

Mechanisms to promote implementation and compliance

Functions:

- to promote implementation of international legal obligations
- to regulate consequences of failure to implement obligations

Aims:

- Prevention of environmental damage
- Remediation of damage that has occurred
- Equitable attribution of the financial burden of prevention and remediation

Mechanisms to promote implementation and compliance

Mechanisms with relevance for IEL:

1. State responsibility
2. Dispute settlement
3. International civil liability regimes
4. Compliance monitoring

State responsibility

Very limited relevance in IEL

WHY?

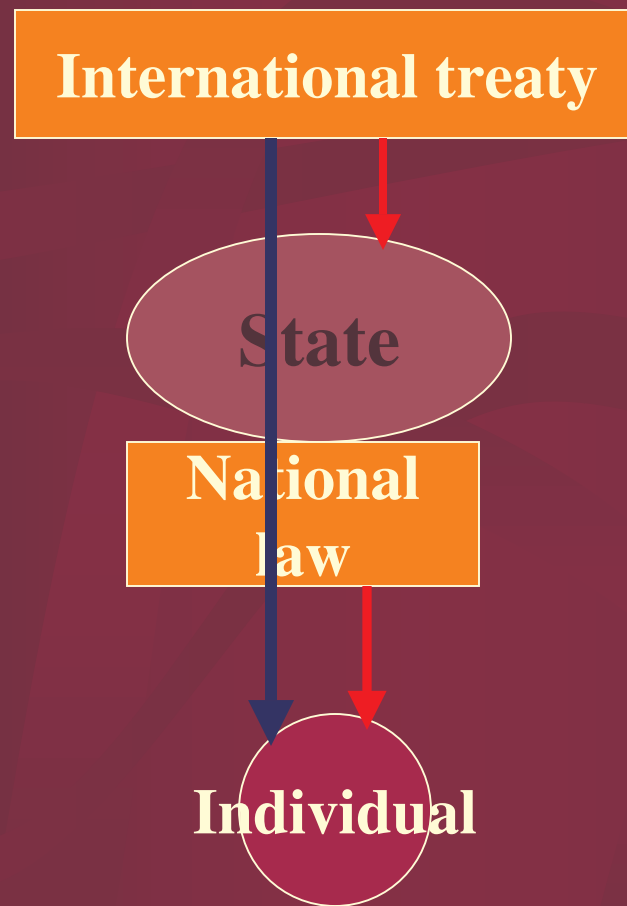
2. Dispute settlement

- Procedure laid down in a treaty to settle disputes between two or more party states in conflicts regarding their obligations under the treaty (interpretation, fulfilment)

2. Dispute settlement

- Procedure:
 - Attempt to resolve the dispute through informal negotiation / with mediation of a third state
 - If this is not successful: submission to the ICJ or an international arbitration body (subject to agreement by all parties to the dispute)
- Most modern MEAs provide this (but never used so far)

3. International treaties on civil liability



→ Normal case: treaty confers rights & obligations on state; these are conferred on individual by national law

→ Civil liability treaty: confers rights & obligations on individual

3. International treaties on civil liability

- establish uniform provisions for key issues (other issues are governed by national legislation of each Party state)
- establish uniform procedures
- provide for mutual recognition of judgments

3. International treaties on civil liability

- contain uniform provisions on the following key issues:
 - Types of damage covered
 - Channeling of liability (definition of the liable person(s))
 - Type of liability (fault-based or strict)
 - Financial limitations of liability

3. International treaties on civil liability

- contain uniform provisions on the following key issues:
 - Obligation of potentially liable persons to take out insurance or provide other type of financial guarantee
 - [Establishment of a compensation fund for damage not covered under the liability provisions]

3. International treaties on civil liability

➤ exist in the following areas relevant to the environment:

- Nuclear damage (adopted 1960s to 1980s; *in force*)
- Damage caused by oil pollution from ships (adopted 1970s to 2000s; *in force*)
- Damage caused by transport of potentially hazardous substances (adopted 1980s, *not in force*)
- Damage caused by transboundary movement of hazardous wastes (Basel Protocol, 1999, *not in force*)

4. Compliance monitoring

➤ *New mechanism developed in the 1990s!*

- Feature of a number of modern MEAs adopted in the 1990s (legal basis in the treaty)
- Subsidiary body of the Conference of the Parties established to monitor individual compliance by parties

4. Compliance monitoring

- Functions: Considering alleged cases of non-compliance and making proposals for addressing the problem. Triggered by
 - One party state with respect to compliance of another party
 - One party state with respect to its own compliance
 - The convention secretariat with respect to compliance by any party

4. Compliance monitoring

- Composition:
 - The Compliance Committee is normally composed of a limited number of representatives of parties with the relevant expertise, respecting balanced regional representation
- Output:
 - Recommendation to the COP / the parties concerned