Assess the role of legal and non-legal measures in overcoming difficulties faced in protecting the global environment. (Trial HSC 2013)

The global environment consists of the earth's naturally occurring ecosystems and the processes taking place within, as well as areas deemed socially, economically or culturally significant. There are many legal and non-legal mechanisms that comprise policies for global environmental protection (GEP) and encouraging ecologically sustainable development (ESD), legal including the UN, international instruments, conferences, courts, intergovernmental organisations (IGOs) and non-legal including non-government organisations (NGOs) and media. However, they have had limited effectiveness resolving ecological issues, particularly due to state sovereignty allowing non-compliance.

The United Nations (UN) coordinates policy to overcome environmental issues, though with limited effectiveness. The **International Panel on Climate Change (IPCC) is a specialised UN body** which provides scientific research to inform governments, but cannot prescribe policy due to state sovereignty. With **172** members, the UN coordinates mega-conferences to encourage international GEP, including the **1992 Rio Conference** that created **Agenda 21** and **27 principles** focussing on intergenerational and intragenerational equity to preserve the environment for both current and future generations. However, as soft law, it poses only a moral influence and no enforcement mechanism, thus it only has 165 signatories of the 197 parties. Thus while demonstrating global concern for ESD, its effectiveness is limited as state sovereignty controls ratification of agreements.

International instruments, including the hard law of the **Kyoto Protocol 1997,** have failed to establish effective GEP frameworks that overcome state sovereignty barriers. Despite setting greenhouse gas (GHG) emission reductions of **5% by 2012 for the EU and 37** industrialised countries, the '***differentiated responsibilities***' principle, denying equal state responsibility for GEP, thus exempting developing countries including major carbon polluters such as **China (27%)** and **India (5%)**. Additionally, the **US (17%)**, neglected to ratify the protocol, **Canada (2%)** withdrew in **2011**, and even **Australia (1.8%)** only ratified it in **2007** following concessions. Thus, when state sovereignty is invoked, even hard law instruments prove ineffective in protecting the environment.

However, international instruments have had some effectiveness in protecting the atmosphere with the **Montreal Protocol (1989),** which banned ozone-depleting substances (ODS) by **2000**, with the **World Meteorology Organisation's 2014 report** stating 'the ozone layer is on track to recovery' by **2050**. Having been ratified by **197** nations including Australia, its imposition of trade constraints on non-participating nations, and a multilateral fund to support developing countries, appealed to nations' economic interests to increase its effectiveness. Thus it demonstrates that international instruments can be effective if complying with national interests.

Global conferences have attempted to address environmental issues such as climate change, though with limited effectiveness. For example, the **2009 Copenhagen Conference** acknowledged the need to suppress global temperature increases under 2'C, but failed to set binding targets. Alternatively, the **2014 Lima Conference Accord** required states to submit plans of their '**Intended Nationally Determined Contribution' (INDC)** to lower GHG emissions. Unfortunately, **INDCs** were left to each country's discretion, resulting in vague plans such as **Pakistan's** to reduce emissions after 'reaching peak levels'. However, it provided for **$100 billion** in annual **'climate finance'** to support developing nations as incentive to join. Thus participation in GEP was expanded, but the conference remained ineffective.

The **International Court of Justice (ICJ)** settles GEP disputes submitted by States, but has so with limited effectiveness. As states must recognise the ICJ's jurisdiction for its decisions to be binding, thus states can use sovereignty to refuse or raise 'preliminary objections' to the Court's jurisdiction. This occurred in **Australia v Japan 2014** which found Japan's whaling illegal, yet Japan restarted in **2015**, thus ineffective against Japan's sovereignty. Furthermore, its jurisdiction is limited to disputes between states, failing to address transnational corporations responsible for **$2.2tn** of annual environmental damage. However, in **Nauru v Australia 1989**, the ICJ effectively made Australia pay **$107 million** to Nauru for damage caused by phosphate mining. Thus the ICJ has had varied effectiveness in its contribution to ESD.

IGOs such as the **European Union (EU)** has been effective in addressing environmentally-damaging persistent organic pollutants (POPs), where by **1993, 67% POPs** on the market were eliminated. Furthermore, the EU proposed an endosulfan ban under the **Stockholm Convention 2007**, but its effectiveness was undermined where Australia continued to use it until **2010**. Indeed in **2002,** India argued against it before the **Committee on Trade and Environment (CTE), stating** developing countries lacked environmentally friendly alternatives, heightening costs of compliance. Despite this, the EU effectively pressured India, resulting in the adoption of endosulfan to the existing POPs list. Thus IGOs can be effective, even with governments excluded from them.

Indeed, even when nations comply with UN conventions, such as in Australia's domestic ratification of the **1992 Convention on Biological Diversity** which implemented the **Environment Protection and Biodiversity Conservation Act (1999)**, their effectiveness remains limited. For example, the act protects areas of national environmental significance, but its jurisdiction only extends to Commonwealth land, undermining its effectiveness. However, under the **2015 Paris Agreement,** Australia aims to reduce emissions to **26-28%** on **2005** levels by **2030**, which demonstrates willingness to GEP, but is modest compared with developed countries like the US and EU. Thus Australian responses show willingness to contribute to GEP but are ineffective in practice.

Non-legal measures, such as non-government organisations (NGOs) and the media, have varied cases of GEP effectiveness. This is demonstrated in the **Tasmanian Dams Case 1983,** where the non-government organisation (NGO) **Tasmanian Wilderness Society** opposed the building of a dam, working with the media to promote their agenda amongst the public. The ensuing protests led the government to use its external affairs powers **(s51)** to enact the **World Heritage Properties Conservation Act 1983**, listing the **Wild Rivers** region under the **World Heritage Convention,** fulfilling treaty obligations. However, media can have a negative influence, where **News Corp's** concentrated media ownership results in papers with sceptical climate coverage, influencing public opinion. Furthermore, non-legal measures are less powerful than states due to lack of funding, legislative power and ability to pursue law breaches in the ICJ, thus also lacking enforceability. That being said, if cooperating or alerting governments to environmental concerns, effectiveness of NGOs increase.

Thus both legal and non-legal mechanisms under GEP remain significantly limited by state sovereignty and its prioritisation of national interests, where state cooperation will be necessary to achieve any future environmental protection.