



UNEP

BC

UNEP/CHW.9/3



Distr.: General
31 March 2008

Original: English

**Conference of the Parties to the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Ninth meeting
Bali, 23–27 June 2008
Item 6 of the provisional agenda*
Compliance committee**

Report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention and proposed work programme for the Committee for the period 2009–2010

I. Introduction

1. By decision VI/12, adopted at its sixth meeting, the Conference of the Parties established a mechanism for promoting implementation of and compliance with the obligations imposed by the Convention, as well as terms of reference for the mechanism, which are set out in the annex to the decision. The terms of reference provide for the establishment of a committee charged with administering the mechanism, which has come to be known as the Committee for Administering the Mechanism for Promoting Implementation and Compliance (“the Committee”).
2. Paragraph 19 of the terms of reference vests the Committee with a mandate to consider specific submissions concerning a Party’s implementation of or compliance with the Convention made to it in accordance with paragraph 9 of the terms of reference with a view to determining the facts and root causes of the matter of concern and assisting in its resolution. Paragraph 21 mandates the Committee to review general issues of compliance and implementation under the Convention as directed by the Conference of Parties.
3. By paragraph 23 of the terms of reference, the Committee is required to report to the Conference of the Parties at each of its ordinary meetings on the work that the Committee has carried out to fulfil its functions under paragraphs 19 and 20 of the terms of reference.

* UNEP/CHW.9/1.

K0840239 300408

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

4. By decision VIII/32, the Conference of the Parties, at its eighth meeting, mandated the Committee to review general issues related to annual national reporting and illegal traffic during the biennium 2007–2008 in accordance with paragraph 21 of the terms of reference and the priorities and budget decided by the Conference of the Parties.

II. Implementation

5. During the biennium 2007–2008, the Committee held its fifth and sixth sessions on 8 and 9 September 2007 and 28 and 29 February 2008, respectively. The Committee also worked intersessionally by e-mail. In addition to implementing its work programme for the biennium 2007–2008, the Committee considered how it could better use its full capacity in the future. The Committee reviewed the activities that it had undertaken since its establishment, identified possible limitations and developed its proposed work programme for the biennium 2009–2010 with a view to enhancing the use by the Parties of the full capacity of the Committee. These matters are addressed in the following sections of the present report.

A. An overview of the activities of the Committee since its establishment

6. The Mechanism for Promoting the Implementation and Compliance of the Basel Convention was established by decision VI/12, adopted by the Conference of the Parties at its sixth meeting in 2002. Recognizing the need for allowing sufficient time for the nomination and election of the members of the Committee, the Conference of the Parties, by its decision VI/13, decided that the Open-ended Working Group, at its first session, would elect the members of the Committee on behalf of the Conference of the Parties. Accordingly, the first elections for membership of the Committee were held at the first session of the Open-ended Working Group, which took place from 28 April to 2 May 2003.

7. The Committee held its first session on 19 October 2003, during which it reviewed and clarified the procedures for specific submissions. The Committee could not initiate work under paragraph 21 of its terms of reference because it had not yet received directions from the Conference of the Parties regarding its review of general issues of compliance and implementation under the Convention. The second session of the Committee was held on 29 April 2004, during which the Committee further clarified the procedures for specific submissions and initiated work to develop its first work programme for consideration by the Conference of the Parties at its seventh meeting.

8. By its decision VII/30, the Conference of the Parties, at its seventh meeting, convened in October 2004, approved the first work programme of the Committee, which was to be implemented in the biennium 2005–2006 and financed through voluntary contributions. The work programme included the following items:

- (a) Identification and analysis of difficulties relating to reporting obligations under the Basel Convention;
- (b) Identification and analysis of difficulties relating to designation and functioning of national competent authorities and focal points;
- (c) Identification and analysis of difficulties relating to development of national legislation to implement effectively the Basel Convention.

9. By its decision VII/32 the Conference of the Parties, at its seventh meeting, also requested the Secretariat to “finalize in consultation with the Implementation and Compliance Committee, a checklist for the preparation of national legislation for the implementation of the Basel Convention as a complement to the model national legislation [...]”.

10. In accordance with its mandate from the Conference of the Parties, at its third session, held on 2 and 3 July 2005, the Committee:

- (a) Decided to develop and transmit a questionnaire to all Parties, in the official United Nations languages, to seek further information on the issues identified under paragraph 9 above. The questionnaire listed all the general review issues identified in the terms of reference of the Committee and allowed countries to identify other difficulties;
- (b) Began consideration of possible lacunae within its terms of reference concerning the procedures to be followed with respect to submissions;

- (c) Decided to develop a brief guide on the Committee's functions and procedures;
- (d) Considered and gave guidance to the Secretariat on the draft checklist on national legislation.

11. At its fourth session, held on 8 and 9 April 2006, the Committee reviewed the results of the above-mentioned questionnaire, in respect of which responses were received from 53 Parties. On the basis of the responses to the questionnaire, the Committee:

- (a) Directed the Secretariat to follow up on the designation of focal points and competent authorities;
- (b) Identified the following as the main difficulties identified by Parties:
 - (i) Ensuring the environmentally sound management of wastes;
 - (ii) Accessing technical and financial support;
 - (iii) Training customs and personnel;
 - (iv) Illegal traffic;
- (c) Noted existing and possible future decisions of the Conference of the Parties concerning national reporting and the Strategic Plan and highlighted the importance of national reporting to the effective operation of the Convention, expressing its strong support for such decisions;
- (d) Recommended that the Secretariat explore opportunities to work with other organizations in providing training on national legislation, noting the resource restraints faced by the Secretariat.

12. The Committee agreed on themes that it would include in the proposals for its work programme for 2007–2008 for consideration by the Conference of the Parties. These themes are set out in paragraph 13 below. It also agreed to draw the attention of the Conference of the Parties to the importance of increasing understanding of the differing waste coding systems that existed and their correlation with the Basel Convention codes, noting that the Committee was not in a position to undertake work, such as the development of a table of concordance on waste codes, on that issue. The Committee also further considered the draft checklist on national legislation developed by the Secretariat, approved the text of a leaflet describing the functions and procedures of the Committee for publication and continued its consideration of procedural lacunae.

13. By its decision VIII/32 the Conference of the Parties, at its eighth meeting, held from 27 November to 1 December 2006, adopted the second work programme proposed by the Committee, to cover the biennium 2007–2008, as follows:

“(a) The Committee shall further develop its understanding of national reporting issues by building on the work undertaken pursuant to its work programme for 2005–2006, with a view to providing guidance on how national reporting could be improved, given that it underpins the operation of the Convention;

(b) The Committee shall undertake work on the issue of illegal traffic, which could include identifying available existing resources from a number of institutions, working in collaboration with such institutions and the Basel Convention regional centres, and assisting Parties through training, taking into account that such work would assist in ensuring the environmentally sound management of wastes.”

14. Decision VIII/32 also directed the Committee, in undertaking its work, to take full account of previous discussions and decisions by Basel Convention bodies on relevant issues and to take account of its mandate to complement the work performed by other bodies of the Basel Convention and by the Basel Convention regional centres; the Committee was also to continue to monitor any developments on the other issues addressed under its work programme for 2005–2006 and to give priority to dealing with any specific submissions received in accordance with paragraph 9 of its terms of reference.

15. The Committee's fifth session was held on 8 and 9 September 2007. At that session, the Committee began its consideration of the difficulties it faced in attracting specific submissions and initiated implementation of its work programme for 2007–2008. Prior to the session the Committee had agreed that its work programme would include:

(a) Development of a guide on best practices in the preparation of annual national reports addressing, among other things, mechanisms for coordination among relevant governmental and private sector entities or associations, procedures for the collection and exchange of information, data collection techniques and technical and human resources necessary to optimize the preparation of annual reports;

(b) Development of a directory of institutions offering training activities at the national, regional and international levels aimed at improving capacity for detection, prevention and prosecution of cases of illegal traffic, which was to serve as a useful source of information for Governments and other entities.

16. The Committee was advised by the Secretariat that, on the basis of its records, African countries seemed to face the greatest difficulty in meeting the annual national reporting requirement. The Committee accordingly developed a guide aimed at assisting African countries to establish efficient national reporting systems, particularly with respect to the collection and organization of information to facilitate completion of national reporting questionnaires. A fact-finding mission to South Africa provided information on good practices for the development of the guide. The Committee noted that the content of the guide could be useful for countries in other regions.

17. In order to develop a directory of institutions offering training on illegal traffic, the Committee developed a questionnaire in English, French and Spanish, which was transmitted to relevant training institutions, focal points and the Basel Convention regional centres. The information provided in response to the questionnaires would be made available either on the Basel Convention website or by a hard copy publication.

18. With a view to assisting Parties in their understanding of the differing roles and competences of focal points and competent authorities, the Committee also decided at its fifth session to produce a brief leaflet setting out the roles and responsibilities of each and highlighting the importance of designating them and keeping information on them up to date.

19. Implementation of the work programme for 2007–2008 continued at the Committee's sixth session, held on 28 and 29 February 2008. At that meeting the Committee also developed proposals for its work programme for the biennium 2009–2010 for consideration by the Conference of the Parties at its ninth meeting. Those proposals are set forth in the annex¹ to the present document.

20. As of 7 March 2008, the Committee had not received any specific submissions. In this connection, the Committee decided to propose to the Conference of the Parties that a special implementation fund be established under the Basel Convention Technical Cooperation Fund which could be accessed upon a recommendation of the Committee to assist a Party determined to be non-compliant following the review of a specific submission concerning that Party.

21. The Committee's activities under its two work programmes have been financed entirely from voluntary contributions received from the United Kingdom of Great Britain and Northern Ireland and Sweden.

B. The outputs of the Committee since its establishment

22. The Committee has met physically for eight days since its establishment. Through such physical meetings and by means of intersessional work by e-mail the Committee has delivered the following outputs:

- (a) Identification of Parties' difficulties, as described in paragraph 12 above;
- (b) Publication of a leaflet on the Committee's function and procedures;
- (c) Development of a guide on national reporting systems;
- (d) Publication of a leaflet on focal points and competent authorities;
- (e) Clarification of the procedures relating to provision of procedural clarifications for specific submissions;

¹ For reasons of economy, the annex is made available in English only and has not been formally edited.

(f) An increase in the number of designated focal points and competent authorities, with some countries designating new focal points or competent authorities or both, and many more countries updating the details of their designated focal points and competent authorities, as a result of activities undertaken by the Secretariat at the direction of the Committee;

(g) Initiation of cooperation between the Secretariat and a number of other institutions on training relevant to the Basel Convention at the direction of the Committee.

23. The Committee has also been successful in raising voluntary contributions to finance implementation of its work programme.

C. Areas in which the full capacity of the Committee could be better used in the future

24. The Committee, in its deliberations at its sixth session, noted that Parties were not making use of the full capacity of the Committee. It therefore sought to identify factors that might be preventing Parties from doing so.

25. In the context of its review of general issues of implementation and compliance the Committee noted that the scope of its activities was restricted by the limited human and financial resources available to the Committee and the Secretariat to undertake work during the intersessional period between meetings of the Committee .

26. With respect to specific submissions on Party implementation and compliance, the Committee examined the experiences of similar bodies under other multilateral environmental agreements and noted that it had not, as at the time of its sixth session, addressed any case relating to a Party. The Committee suggested that this might result from the following shortcomings or limitations:

(a) The inability of the Committee to initiate consideration of a particular case of implementation and compliance difficulties of which it becomes aware;

(b) The lack of a “civil society trigger” (cf., the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters);

(c) The lack of resources to assist Parties that are determined to be facing difficulties in implementation and compliance (cf., the Montreal Protocol on Substances that Deplete the Ozone Layer and the Multilateral Fund for Implementation of the Montreal Protocol);

(d) The restricted scope of the Secretariat trigger, which is limited to submissions relating to the difficulties that a Party may have in complying with its reporting obligations under paragraph of article 13 3 of the Convention (cf., the Montreal Protocol, which provides a general secretariat trigger);

(e) The need to promote a better understanding of the facilitative nature of the mechanism.

27. The Committee took these observations into consideration when developing its recommendations for its 2009–2010 work programme for consideration by the Conference of the Parties at its ninth meeting, which is set out in the annex to the present document.

28. Furthermore, the Committee recommended to the Secretariat that it use its mandate under paragraph 9 (c) of the Committee’s terms of reference to make specific submissions, bearing in mind the facilitative nature of the compliance mechanism. When making such submissions the Committee recommended that the Secretariat focus on cases:

(a) In which no national reports have been submitted by a Party since the date of its adherence to the Convention;

(b) In which the information provided by a Party required under part A of the national reports, on competent national authority, focal point and legislation, in accordance with paragraph 3 of article 13 of the Convention, is not complete.

III. Proposed action

29. At its ninth meeting, the Conference of the Parties may wish to consider adopting a decision along the following lines:

The Conference of the Parties,

Noting the report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention on its work and the recommendations contained therein,

Recognizing the need to provide the Committee with sufficient funding in order to enable it to function effectively and to carry out its work programme;

1. *Approves* the work programme of the Committee for 2009–2010, which is set out in the annex to the present decision;

2. *Requests* the Committee to establish priorities, work methods and schedules with regard to the issues identified in the work programme and to coordinate with the Open-ended Working Group, the Secretariat and the Basel Convention regional centres in order to avoid duplication of activities;

3. *Calls upon* all Parties that are in a position to do so to make financial or in-kind contributions to enable the Committee to carry out its work programme;

4. *Requests* the Committee to report to the Conference of the Parties at its tenth meeting on the work it has carried out to fulfil its functions in accordance with paragraphs 23 and 24 of the terms of reference for the Mechanism for Promoting Implementation and Compliance of the Basel Convention;

5. *Calls upon* Parties to make use of the Mechanism for Promoting Implementation and Compliance of the Basel Convention;

6. *Decides* to enlarge the scope of the Technical Cooperation Trust Fund of the Basel Convention to establish an implementation fund to assist any Party that is a developing country or country with an economy in transition and is the subject of a submission made in accordance with paragraph 9 of the terms of reference of the Committee;

7. *Authorizes* the Committee to recommend use of the implementation fund referred to in paragraph 6 above, subject to the availability of resources, to assist Parties in the context of the facilitation procedure established under paragraph 20 of the Committee's terms of reference;

8. *Urges* Parties that are in a position to do so to provide contributions to the implementation fund referred to in paragraph 6 above to support the activities referred to in paragraph 7 above.

Annex

Work programme for 2009–2010 of the Committee for Administering the Mechanism for Promoting Implementation and Compliance

I. Review of general issues of compliance and implementation under the Convention

1. During the biennium 2009–2010 the Committee for Administering the Mechanism for Promoting Implementation and Compliance shall review the general issues identified in tables 1 and 2 below in accordance with paragraph 21 of the terms of reference for the mechanism contained in the annex to decision VI/12 of the Conference of the Parties and in accordance with the priorities and budget decided by the Conference of the Parties at its ninth meeting.
2. In doing so the Committee shall take full account of previous discussions and decisions by Basel Convention bodies on relevant issues and shall also take account of its mandate to complement the work performed by other bodies of the Basel Convention and by the Basel Convention regional centres.
3. The Committee shall also continue to monitor any developments on other issues addressed under its earlier work programmes.
4. In undertaking the review of general issues of compliance, the Committee may refer to, and cooperate with, all sources of information and expertise set forth in paragraph 22 of the terms of reference, including through collaboration with regional and international bodies with monitoring and enforcement responsibilities in respect of hazardous wastes.

Table 1: Monitoring, assessing and facilitating reporting under article 13 of the Basel Convention

Objective	Activity
Ensure and improve effective and complete national reporting.	<ul style="list-style-type: none"> (a) Review information held by the Secretariat under article 13 of the Convention: (b) Compile: <ul style="list-style-type: none"> i. A list of Parties which have submitted annual reports; ii. A list of Parties which have not submitted annual reports; iii. A list of Parties which have submitted complete reports; iv. A list of Parties which have submitted reports that are obviously only partially complete. (c) Assess the status of reporting, identifying the difficulties faced by Parties in fulfilling their national annual reporting obligations and their needs for assistance with respect to reporting. (d) Classify and publish Parties' compliance performance with respect to the annual national reporting obligations. (e) Develop further guidance documents on best practices in national reporting, including mechanisms for coordination among relevant governmental and relevant entities, procedures for the collection and exchange of information, data collection techniques and technical resources and relevant methods necessary to optimize the completion of national reports. (f) Promote and facilitate the exchange of information on best available practices and best available techniques between developed countries and developing countries, including countries with economies in transition, on development of national reporting.

Table 2: Implementation of, and compliance with, specified obligations under the Basel Convention

Objective	Activity
Ensure and improve implementation of, and compliance with, specified obligations under articles 3, 4, 5 and 6 of the Convention.	<ul style="list-style-type: none"> (a) Review notifications transmitted by Parties to the Secretariat on national definitions of hazardous waste under Article 3 of the Convention. (b) Review notifications transmitted by Parties which prohibit the import of hazardous wastes or other wastes for disposal, and those which prohibit or do not permit the export of hazardous wastes and other wastes, under paragraphs 1 (a) and (b) of article 4 of the Convention. (c) Review Parties' compliance with the duty to designate competent authorities and focal points under article 5 of the Convention. (d) Compile: <ul style="list-style-type: none"> i. A list of Parties which have designated competent authorities and focal points; ii. A list of Parties which have not designated competent authorities or focal points. (e) Identify difficulties faced by Parties in designating competent authorities and focal points and their needs for assistance to meet this requirement. (f) Review and assess the application of the control system for the transboundary movement of wastes (notification document and movement document) and the difficulties that Parties face in implementing the system. (g) Review the status of existing national legislation and other legal or administrative measures, including implementation regulations, and identify needs for assistance. (h) Assess the compliance and implementation status of specified obligations of the Parties under articles 3, 4, 5 and 6 of the Basel Convention and publish the conclusions resulting from such assessment. (i) Provide general information and guidance on the Basel Convention website, or through publications, to facilitate, promote, and aim to secure the implementation of Parties' obligations under articles 3, 4, 5 and 6 of the Convention. The Secretariat may identify to the Committee those difficulties in implementation that Parties have frequently identified in their communications with the Secretariat.

II. Specific submissions regarding Party implementation and compliance

5. The Committee shall give priority to dealing with specific submissions regarding Party implementation and compliance received in accordance with paragraph 9 of the terms of reference.

6. At the time of the convening of the sixth session of the Committee on 28 February 2008, the Committee had not received any specific submissions from Parties. In the light of this fact the Committee shall address existing shortcomings and limitations in relation to the lack of specific submissions to the Committee, as described in the Committee's report for the ninth meeting of the Conference of the Parties, with a view to developing recommendations for the consideration of the Conference of the Parties at its tenth meeting on appropriate actions to address those shortcomings and limitations. In undertaking this element of its work programme, the Committee may refer to the sources of information set forth in paragraph 22 of its terms of reference.