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**Basel Convention on the Control of
Transboundary Movements of
Hazardous Wastes and their Disposal**

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**Rotterdam Convention on the Prior
Informed Consent Procedure for
Certain Hazardous Chemicals and
Pesticides in International Trade**



**Stockholm Convention on
Persistent Organic Pollutants**

**Ad hoc joint working group on enhancing cooperation and
coordination among the Basel, Rotterdam and Stockholm conventions**

Second meeting

Vienna, 10–13 December 2007

Item 3 of the provisional agenda*

**Consideration of the intersessional work undertaken by the
members of the ad hoc joint working group and by the
Secretariats of the Basel, Rotterdam and Stockholm Convention**

**Experiences of the Basel Convention in the development of a
compliance mechanism**

Note by the secretariats

Attached is the thought starter on “Experiences of the Basel Convention in the development of a compliance mechanism” prepared by the Secretariat of the Basel Convention for consideration by the meeting.

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Experiences of the Basel Convention in the development of a compliance mechanism

I. Introduction

1. The Mechanism for Promoting Implementation and Compliance, and the Committee tasked with its administration (the Compliance Committee), was established in 2002 by the sixth meeting of the Conference of the Parties to the Basel Convention, by its decision VI/12¹. The Committee administering the mechanism was established as a subsidiary body of the Conference of the Parties.

2. The Committee was established “[...]to assist Parties to comply with their obligations...and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention”.² The Mechanism:

- (a) Establishes a procedure that is non-confrontational, transparent, cost-effective, preventive and non-binding in nature;
- (b) Pays particular attention to the special needs of developing countries and countries with economies in transition;
- (c) Promotes cooperation between all Parties.

II. Current Status

A. Composition and tenure

3. The Committee is comprised of 15 members: three from each of the five regional groups of the United Nations. Its Officers – a Chair, three Vice-Chairs and a Rapporteur – are elected on the same basis of geographical representation. Members have expertise relating to the subject matter of the Basel Convention in areas including scientific, technical, socio-economic and/or legal fields, and are elected by the Conference of the Parties for two terms³ and serve in the best interests of the Basel Convention. Since its establishment, the Committee members have included government officials, as well as academics.

4. The Terms of Reference of the Committee provided for the Conference of the Parties to initially elect five members, one from each United Nations region, for one term, and ten members, two from each region, for two terms. At each subsequent ordinary meeting, new members were elected for two full terms to replace those members whose period of office expired, or was about to expire. This initial differentiation of period of tenure was designed to institute a system of rotation to ensure that institutional knowledge was passed on while the membership of the Committee changed. The initial period of office, which differed from the normal duration of the term of office, caused some confusion. Further clarification was therefore required as to the procedures in this respect and duration of term of office.

5. The terms of reference provide that members shall not serve for more than two consecutive terms. However, they may serve their term of office and return at a later date. This was also unclear initially and could be clarified upon the establishment of similar bodies within this or other organizations.

6. The Terms of Reference provide for members to serve objectively and in the best interest of the Convention. They also provide for the Party who nominated the member to nominate an alternate in the event that a member resigns or is otherwise unable to complete his or her term of office. This has, at times, led to some discussion regarding the capacity in which Members serve, and whether they participate as representatives of their Governments. Furthermore, there has, on occasion, been a need to clarify to Parties that membership does not automatically change if the designated Focal Point for the Convention is replaced.

¹ The Terms of Reference for the Committee are contained in the Appendix to decision VI/12.

² Paragraph 1 of Terms of Reference for the Committee.

³ One term means the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the next ordinary meeting of the Parties (paragraph 6).

B. Procedures under the mechanism

7. The work of the Committee is initiated under two procedures; (i) specific submissions; and (ii) the general review procedure.

1. Specific Submissions

8. Specific submissions can be made by:

- (a) A Party that it is or will be unable to fully implement or comply with its obligations (“Self-submission”);
- (b) A Party that has concerns or is affected by a failure to comply with and/or implement the Conventions obligations by another Party (“Party-to-Party submissions”); or
- (c) The Secretariat⁴ if it becomes aware of possible difficulties of any Party in complying with its reporting obligations (“Secretariat submissions”).⁵

9. The Committee has the following remedies available in the event of a specific submission:

(a) *Facilitation Procedure*⁶:

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, the Committee may provide to the Party, after coordination and agreement with that Party, advice, non-binding recommendations and information.

(b) *Recommendation to the Conference of the Parties on additional measures*⁷:

If, after undertaking the facilitation procedure and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Parties, the Committee considers it necessary to pursue further measures, it may recommend to the Conference of the Parties that it consider:

- Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources; or
- 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 co-operation between all Parties.

Any such action must be consistent with Article 15 of the Convention on the functions of the Conference of the Parties.

10. Since its inception, the Committee has yet to receive a specific submission. In order to encourage Parties to take advantage of its services, the Committee has developed and distributed an information leaflet aimed at providing Parties with more information on the scope of its mandate, and the guidance it is able to offer.

11. While the Committee awaits the opportunity to examine a specific submission, it has been considering how to deal with cases of specific submissions, so as to ready itself to effectively respond in the event such a submission is received and taking into account the lack of specific direction provided in the terms of reference with respect to procedural and administrative matters. The Committee’s consideration of such issues is continuing in nature, and the Committee is not developing binding rules but, rather, considerations that may guide its practice when a submission is received. The Committee is mindful, however, that its consideration of such issues can only take place within the scope of the mandate provided under the Terms of Reference, and to the extent that such considerations do not contradict the Rules of Procedure of the Conference of the Parties which apply, *mutatis mutandis*, committees established by the Conference of the Parties. The Committee has

⁴ While pursuing its functions under Articles 13 and 16 of the Convention.

⁵ Paragraph 9 of the Terms of Reference.

⁶ Paragraph 19 of the Terms of Reference.

⁷ Paragraph 20 of the Terms of Reference.

before it, for consideration, issues such as the following, on which its Terms of Reference are either silent or ambiguous:

- (a) Implementation: Whether the requirement to include substantiating information should be applied to self-submissions or submissions by the Secretariat, as opposed to Party-to-Party submissions only. The Committee also considered whether Parties should be required to evidence the fact that consultations had been attempted prior to seeking its assistance.
- (b) Language of submissions: The report of its first session was inconclusive over the matter of language of submissions and who should bear the cost of translation.
- (c) Consultation period prior to submissions by the Secretariat: Whether submissions made by the Secretariat should include information evidencing that consultations have been held between the Secretariat and the Party concerned for at least three months prior to seeking the Committee's assistance.
- (d) Party-to-Party: Direct involvement: Clarification on how to interpret the term 'direct involvement' in relation to Party-to-Party submissions to the Committee.
- (e) Timeframes for receipt and transmittal of submissions: Whether to implement a mechanism, such as a register, to attest to the specific dates of receipt by the Secretariat of submissions and additional information by a Party whose compliance is in question, in order to determine the point from which time will run.
- (f) Secretariat transmittal of submissions: Whether a minimum level of information is required before the Secretariat forwards submissions to the Committee, therefore enabling the Secretariat to determine a submission is incomplete or lacking essential information or whether the Committee alone may handle questions of admissibility and quality of documentation.
- (g) Absence of a reply from a Party whose compliance is in question: How to deal with the absence of a response from the Party whose compliance is in question. The Committee considered how to deal with such an absence in the event of self-submissions and Secretariat or Party-to-Party submissions, including sending reminders.
- (h) Admissibility of submissions: What criteria should be used to assess whether a claim is manifestly ill-founded or *de minimis*, therefore inadmissible, including developing some examples of grounds for possible inadmissibility.
- (i) Conduct of business: Whether sessions of the Committee should be held in private or public.
- (j) Form of proceedings: Whether proceedings should take the form of oral hearings, necessitating witnesses and legal expertise, or whether deliberations of submissions should be carried out in a facilitative manner, where Parties may present responses and comments but there is no requirement for legal representation or witnesses.
- (k) Membership: Conflict of interests: What procedure to apply to determine and deal with conflicts of interests, as well as demonstrating transparency to avoid conflicts of interests.
- (l) Working practices of the Committee: Whether to organize itself into sub-committees to utilize members' expertise most efficiently and to facilitate its concurrent work on specific submissions and work programmes, given that meetings of the Committee are limited.
- (m) Role of the Secretariat: The Committee considered what type of safeguards to adopt to ensure that, in the case of Secretariat submissions, information taken into consideration also derives from other sources and other similar safeguards are in place to ensure transparency and avoid conflicts of interests.
- (n) Frequency of meetings: Given the infrequency of meetings under the provisions of the Terms of Reference, whether a procedure should be established which will enable the Committee to respond to situations which require urgent consideration.
- (o) Presentation of recommendations to the Parties: The manner in which recommendations may be made by the Committee to Parties whose compliance they are examining. In this regard, the Committee considered whether they might make recommendations orally during proceedings, or in writing in the weeks subsequent to the close of proceedings. In this regard, the Committee also explored if a time limit for making recommendations to Parties was necessary.
- (p) Making recommendations to the Conference of the Parties: As the Committee may seek recourse from the Conference of the Parties in the event its facilitations procedure is unsuccessful, the Committee considered what threshold exists in determining that the facilitation procedure has failed to render

the results intended. Consideration was also warranted as to the criteria which needs to be met before recourse to action by the Conference of the Parties may be triggered.

(q) Confidentiality – Reporting to the Conference of the Parties: Whether to adopt a mechanism to safeguard information it has received in confidence.

2. General Review Procedure

12. While the Committee awaits receipt of a specific submission of alleged non-compliance, it has undertaken considerable work under its general review function, as envisaged by paragraph 21 of its Terms of Reference.

13. Under paragraph 21, the Committee shall, as directed by the Conference of the 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.

14. The Committee reports to each ordinary meeting of the Conference of the Parties, for its consideration and approval, on the work the Committee has carried out, any conclusions and/or recommendations it has developed, and on suggestions for any future work on compliance and implementation. Accordingly, the Committee reviews general issues related to the implementation of the Convention, as directed by the Conference of the Parties.

15. In the 2004-2005 biennium, the Committee sought to identify and analyse difficulties relating to (a) reporting obligations under the Basel Convention; (b) designation and functioning of national competent authorities and focal points; and (c) development of national legislation to effectively implement the Convention. Funding of 37,500 USD was made expended by the Committee for these exercises. Such funding was made available through voluntary contributions from a Member State. To this end, the Committee transmitted questionnaires to the Parties on the aforementioned issues, and retained a consultant to undertake a preliminary analysis of the responses received. Only ten responses were received on the initial deadline, upon which further communications were sent requesting assistance in encouraging the focal points to respond. Following this initiative, fifty three responses were received, on which the consultant based her report to the Committee

16. On the basis of the responses received, and the preliminary analysis, the Committee made the following recommendations:

- (a) To the Conference of the Parties:
 - (i) The Committee expressed its strong support for decisions of the Conference of the Parties on the issue of reporting obligations;
 - (ii) The Conference of the Parties was recommended to request that the Secretariat organize training seminars, subject to the receipt of voluntary contributions, on the elements required in legislation for implementing the Basel Convention. The proposal that such training seminars be held back-to-back with a meeting of the Parties was put forward. Furthermore, the Committee requested the Conference of the Parties to encourage Parties to refer to the checklist for national legislation, once completed, and to undertake self-audits, using the checklist, to assess whether their national legislation complied with the obligations set out in the Convention;
 - (iii) The Committee drew the attention to the importance of increasing understanding of the differing waste coding systems that exist and their correlation with the Basel Convention codes, for example through the development of a table of concordance on waste codes.

- (b) To the Secretariat:
 - (i) The Committee recommended that the secretariat use its best efforts to follow up with those Parties that had not designated focal points or competent authorities;
 - (ii) On the issue of the development of national legislation to implement effectively the Basel Convention, the Committee recommended that the secretariat consider how to best use its resources in engaging with UNITAR and other similar research and training organizations to further reinforce current training projects. It also encouraged it to find out what assistance UNEP could provide to Parties with the development of legislation, similar to that offered to African countries under the Partnership for Development of Environmental Law and Institutions (PADELIA) project. It was also proposed that the legislation on the Basel Convention website be grouped by language and legal system, to facilitate its use by Parties as a resource tool;

17. Having gathered information on the difficulties Parties faced on a number of issues, its 2005-2006 work programme served as a useful premise to formulate proposals for its 2007-2008 work programme. Accordingly, Decision VIII/32 of the eighth meeting of the Conference of the Parties to the Basel Convention requested the Committee

- (a) Develop its understanding of national reporting issues by building on 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; and
- (b) 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.

18. To this end, the Committee has undertaken work to:

- (a) Retain a Consultant to spend a week with the Basel Convention focal point of an identified country, in order to understand how the country's information management system works, with a view to identifying best practices which could be replicated in other countries of the region. The Consultant shall produce a draft guide based on his or her findings, to be presented to the Committee for review at its next session;
- (b) Collaborate with and circulate a questionnaire to institutions offering training at the national, regional and international levels aimed at improving capacity for detection, prevention and prosecution of cases of illegal traffic, in order to identify the available existing resources from such institutions;
- (c) Establish a 'directory' of such training institutions including information such as contact details, course content, nature of training provided, target groups, duration of training programmes, working languages and relevant publications, to serve as a useful source of information for governments and others

A voluntary contribution for the whole of the estimated cost of these exercises was provided by a Party. A provisional time frame was provided of 12 months (for work under section a) and 6 months (for work under sections b and c).

19. The Conference of the Parties also noted in its decision that "when the Committee receives specific submissions [...] it shall give priority to dealing with such submissions",

20. The Conference of the Parties further determined that "in undertaking its work, the Committee shall take full account of the previous discussions and decisions by the Basel Convention bodies on the 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. Funding

21. The costs of meetings of the Compliance Committee are met from the Basel Convention Trust Fund, which is resourced from the assessed contributions of all Parties. Such meetings must be held back-to-back with the meetings of other bodies of the Convention, and can only be held once a year. This allocation per biennium, of USD 4 000 for conference servicing costs and USD 50 400 for the costs of meetings and conferences includes travel and Daily Subsistence Allowance (DSA) costs for seven travels per meeting. Thus, only the participation of members from developing countries or countries with economies in transition may be met. Meetings are held in English only, so no translation costs are incurred. However, the question has arisen

regarding the question of languages, in the context of submissions, as stated above, given that all the UN languages are official languages of the Basel Convention.

22. The costs associated with the Committee's work programme are provided for through voluntary contributions from donor countries. Accordingly, the amount of work the Committee is able to undertake is related to the amount of financial support made available for its purposes.

III. Conclusion

23. The Committee has identified a range of issues on which its terms of reference are either silent or ambiguous, that require further consideration. This includes the provisions regarding the terms of office, which have raised questions as to the capacity in which Members are nominated. In addition, the lack of predictable financing/funding hampers both the operation of the Committee and capacity building to support its recommendations.

24. There is a general reluctance amongst Parties to make a specific submission to the Committee. Accordingly, the Committee has sought to reassure Parties of its facilitative, non-confrontational nature, so as to encourage Parties to take advantage of the expertise the Committee can offer. Parties appear to perceive the making of a submission to the Committee about another Party's compliance with the Convention as a strong diplomatic act to be avoided except in extreme circumstances. Thus far, Parties to a dispute have tended to resolve such matters through bilateral negotiations or through the Secretariat's good offices. Furthermore, with regard to self-submissions, Parties appear to question the efficacy of bringing a matter to the Committee, when it lacks the capacity to provide access to financial or other resources which would serve to remedy their non-compliance.

25. Since its establishment, the Committee has contributed to the work of the Convention on the basis of its general review powers. Its general review functions have served to enable the Committee to develop guidance for Parties aimed at alleviating difficulties faced with certain matters under the Convention, while the Committee awaits receipt of a specific submission.

26. Full participation of the Committee is dependent upon the willingness of developed country Governments to finance the participation of their members. Furthermore, all members of the Committee who are government officials require the understanding and support of their Ministries to enable them to devote time and attention to the work of the Committee. This is particularly true of members who are Officers of the Committee, which requires significant involvement of the individuals concerned, both prior and between meetings of the Committee.
