

THE BASEL CONVENTION MECHANISM FOR PROMOTING IMPLEMENTATION AND COMPLIANCE

CELEBRATING A DECADE
OF ASSISTANCE TO PARTIES



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FOREWORD

In order to promote awareness of the mechanism for promoting the implementation of and compliance with the obligations set out under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Committee that is entrusted with administering that mechanism (“the Implementation and Compliance Committee”) decided to prepare, as part of its 2009-2011 work programme, the present brochure – a brief overview of the activities of the Committee carried out during the period 2002 – 2011.

The present brochure complements the brochure entitled “The Basel Convention Mechanism for Promoting Implementation and Compliance” published in 2006, which is intended to be a brief guide for Parties to explain the procedures of the Committee.

This present brochure has been produced by the Implementation and Compliance Committee partly with the financial support of the United Kingdom of Great Britain and Northern Ireland.

This publication is intended for public information purposes only and is not a legal document.

INTRODUCTION

Established in 2002 by decision VI/12 of the sixth meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (hereafter “the Basel Convention”), the Mechanism for Promoting the Implementation of and Compliance with the obligations set out under the Basel Convention celebrates, in 2011, its tenth anniversary. This anniversary coincides with the holding of the tenth meeting of the Conference of the Parties to the Basel Convention (Cartagena de Indias, Colombia, 17-21 October 2011).

Since its inception, the Committee administering the Mechanism for Promoting the Implementation of and Compliance with the obligations set out under the Basel Convention (hereafter “the Committee”) has formally met during eight sessions and conducted a significant amount of its work during intersessional periods, through electronic means. The Committee has presented reports on its activities to the seventh, eighth, ninth and tenth meetings of the Conference of the Parties. Over that same period, the Conference of the Parties has adopted a series of decisions based on the recommendations and conclusions put forward by the Committee (for ease of reference, information on the dates and documents pertaining to these meetings is set out in annex 1).

The terms of reference of the Mechanism for Promoting the Implementation of and Compliance with the obligations under the Basel Convention (set out in Annex 2), the Committee’s reports, as well as the decisions adopted by the Conference of the Parties pertaining to the work of the Committee form the basis of the present publication. Taken together, these elements provide an overview of the activities undertaken by the Committee during its first ten years of existence, under its **general review mandate** and its **specific submissions mandate**, with the objective of assisting Parties to

comply with their obligations under the Convention and of facilitating, promoting, monitoring and aiming to secure the implementation of and compliance with the obligations under the Convention.

Today, the Committee is a dynamic institution under the Convention.

CHAPTER I

CONSIDERATION OF SPECIFIC SUBMISSIONS

In line with paragraph 19 of the terms of reference of the Mechanism for Promoting the Implementation of and Compliance with the obligations set out under the Basel Convention (hereafter, “the terms of reference”), the Committee shall consider any submission made to it in accordance with the terms of reference with a view to determining the facts and root causes of the matter of concern and, assist in its resolution.

During its seventh and eighth meetings, the Conference of the Parties mandated the Committee to give priority to the consideration of specific submissions regarding Party implementation and compliance (decisions VII/30 and VIII/32). However, no such submission had been received by the Committee by the time of the ninth meeting of the Conference of the Parties.

Based on the recommendations put forward by the Committee in its report, the ninth meeting of the Conference of the Parties addressed the lack of specific submissions in a twofold manner (decision IX/2). First, the Conference of the Parties mandated the Committee to address existing **shortcomings and limitations** in relation to the lack of specific submissions to the Committee, in particular as they may result from the existing options to trigger the mechanism, the lack of resources to assist Parties that are determined to be facing difficulties in implementation and compliance, and the need to promote a better understanding of the facilitative nature of the mechanism.

Second, the Conference of the Parties decided to enlarge the scope of the Trust Fund to Assist Developing Countries and other Countries in Need of Technical Assistance in the Implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Technical Cooperation Trust Fund) and



Members of the Committee during its eighth session

established 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 the terms of reference of the Committee.

Following the ninth meeting of the Conference of the Parties, the Committee received one self submission by Oman with respect to difficulties faced by that Party in implementing and complying with its obligation to submit annual reports in accordance with paragraph 3 of Article 13 of the Convention. The Committee also received nine submissions from the Secretariat with respect to nine Parties having never submitted a national report: Bhutan, Cape Verde, Eritrea, Guinea Bissau, Liberia, Libya, Nicaragua, Swaziland and Togo. These ten submissions were considered by the Committee during its eighth session, at which time it adopted ten decisions. The Committee also decided, as a result of its considerations of the specific submissions, to include in its proposed work programme for 2012-2013 the development of guidance on the development of national inventories. During that meeting, the Committee also considered and developed recommendations on how to address existing shortcomings and limitations in relation to the lack of specific submissions to the Committee.

The tenth meeting of the Conference of the Parties, in its decision BC-10/11, welcomed the work of the Committee with respect to the specific submissions it had received. With regards to the implementation fund, the meeting took note of the funding needs identified by the Committee (USD 300,000) for the purpose of undertaking activities listed in the voluntary compliance action plans approved by the Committee.



From left to right: Mr. Frank Pearl, Minister of Environment, Colombia; Mr. Achim Steiner, UN Under-Secretary-General and UNEP Executive Director; Mrs. Katharina Kummer-Peiry, Executive Secretary, Secretariat of the Basel Convention; Mr. Jim Willis, Executive Secretary, the Basel, Rotterdam and Stockholm Conventions; Mrs. Paula Caballero, Ministry of Foreign Affairs, Colombia and President of COP 10.

With regards to the trigger options, the Conference of the Parties extended the Secretariat trigger provided under paragraph 9 (c) of the terms of reference for the period between the tenth and eleventh meetings of the Conference of the Parties. As a consequence, the Secretariat may, during that period, make a submission if it becomes aware of possible difficulties of any Party in complying with its obligations:

- to notify the Secretariat of a national definition of hazardous wastes or of an import or export prohibition, and of any changes thereto;
- to designate or establish one or more competent authorities and one focal point and to inform the Secretariat thereof; and
- to submit its annual report.

The tenth meeting of the Conference of the Parties also requested the Committee to give priority to the consideration of specific submissions over the period 2012-2013 and decided to establish a legal framework programme for the review and assessment, upon a Party's request, of its national legislation to implement the provisions of the Convention.

CHAPTER II

REVIEW OF GENERAL ISSUES OF COMPLIANCE AND IMPLEMENTATION

In line with paragraph 21 of the terms of reference, the Committee shall, as directed by the Conference of the Parties, review general issues of compliance and implementation under the Convention. In accordance with the successive work programmes adopted by the Conference of the Parties, the Committee has reviewed general issues of compliance and implementation pertaining to a number of obligations under the Convention: national reporting, illegal traffic, the designation of competent authorities and focal points, the notification of national definitions of hazardous wastes and of import or export restrictions, the development of national legislation, and the control system for transboundary movements of hazardous and other wastes.

Over the years, the Committee has identified and analyzed the difficulties faced by Parties relating to the implementation of several of the obligations mentioned above, and made recommendations on how to overcome these.

Designation of focal points and competent authorities

The Committee has recommended that the Secretariat use its best efforts to follow up with those Parties that had designated neither a focal point nor competent authorities. As a result, when 18 out of 168 Parties had not designated a competent authority and focal point in April 2006, only 15 out of 176 Parties had yet to comply with that obligation in November 2011, thus evidencing some progress on this matter.

National legislation

The work of the Committee has evidenced, based on the results of surveys undertaken in 2006 and 2010, that the main constraints faced by Parties to adopt and implement national legislation were: a lack of preliminary review of existing legislation to determine the gaps in existing laws and to identify further legislative needs; the lack of specialist technical expertise of environment law and hazardous waste issues for translating Convention obligations into domestic law; difficulties in coordination between various ministries and agencies; financial constraints; and a lack of expertise in legislative drafting. As a result, the Committee recommended that the Conference of the Parties, at its tenth meeting, establish a legal framework program for the review and assessment of national legislation to implement the provisions of the Convention, and to assist parties in the adoption of new legislation or the amendment of existing legislation, a recommendation that was adopted for specific submissions upon the request of a Party.

National reporting

The work of the Committee over the years has led the Conference of the Parties to acknowledge, during its tenth meeting, that some Parties currently lack incentives fully to comply with their national reporting obligations, stemming from: a lack of capacity and lack of capacity-building activities, a lack of understanding of the usefulness of the information reported, and a lack of consequences in case of the non-transmission of national reports. The Conference of the Parties has also affirmed that the problem of non-reporting, incomplete reporting or late reporting is serious because of the close link between the core obligations of the Convention and the obligation to transmit national reports. Based on the recommendations put forward by the Committee, the Conference of the Parties has requested that the Committee continue to focus its attention on improving Parties' implementation and compliance with their reporting obligation.



Development of tools and awareness activities

The Committee has developed tools to assist Parties in the following areas:

- National legislation: Checklist for the legislator;
- National reporting:
 - Guidance document on improving national reporting,
 - Training CD on improving national reporting, and
 - Benchmark national report;
- Illegal traffic: Directory of Training Institutions Offering Activities Aimed at Improving Capacity for Detection, Prevention and Prosecution of Cases of Illegal Traffic.

The following three leaflets have been produced to raise awareness about the Committee and its work, and to assist Parties :

- The Basel Convention Mechanism for Promoting Implementation and Compliance (March 2006);
- The Role of Competent Authorities and Focal Points under the Basel Convention (updated in December 2010); and
- Controlling Transboundary Movements of Hazardous Wastes (November 2011).



To access the above publications visit <http://www.basel.int/>

Relevant outcomes of the tenth meeting of the Conference of the Parties

During its tenth meeting, the Conference of the Parties endorsed several of the recommendations put forward by the Committee (decision BC-10/11). For example, the Conference of the Parties:

- adopted **national reporting targets** as a way of measuring progress with the overall implementation of and compliance with paragraph 3 of Article 13 of the Convention: 30 per cent of reports due for 2010 are submitted in time (baseline: 13.3 per cent for the reports due for 2006); and 20 per cent of reports due for 2010 are submitted complete (baseline: 9 per cent for the reports due for 2006);



- adopted **harmonized forms** for Parties to notify and report information pertaining to national definitions of hazardous wastes and to import or export restrictions; and
- encouraged the 15 Parties that have not designated a focal point and one or more competent authorit(ies) to make a **submission** to the Committee.

In addition, the tenth meeting of the Conference of the Parties adopted the 2012-2013 work programme of the Committee that includes the review of general issues of compliance and implementation under the Convention with respect to national reporting, national legislation, illegal traffic, insurance, bond and guarantee, and the control system for transboundary movements of hazardous and other wastes. The Committee was mandated, *inter alia*, to:

- classify and publish parties' **individual compliance performance with respect to the annual reporting obligation**, taking into account the national reporting targets set by the Conference of the Parties;
- develop further tools to improve national reporting, such as guidance on the development of **inventories**;

- develop terms of reference for **cooperative arrangements on preventing and combating illegal traffic** to bring together and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity building activities; and
- develop guidance on the **take back procedure** in case of illegal traffic.

In a separate decision (decision BC-10/3), the Conference of the Parties also requested the Committee to oversee the activities undertaken to **prevent and combat illegal traffic**.

ANNEX 1

The Committee: Sessions held and reports of these sessions:

- First session, 19 October 2003; UNEP/CHW/CC/1/3
- Second session, 29 April 2004; UNEP/CHW/CC/2/3
- Third session, 2-3 July 2005; UNEP/CHW/CC/3/8
- Fourth session, 8-9 April 2006; UNEP/CHW/CC/4/6
- Fifth session, 8-9 September 2007; UNEP/CHW/CC/5/6
- Sixth session, 28-29 February 2008; UNEP/CHW/CC/6/7
- Seventh session, 25-26 June 2009; UNEP/CHW/CC/7/10
- Eighth session, 21-23 March 2011; UNEP/CHW/CC/8/25

Reports of the Committee to the Conference of the Parties and relevant decisions adopted by the Conference of the Parties

- Sixth meeting of the Conference of the Parties, Geneva, 9-14 December 2002
 - Decision VI/12
- Seventh meeting of the Conference of the Parties, Geneva, 25-29 October 2004
 - Report of the Committee; UNEP/CHW.7/20
 - Decision VII/30
- Eighth meeting of the Conference of the Parties, Nairobi, 27 November-1 December 2006
 - Report of the Committee; UNEP/CHW.8/12
 - Decision VIII/32

- Ninth meeting of the Conference of the Parties, Bali, 23-27 June 2008
 - Report of the Committee; UNEP/CHW.9/3
 - Decision IX/2

- Tenth meeting of the Conference of the Parties, Cartagena, 17-21 October 2011
 - Report of the Committee; UNEP/CHW.10/9/Rev.1
 - Decision BC-10/3 and decision BC-10/11

To access the above reports and decisions visit <http://www.basel.int/>

ANNEX 2

MECHANISM FOR PROMOTING IMPLEMENTATION AND COMPLIANCE WITH THE OBLIGATIONS UNDER THE BASEL CONVENTION

TERMS OF REFERENCE¹

Objectives

1. The objective of the mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

Nature of the mechanism

2. The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties. The mechanism should complement work performed by other Convention bodies and by the Basel Convention Regional Centres.

Composition and tenure

3. A Committee for administrating this mechanism (“the Committee”) is hereby established. It shall consist of 15 Members nominated by the Parties, serving in accordance with paragraph 5, and based on

¹ As adopted by the sixth meeting of the Conference of the Parties (decision VI/12), and amended by the tenth meeting of the Conference of the Parties (decision BC-10/11).

equitable geographical representation of the five regional groups of the United Nations, elected by the Conference of the Parties.

4. If a Member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the mandate.
5. Members of the Committee will serve objectively and in the best interest of the Convention. They shall have expertise relating to the subject matter of the Convention in areas including scientific, technical, socio-economic and/or legal fields.
6. At the meeting at which the decision establishing the mechanism is adopted, the Conference of the Parties shall elect five members, one from each region, for one term, and ten members, two from each region, for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired, or is about to expire. Members shall not serve for more than two consecutive terms. For the purposes of the present terms of reference “term” means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Parties.
7. The Committee shall elect its officers – a Chair, three Vice-chairs and a Rapporteur – based on equitable geographical representation of the five regional groups of the United Nations.
8. The Committee shall meet at least once between each regular meeting of the Conference of the Parties, and in conjunction with meetings of other Convention bodies. The secretariat shall arrange for and service the meetings of the Committee.

Procedures for specific submissions

9. Submissions may be made to the Committee by:
 - (a) A Party that concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;

- (b) A Party that has concerns or is affected by a failure to comply with and/or implement the Convention's obligations by another Party with whom it is directly involved under the Convention. A Party intending to make a submission under this subparagraph shall inform the Party whose compliance is in question, and both Parties should then try to resolve the matter through consultations;
 - (c) The Secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any party in complying with its obligations under paragraph 1 of Article 3, paragraph 1 of Article 4, Article 5 and paragraphs 2 and 3 of Article 13 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned².
10. Any submission, except one made under paragraph 9 (c), shall be addressed in writing to the secretariat, and shall set out:
- (a) The matter of concern;
 - (b) The relevant provisions of the Convention; and
 - (c) Where paragraph 9 (b) applies, information substantiating the submission.
11. Where a submission is made under paragraph 9 (a), the secretariat shall forward the submission, within two weeks of its receiving the submission, to the Committee for consideration at its next meeting.
12. The Party whose compliance is in question may present responses and/or comments at every step of the proceedings described in this decision.
13. In cases of a submission other than by a Party with respect to its own compliance, the secretariat shall send, within two weeks of its receiving the submission, a copy to the Party whose compliance with the Convention is in question and to the Committee for consideration at its next meeting.

² Paragraph 9 (c) of the terms of reference was amended on a provisional basis for the period between the tenth and eleventh meetings of the Conference of the Parties, in line with paragraph 13 of decision BC-10/11 adopted by the tenth meeting of the Conference of the Parties

14. Without prejudice to paragraph 12, additional information provided in response by the Party whose compliance is in question should be forwarded to the secretariat within three months of the date of the receipt of the submission by the Party in question, unless the circumstances of a particular case require an extended period of time. Such information will be immediately transmitted to the members of the Committee for consideration at its next meeting. Where a submission has been made pursuant to paragraph 9 (b), the information shall also be forwarded by the secretariat to the Party that made the submission.
15. Where a Party is identified in a submission or itself makes a submission, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee. Conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties.
16. Meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise.
17. Under the compliance mechanism, a Party may also consider and use relevant and appropriate information provided by civil society on compliance difficulties.
18. The Committee may decide not to proceed with a submission which it considers is:
 - (a) *de minimis*; or
 - (b) manifestly ill-founded.

Facilitation procedure

19. The Committee shall consider any submission made to it in accordance with paragraph 9 with a view to determining the

facts and root causes of the matter of concern and, assist in its resolution. As part of this process, the Committee may provide a Party, after coordination with that Party, with advice, non-binding recommendations and information relating to, inter alia;

- (a) Establishing and/or strengthening its domestic/regional regulatory regimes;
- (b) Facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity-building;
- (c) Elaborating, as appropriate and with the cooperation of the Party or Parties faced with the compliance problems, voluntary compliance action plans, and review their implementation. A voluntary compliance action plan may include benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation;
- (d) Any follow-up arrangements for progress reporting to the Committee, including through the national reporting procedure under article 13.

Advice, non-binding recommendations and information other than those listed in subparagraphs (a) to (d) above should be provided in agreement with that Party.

Recommendation to the Conference of the Parties on additional measures

20. If, after undertaking the facilitation procedure in paragraph 19 above and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Party whose compliance is in question, the Committee considers it necessary in the light of paragraphs 1 and 2 to pursue further measures to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider:

- (a) Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources; or
- (b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote cooperation between all Parties.

Any such action shall be consistent with article 15 of the Convention.

General review

21. The Committee shall, as directed by the Conference of Parties, review general issues of compliance and implementation under the Convention relating to, inter alia:

- (a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;
- (b) Training customs and other personnel;
- (c) Accessing technical and financial support, particularly for developing countries, including technology transfer and capacity-building;
- (d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
- (e) Monitoring, assessing and facilitating reporting under article 13 of the Convention; and
- (f) The implementation of, and compliance with, specified obligations under the Convention.

Consultation and information

22. In carrying out its functions, the Committee may, inter alia:
- (a) Request further information from all Parties, through the secretariat, on general issues of compliance and implementation under its consideration;
 - (b) Consult with other bodies of the Convention;
 - (c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;
 - (d) Undertake, with the agreement of a Party(ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
 - (e) Consult with the secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
 - (f) Review the national reports of Parties provided under article 13 of the Convention.

Reporting

23. The Committee shall report to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfil its functions under paragraphs 19 and 20 for the information and/or the consideration of the Conference of the Parties.
24. The Committee shall also report to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed under paragraph 21 and on its suggestions for any future work that may be required on general issues of compliance and implementation, for the consideration and approval of the Conference of the Parties.

Decision-making

25. The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible, the report and recommendations shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a two-third majority of the members present and voting or by eight members, whichever is the greater. Ten members of the Committee shall constitute a quorum.

Confidentiality

26. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.

Relationship with provisions of the Convention

27. The present mechanism shall be without prejudice to the provisions of article 20 on settlement of disputes.
28. In performing its functions under paragraphs 19, 20 and 21, the Committee shall take into account any specific procedures provided for under the Convention concerning failures to meet Convention obligations.



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