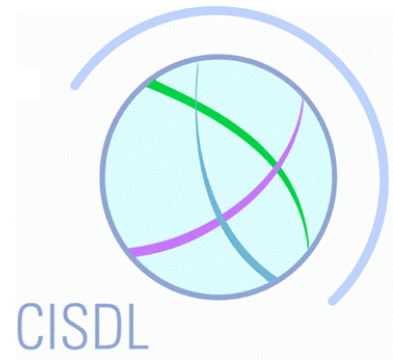


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Date & Time: 2002-06-13 14:00	Speaker: Ms. Xueman Wang
Rapporteur: [Wilma Hovius]	Language: English



**Plenary Roundtable One:
New Legal instruments for ISDL Monitoring &
Compliance**
June 13, 2002, Montreal

- 1) Since 1992, more than 200 environmental treaties have been developed
- 2) The issue regarding these treaties is enforcement
 - a) Traditional enforcement mechanisms have not worked
 - b) Instead, a “compliance theory” has developed: this compliance theory will be described by looking at two compliance mechanisms:
 - i) The Cartagena Compliance mechanism and
 - ii) The Kyoto compliance mechanism
- 3) Environmental protection must be enforceable. However, alternatives must be found, as traditional enforcement does not work.
- 4) Compliance approaches used by most MEAs
 - a) Facilitating compliance
 - i) First compliance is capacity building: need sufficient technical, economic and other instruments
 - ii) Provide incentives to compel compliance: example: Kyoto Protocol. This, however, is not enough.
 - iii) Thus, a managerial approach has evolved: the establishment of a system that is transparent, fixes problems, and respond to non-compliance
- 5) Major steps required in compliance systems are “reportment” and assessment of reporting.
- 6) Factors affecting design of a compliance regime
 - a) Objectives of a MEA
 - b) Characteristics of the commitments (hard/soft)
- 7) Compliance procedure: two models
 - a) Cartagena model
 - i) Regarding safe handling and transfer and use of GMOs
 - ii) Basic characteristics:
 - (1) Protocol contains many procedural mechanisms
 - (2) First international legally binding instrument that requires regulatory framework
 - (3) Relationship of the protocol as a liability regime: its success remains to be seen
- 8) Biosafety protocol: the compliance mechanism
 - a) Two layer structure
 - i) The compliance committee and
 - ii) The supreme body of the protocol: the COP/MOP
 - (1) Political side of the compliance committee
 - b) Consequences of non-compliance
 - i) Soft consequences recommended by the compliance committee
 - ii) Hard consequences imposed by the COP
- 9) Kyoto Protocol model
 - a) Emphasizes function of enforcement
 - b) Uniqueness of Kyoto compliance mechanisms:
 - i) Legally binding emission reduction commitments
 - ii) Market mechanism: emissions trading, CDM (clean development mechanism): its purpose is to reduce cost of compliance
 - c) **Compliance mechanism**
 - i) Must be swift
 - ii) Incorporates two processes: soft process that is facilitative and a strong process that is geared towards stricter enforcement
 - d) How mechanism is triggered: two sources and three ways
 - i) First source: parties
 - (1) If party has difficulty in enforcing, can go to committee
 - (2) Or a party that thinks another state is not implementing, can go to committee
 - ii) Compliance committee is somewhat compulsory
 - e) Compliance committee
 - i) Two branches

- (2) Enforcement: deals with enforcement
- ii) Interaction between branches
 - (1) For example, enforcement branch can refer a case to the facilitative one
- iii) Each branch takes a preliminary examination to screen the complaint
- iv) After screening,
 - (1) Facilitative branch follows general procedure: to provide advice, assistance and information
 - (2) Enforcement branch follows a more judicial procedure
 - (a) In principle, the case should finish within 6 months
 - (b) Non compliance can lead to the development compliance action plan
 - (c) The decision can be appealed