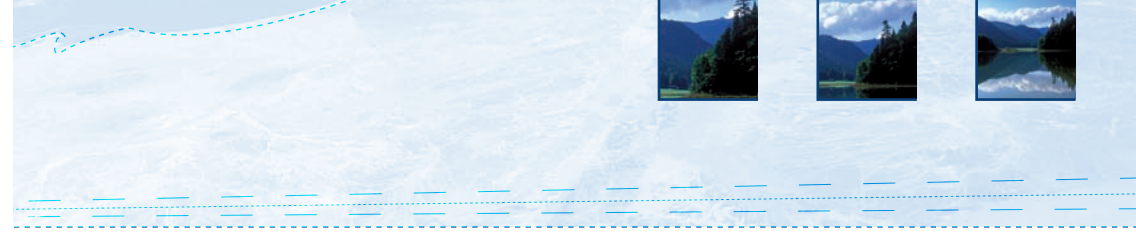




The Basel Convention Mechanism for Promoting Implementation and Compliance



BASEL CONVENTION
*the world environmental
agreement on wastes*



The Basel Convention Mechanism for Promoting Implementation and Compliance



In order to promote understanding 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 Compliance Committee”) decided that it would prepare the present publication - a brief guide for Parties to explain, in clear terms, the procedures of the Committee.

The guide has been produced by the Compliance Committee with the financial support of the United Kingdom of Great Britain and Northern Ireland. The Kobe University Graduate School of International Cooperation Studies (GSICS) provided the flow diagrams that appear in the guide.

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Chapter I

OVERVIEW OF THE BASEL COMPLIANCE MECHANISM

1. To assist Parties to comply with their obligations under the Convention, the Basel Compliance Mechanism:

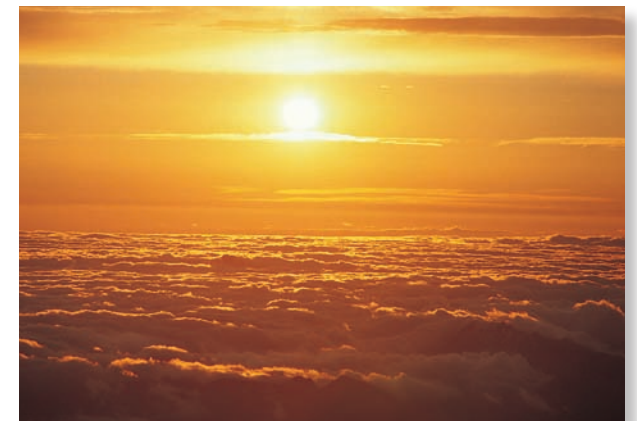
- Establishes a Committee dedicated to help Parties to implement the provisions of the Convention;
- Establishes a procedure that is non-confrontational, transparent, cost-effective, preventive and non-binding in nature;
- Pays particular attention to the special needs of developing countries and countries with economies in transition;
- Promotes cooperation between all Parties;
- Considers specific submissions with a view to determining the facts and root causes of the matter of concern;
- Assists in the resolution of compliance difficulties by providing Parties with advice, non-binding recommendations and information;
- Recommends to the Conference of the Parties further additional measures to address Parties' compliance difficulties; and
- Reviews, as directed by the Conference of the Parties, general issues of compliance and implementation under the Convention.

2. A bit of history:

- The Mechanism for Promoting Implementation and Compliance was established by Decision VI/12 of the Conference of the Parties adopted in 2002.
- The Mechanism was established as a subsidiary body of the Conference of the Parties under Article 15, paragraph 5 (e) of the Convention.

3. Who are the members of the Committee?

- The Committee is comprised of 15 members: three from each of the five regional groups of the United Nations (the African group, the Asian group, the Central and Eastern European group, the Latin America and Caribbean group, and the Western Europe and Others group).
- Although the members are nominated by Governments, they serve objectively and in the best interest of the Basel Convention.
- The members have expertise relating to the Basel Convention in areas including scientific, technical, socio-economic and/or legal fields.





Chapter II

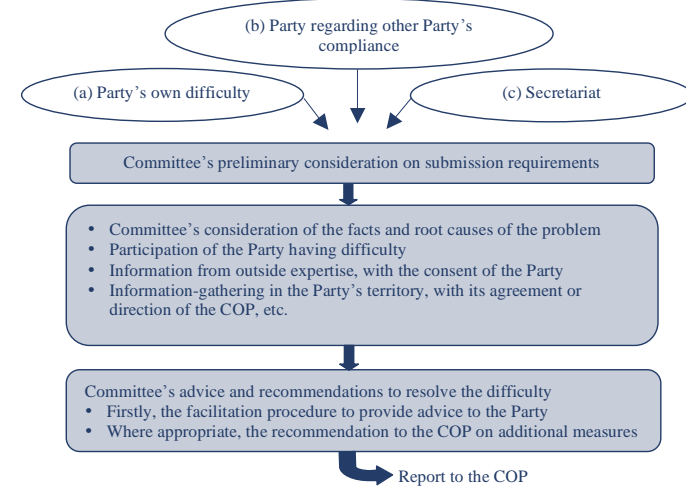
HOW TO USE THE MECHANISM

1. The Committee initiates its work by two procedures:

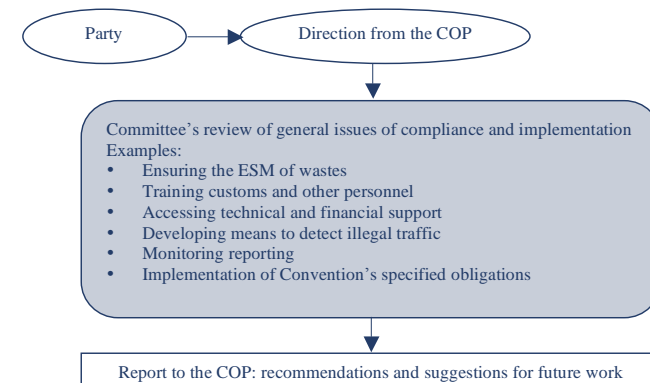
(1) Specific Submissions, and (2) General Review

- Specific submissions can be made by:
 - (a) A Party as to its own compliance difficulty (“self-submissions”).
 - (b) A Party as to another Party’s failure to comply with the obligations under the Convention (“Party-to-Party submissions”).
 - (c) The Secretariat as to Party’s reporting obligations under the Convention (“Secretariat submissions”).
- General review can be initiated by a decision of the Conference of the Parties.
- See the flow-charts opposite for an overview of those two procedures:

Specific submission (Para.9 procedure)



General Review (Para.21 procedure)





Chapter III

THE SPECIFIC SUBMISSION PROCEDURE

1. What types of compliance difficulties may a submission address?

- In case of self-submission: If a Party concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention.
- In case of Party-to-Party submission: If a Party 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.
- In case of Secretariat submission: If the Secretariat, while acting pursuant to its functions under Articles 13 and 16 of the Convention, becomes aware of possible difficulties of any Party in complying with its reporting obligations under Article 13, paragraph 3 of the Convention.

2. Content and form of the submission

- Submissions must be made in writing. Submissions may be made in any of the official working languages of the Convention, i.e., Arabic, Chinese, English, French, Russian or Spanish.
- Each submission should detail:
 1. the matter of concern;
 2. the relevant provisions of the Convention; and
 3. in the case of a Party-to-Party submission, information substantiating that submission.
- The Committee may decide not to proceed with a submission which it considers is:
 - (a) de minimis; or
 - (b) manifestly ill-founded

- A Party may also include in the submission relevant and appropriate information provided by civil society on compliance difficulties.
- Where information is provided in confidence to the Committee, this must be indicated clearly.
- The submissions should be sent to the Secretariat, for onward transmittal to the Committee at the following address:

The Executive Secretary
Secretariat of the Basel Convention
International Environment House
11-13 Chemin des Anémones
1219 Geneva - Switzerland

3. Notification and consultation prior to the submissions

- In the case of Party-to-Party submissions, a Party intending to make a submission must first inform the Party whose compliance is in question, and both Parties should then try to resolve the matter through consultations.
- In the case of Secretariat submissions, the Secretariat must first attempt to resolve the matter through consultations with the Party concerned at least for three (3) months.
- The Committee may declare inadmissible the submissions that did not satisfy the above prior requirements.

4. Recommended timeframe for submissions

- For Self-submission cases: Six (6) weeks before the commencement of the next meeting of the Committee, allowing two weeks for the Secretariat to process and transmit the submission to the Committee, and three to four weeks for the Committee to review the documentation.



- For Party-to-Party cases: Four (4) months before the next meeting of the Committee allowing two weeks for the Secretariat to process and transmit the submission to the Committee and other Party whose compliance is in question, and to allow that Party three months to consider and prepare a response. This indicative time frame allows the Committee three to four weeks to review all information received.
- The timeframes for Party-to-Party submissions also apply for submissions made by the Secretariat.
- All the above time limits are indicative and may be extended according to the necessities warranted by the circumstances of the matter at hand and in accordance with the terms of reference.

5. Processing of submissions

- The Secretariat shall forward the submission to the Committee and, in cases of Party-to-Party and Secretariat submissions, to the Party whose compliance is in question. In such cases, the



Secretariat will forward the submission to the diplomatic mission in Geneva, Switzerland (where such a mission exists) and the Focal Point¹ of the Party.

- The Committee will consider the submission at its next meeting. It is noted that the Committee gives priority to the consideration of specific submissions over the other work (e.g. general reviews) that it has before it at each meeting.



6. Participation of Parties during the consideration of submissions

- The Party whose compliance is at issue shall be invited to participate in the consideration of the submission by the Committee. However, this Party shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee.
- The Party whose compliance is in question may present responses and/or comments at every step of the proceedings. The Party whose compliance is in question is given opportunity to comment on the conclusions and recommendations formulated by the Committee.
- Unless the Committee and the Party whose compliance is in question agree otherwise, meetings dealing with specific submissions are not open to the public or Parties other than the Party whose compliance is in question.

¹ The "Focal Point" is the entity designated by each Party, pursuant to Article 5 of the Basel Convention, to receive and transmit information through the Secretariat to all other Parties. Such information includes the import prohibitions, national reports, information on bilateral agreements entered into relating to the transboundary movements of hazardous wastes. The Focal Points serve as the contact point for each Party in connection with matters related to the Basel Convention.



7. Information considered by the Committee

- During its review of a submission, the Committee will consider:
 - (a) the information provided in the submission and in the response provided by the Party whose compliance is in question;
 - (b) the responses and comments presented by the Party whose compliance is in question during the consideration of the matter;
- The Committee may determine that it requires further information and may seek such information through the following means:
 - (a) Consult with other bodies of the Convention;
 - (b) Information gathering in the territory of relevant Party(ies) with the agreement of that (those) Party(ies);
 - (c) Consult with the Secretariat and draw upon its experience and knowledge base compiled under Article 16 of the Convention;
 - (d) Request information through the Secretariat, where appropriate in the form of a report, on matters under its consideration;
 - (e) 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;
 - (f) Review national reports of the Parties provided under Article 13 of the Convention.
- The Committee, any Party or others involved in its deliberations must protect the confidentiality of information received in confidence. A Party may indicate that all the information it provides is to be treated as confidential.

8. Remedies available to the Committee

Step 1: Facilitation Procedure

- The Committee considers any submission made to it 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, after coordinating with that Party, the Committee may provide a Party with advice, non-binding recommendations and information relating to (amongst other things):
 - (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, such as 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 reviewing 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 above should be provided in agreement with that Party.

Step 2: Recommendation to the Conference of the Parties on additional measures

- If, after undertaking the facilitation procedure, and taking into account the cause, type, degree and frequency of compliance difficulties, the Committee considers it necessary to pursue further measures to address a Party's implementation and compliance difficulties, it may recommend to the Conference of the Parties that it considers:
 - (a) Further support under the Convention for the Party concerned, including prioritisation of technical assistance and capacity-building and access to financial resources; or
 - (b) Issuing a cautionary statement and provide 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 of the actions above must be consistent with Article 15 of the Convention on the functions of the Conference of the Parties.

9. Decision-making

- As is the normal practice of Basel Convention bodies, every effort is taken to reach decisions on matters of substance by consensus. Where consensus cannot be reached, decisions are adopted by a two-thirds majority of the members present and voting, or by eight members, whichever is greater.
- Decisions will only be adopted if there are at least ten members of the Committee present.

Chapter IV

THE GENERAL REVIEW PROCEDURE

1. What general issues of compliance and implementation can be the subject of review?

- The Committee may, under the direction of the Conference of the Parties, review general issues of compliance and implementation relating to (amongst other things):
 - (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 the Convention.
 - (f) The implementation of, and compliance with, specified obligations under the Convention.

2. What does the Committee do once it has conducted a review?

- Once the Committee has undertaken a review, it reports to the next ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed and on its suggestions for any future work that facilitates implementation of, and compliance with, the Basel Convention. The Conference of the Parties will consider such recommendations, and may approve them.



For further information on the Basel Convention or its Mechanism for Promoting Implementation and Compliance:

visit the Basel Convention website at: <http://www.basel.int>

or

contact the Basel Convention Secretariat at
International Environment House
13-15 Chemin des Anémones
CH - 1219 Chatelaine
Geneva, Switzerland
tel. +41 22 917 8218
fax +41 22 797 3454
e-mail: sbc@unep.ch



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