii. 1281 Multilateral Environmental Agreements
iii. 248 Other (non-multi, non-bi) Environmental Agreements
iv. 210 Bilateral Environmental Non-binding Instruments (non-agreements)
v. 239 Multilateral Environmental Non-binding Instruments (non-agreements)
vi. 98 Other (non-multi, non-bi) Environmental Non-binding Instruments (non-agreements)

(Mitchell. 2017)
In that sense, Multilateral Environmental Agreements are seen as a relatively recent tool for Biodiversity Conservation. In the international law making process, Multilateral Environmental Agreements (MEAs) have emerged as the "predominant legal method for addressing environmental problems that cross national boundaries" (Harvard Law Review 1991:1521). Such cooperation amongst nation states is seen as based upon 'shared sovereignties' and a useful tool to address such concerns that are beyond political boundaries. While it is well recognized that the legal underpinnings of the current drive to protect the global environment remain embedded in the general principles of ** Data from Ronald B. Mitchell. 2002-2017. International Environmental Agreements Database Project (Version 2017.1) Available at: http://iea.uoregon.edu/. Date accessed: 25 January 2017).
international law, states are increasingly reliant upon treaty law, in the form of multilateral environmental agreements (MEAs), to respond to new and complex challenges as they arise (Desai 2003).

Multilateral environmental agreements guide global, regional and national action on environmental issues and are a result of multilateral processes, which makes them key elements of environmental, legal and governance regimes. Scholars and practitioners also refer to them as “soft laws” to indicate the nature of the instruments and compliance issues related to them. (Pisupati 2016).

The adoption of these instruments is only the beginning of a process: full implementation of their provisions is vital to ensure their effectiveness. While setting out to efficiently combat environmental degradation, alleviate poverty, and enhance intra- as well as inter-generational equity embedded in the concept of sustainable development, there is wide concern, within international diplomatic circles, that MEAs have not lived up to their promises; that they are not fully complied with nor enforced; or are inadequately implemented. These shortcomings are one of the leading causes for the continued degradation of the environment (UNEP 2006).

Desai (2006) has pointed to the growth of functional international organisations (specialised agencies), functional commissions and regional commissions as well other programmes within the UN system providing living testimony to the craving for institutionalisation of international cooperation.

The roles of the UN General Assembly and that of UNEP merit special attention here. As a plenary organ of the United Nations, the General Assembly has provided crucial guidance to the whole process, acting as a ‘conductor of a grand orchestra’ that provides political guidance to States, notwithstanding the inbuilt Charter limitation that it can only make ‘recommendations’ through its resolutions (Desai 2006).
UNEP as a subsidiary organ of the UN has played an important role in this process. Institutionally, UNEP is simply a programme of the UN General Assembly. While it does not have the legal status of an independent international organisation, it does not appear to have deprived this UN body of some measure of international legal personality (Desai 2006).

In UNEP’s Annual Report for 2012, the UN Secretary General mentions the collective desire of world leaders to “strengthen the institutional framework for sustainable development, including reinforcing UNEP as the leading global environmental authority.

It is here that the now globally acknowledged concept of ‘implied power’ comes into play. This simply means that while states may try and to put most things in the written form for maximum clarity, certain things even if not explicitly clarified in the constituent instrument can be presumed, if they are essential for its raison d’être. This has also been affirmed by the International Court of Justice (ICJ) in the Reparations case in this much-quoted passage: “Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. This principle of law was applied by the Permanent Court of International Justice to the International Labour Organization in its Advisory Opinion No. 13 of July 23rd, [p183] 1926 (Series B., No. 13, p. 18), and must be applied to the United Nations.”

Further, the ICJ added, “In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that 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. Accordingly, the Court has come to the conclusion that the Organization is an international person.” (Advisory opinion of the International Court of Justice (ICJ), 11 April 1949).

This needs to be emphasised as at several stages, various MEAs- CITES included- seem to have made liberal use of these principles to enhance their objectives.

Compliance mechanisms in Multilateral Environmental Agreements.
It is to be understood that Multilateral Environmental Agreements (MEAs), of which CITES is one, are multilateral treaties and as such they are subject to the 1969 Vienna Convention on the Law of Treaties (Goeteyn and Maes (2011).

Any such MEA is expected to provide a mechanism to resolve any disagreement or dispute amongst parties. This may include consultation, negotiation, arbitration and/or judicial review or a reference to the International Court of Justice. If a treaty does not provide a specific dispute resolution mechanism, article 66 of the Vienna Convention 1969 may apply.

This reads as follows:

Article 66, PROCEDURES FOR JUDICIAL SETTLEMENT, ARBITRATION AND CONCILIATION

If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the following procedures shall be followed:

(a) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) Any one of the parties to a dispute concerning the application or the
interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations (United Nations 1980).

Some Important Definitions in International Environmental law

The Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (UNEP 2002) offer the following definitions:

“Compliance” means the fulfilment by the contracting parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement; (International context).

“Compliance” means 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, licences and authorizations, in implementing multilateral environmental agreements; (National context).

“Implementation” refers to, 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.

“Enforcement” means the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations implementing multilateral environmental agreements, can be brought or returned into compliance and/or punished through civil, administrative or criminal action. (UNEP 2001).
The compliance mechanism under a Multilateral Environmental Agreement could comprise of one or more of the following:

1) An obligation on member states/parties to provide periodic reports on predetermined parameters

2) A framework for verification of such information.

3) Evaluation of such reports in a time bound and transparent manner

4) Assessment of such information on well established criteria to identify possible instances of non-compliance or “defaulters”

5) Costs (including corrective measures wherever applicable) of non compliance to be imposed in case of such non compliance

6) Institutional framework for review and/or resolution of disputes, if any.

A compliance mechanism in an MEA can therefore be described as a body of procedures, ranging from the gathering of information, consideration of the information provided, the causes and degree of non-compliance and the decision-making by the COP, MOP or a specifically designed and designated Compliance Committee with regard to a Party to the treaty that encounters difficulties in meeting the treaty requirements (Goeteyn and Maes 2011).