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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**

The potential for cooperation on compliance

Note by the secretariats

Attached is the thought starter on “The potential for cooperation on compliance” prepared by South Africa with input from the United Kingdom of Great Britain and Northern Ireland for consideration by the meeting. It is presented as received and has not been formally edited.

* UNEP/FAO/CHW/RC/POPS/JWG.2/1.

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Thought Starter: Potential for Co-operation on Compliance between the Basel, Rotterdam and Stockholm Conventions

1. Introduction

In discussions at AHJWG-1¹, objectives and guiding principles were identified for the work to be undertaken in the group. Those which are relevant for compliance issues include, but are not limited to, the overall objective of “(s)trengthening the three conventions, with particular focus on strengthening implementation...”; and the guiding principles of “(p)romoting implementation and enforcement of the three conventions at all levels, especially at national level”. In this context, identifying synergies for compliance is a central topic for discussion. As remarked by the Chair of the Committee of the Whole of Stockholm COP-3: “a treaty without a compliance mechanism is a weak treaty”².

This paper approaches the issue from the perspective that the role of compliance mechanisms is to be facilitative rather than punitive. It has been suggested that compliance regimes for MEAs should focus on the establishment of mechanisms which facilitate implementation through *inter alia* preventative co-operation, compliance assessment and the provision of assistance in cases of non-compliance³. With this as a starting point, the potential for co-operation between the conventions can be considered,

2. Current Status

Under the three agreements, only Basel has a compliance mechanism in place, as set out in detail in document UNEP/FAO/CHW/RC/POPS/JWG.2/9.

Both the Rotterdam and Stockholm Convention texts mandated the negotiation of non-compliance mechanisms (Article 17 – both conventions), and as such, negotiations are currently underway in both. It is worth noting that the issues under debate in both negotiations are quite similar, encompassing particular procedural (*inter alia* triggers for invoking a compliance procedure; measures to address difficulties in complying); and institutional questions (*inter alia* the terms of reference which guide the functioning of the compliance committee/body, including size and composition; decision-making processes (consensus/voting) and participation by non-governmental stakeholders). Work continues within both conventions on this issue.

3. Implications of this context

This particular context raises questions as to how to approach this issue within the AHJWG discussions. It would appear that co-operation with a view to facilitating the successful outcome to the Rotterdam and Stockholm negotiations would be the logical place to start. It should be noted that while focusing on co-operation around the negotiations would be the rational starting point, co-operation in terms of the ongoing functioning of the compliance mechanisms in the long term should also be taken into account. How one addresses the co-operation for the successful negotiations however will have a bearing on the long-term co-operation between the conventions.

4. Co-operation for the Development of Compliance Mechanisms

There are various alternatives as to how this can be done. This could be done through an experience-sharing exercise, based on the inputs from the Basel Convention, and potentially with inputs from the Montreal Protocol (for the purposes of this issue only), if so agreeable. Such an exercise should be focused on identifying the challenges faced by Parties with existing compliance mechanisms, with a view to deepening the understanding of the concerns around the current proposals on the table in the Rotterdam and Stockholm Conventions.

¹ See Annex 1 of document UNEP/FAO/CHW/RC/POPS/JWG.1/4

² IISD (Monday, 7 May 2007), Summary of the Third Meeting of the Stockholm Convention on Persistent Organic Pollutants: 30 April – 4 May 2007.

³ Bankobeza, G. (2005) *Compliance Regime of the Montreal Protocol* in Kaniaru, D. (Ed) (2007) *The Montreal Protocol: Celebrating 20 Years of Environmental Progress*. Cameron May Ltd/UNEP

Another alternative would be to identify a “third way” to resolve the problems experienced within the Rotterdam and Stockholm conventions negotiations. Inputs received to this paper include the idea of considering a joint mechanism for the conventions. This could be done in various ways, such as:

- (i) A single mechanism is developed for the Rotterdam and Stockholm conventions, while the Basel mechanism continues to operate independently;
- (ii) The Basel mechanism is adopted by the Rotterdam and Stockholm conventions to form one single mechanism for all three agreements; or
- (iii) An entirely new mechanism is developed for all three conventions.

There are particular questions which will need to be addressed when considering such an option, including the implications of differing memberships between the agreements.

5. Incorporating a longer term perspective to Co-operation

The advantages and disadvantages of the above alternatives would have implications for identifying the opportunities for co-operation in the ongoing operation of the compliance mechanism(s).

Members could look at the development of arrangements for information exchange and consultative processes among the compliance committees of the three agreements.

With respect to the idea of a joint mechanism for the conventions, and the ongoing operation of the compliance mechanism(s) is whether effective implementation of the conventions could be compromised if they are treated together.

Questions of cost and capacity would need to be factored into such a discussion. The outcome of other issues under discussion would also have some bearing on this.

6. Proposed approach in AHJWG discussions

Taking into consideration the guiding principles agreed by the AHJWG members in Helsinki⁴, that *institutional structures are defined by functions that should be identified beforehand*, the following approach to the discussions is proposed in order to be able to answer the questions as to the (i) role the AHJWG work will have in respect of the ongoing negotiations within Rotterdam and Stockholm conventions on the development of mechanisms for compliance; and (ii) the resultant long-term opportunities for co-operation.

There may be an inherent risk in over-simplifying the challenges faced by parties in the implementation of their obligations under each of the agreements. This is clear when one considers the different objectives of the conventions. The focus of the Basel and Rotterdam conventions is on sustainable management in particular through the control of trade/trans-boundary movement of harmful wastes, chemicals and pesticides; while the Stockholm Convention (and the Montreal Protocol) intends to achieve the phase-out and elimination of POPs and ODS respectively. Even making this distinction involves somewhat of a generalisation (see Table 1).

Table 1: Proposed Matrix of Agreements

Facilitate Sustainable Management, especially through Trans-boundary Control	Phase-out and Elimination
<i>Basel Convention</i> (existing mechanism)	<i>Stockholm Convention</i> [under negotiation]
<i>Rotterdam Convention</i> [under negotiation]	[<i>Montreal Protocol</i>] (existing mechanism)

⁴ Annex 1; UNEP/FAO/CHW/RC/POPS/JWG.1/4

The experiences of the Basel convention, and potentially the Montreal Protocol, should enable a better understanding of the challenges facing parties in implementing the agreements. The costs of participation should also be considered, for e.g. in the case of a party-initiated procedure. This process will shed light as to how the problems being faced in the Rotterdam and Stockholm conventions can be resolved, whether through deepened understanding of the issues, or through a joint-mechanism.

The AHJWG should therefore consider whether for the purposes of this particular discussion, the secretariat of the Montreal Protocol be invited to made inputs as to how the Implementation committee of the Protocol functions, along the lines of the inputs made by the Basel Convention to this meeting.

Furthermore, by approaching the idea of the potential for co-operation for compliance in this manner, it is suggested that this could provide a basis for future compliance issues in other contexts.
