

# The Basel Convention Implementation and Compliance Committee – practical experience, future challenges.

Roy Watkinson

The British Institute of International  
and Comparative Law

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## Summary

- The presentation will focus on the role, composition, organization and work programme of the Committee, the challenges encountered and achievements of this mechanism so far.
- From the experience described an evaluation will be made of the merits of the mechanism and benefits for contracting parties to the Convention with a view to assessing the likely direction and future prospects for compliance related work.

## Outline

- Back ground to the Basel Convention
- The Implementation and Compliance Committee –
  - Development
  - Terms of Reference, powers
  - Composition
- The ICC's Work Programmes
- Its Products
- Future Work
- Evaluation
- Challenges
- Conclusion

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## The Basel Convention

on a page

- A Multilateral Environmental Agreement (MEA) negotiated under the auspices of the United Nations Environment Programme
- Objective: to protect human health and the environment against the adverse effects of hazardous wastes.
- Adopted in 1989, entered into force in 1992, now has 178 Parties
- Addresses transboundary movements of hazardous wastes and their disposal (includes recovery and final disposal)
- Rests on two main pillars – obligations on Parties to dispose of waste in accordance with principles of environmentally sound management (ESM) and prior informed consent (PIC)
- Provides definitions of waste and hazardous waste , an administrative control system, that illegal traffic in hazardous waste is criminal, a range of technical standards, for Competent Authorities to enforce
- Work programme decided by biennial Conferences of Parties (CoP), managed though subsidiary bodies (Open Ended Working Group), with a Secretariat

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## **The Basel Convention's Mechanism for Promoting Implementation and Compliance**

- Objective 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
- Mechanism is 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.

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## **Genesis of the ICC**

- Original Convention text made no provision for a compliance mechanism
- Decision V/16 at CoP 5 requested the Legal Working Group to prepare a draft decision for adoption at CoP 6 establishing a mechanism for promoting implementation and compliance with the obligations under the Basel Convention
- debated at the first, second, third, fourth and fifth sessions of the Legal Working Group.
- A Committee for Administering the Mechanism for Promoting Implementation and Compliance was established at COP 6 in Geneva in 2002.

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## **The Implementation and Compliance Committee – composition and election**

- Is a subsidiary body of the Convention
- Membership of 15 persons, nominated by Parties, based on equitable geographical representation of the five UN regional groups, elected by the Conference of the Parties.
- Period of office: two full terms. Members shall not serve for more than two consecutive terms (term = period beginning at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting).
- Members 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.” (par. 5 ToR)

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## **Key Terms of Reference - 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, becomes aware of possible difficulties of any Party in complying with its reporting obligations under article 13, paragraph 3 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.

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## **Key Terms of Reference - General Review**

Par. 21 the Committee shall, as directed by the Conference of the Parties, review general issues of compliance and implementation under the Convention. Such issues may relate, *inter alia*, to:

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

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## **First Meeting -Initial Programme**

- No formal WP approved by a CoP, Committee had to decide how to proceed
- Committee considered organizational issues not covered in ToR:
  - Time periods for submitting cases to the committee
  - Submissions made to the committee by the Secretariat
  - Language of submissions
  - Report of the committee (confidentiality)
- And proposals for work in the absence of specific cases
  - Identification of issues for general review
  - prepare a guide for Parties explaining in clear terms the procedures of the committee

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## **Work programme 2005-2006**

At the Seventh Conference of the Parties the following Work programme was approved:

- Identification and analysis of difficulties relating to reporting obligations under the Basel Convention;
- Identification and analysis of difficulties relating to designation and functioning of national competent authorities and focal points;
- Identification and analysis of difficulties relating to development of national legislation to implement effectively the Basel Convention
- Priority to be given to submissions.

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## **Work programme 2005-2006**

### **Results: Groundwork**

- No submissions received from Parties
- At its third session the Committee decided to send questionnaires on the issues identified above, financed by the UK
  - the Committee retained a consultant to finalize the questionnaires, analyse any responses received and submit a report to the Committee at its fourth session.
- Also investigated were the Parties' main priorities which were identified as:
  - (a) Ensuring the environmentally sound management of wastes;
  - (b) Accessing technical and financial support;
  - (c) Training customs and other personnel;
  - (d) Illegal traffic.
- Secretariat paper reviewed on "Possible procedural lacunae in the terms of reference for the implementation and compliance committee".

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## Work programme 2007-2008

- national reporting issues
  - develop understanding by building on the work undertaken in 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;
- 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.

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## Work programme 2007-2008

### Results – case trigger recommendation

At the time of the convening of the sixth session of the Committee on 28 February 2008, no submissions had been received.

#### National reporting

To enhance Parties' use of the Committee's full capacity it recommended the Secretariat should use its mandate under paragraph 9 (c) of the Committee's terms of reference to make specific submissions in particular circumstances. Secretariat to focus on cases:

- (a) In which no national reports have been submitted by a Party since the date of 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.<sup>14</sup>

## **Work programme 2007-2008**

### **Results**

#### Illegal traffic,

- To develop a directory of institutions offering training on illegal traffic, a questionnaire sent was transmitted to relevant training institutions, focal points and the Basel Convention regional centres.

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## **Work programme 2009-2011**

#### Ensure and improve effective and complete national reporting.

Review information held by the Secretariat under article 13 of the Convention.

#### (b) Compile:

- (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.

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## **Work programme 2009-2011**

(e) Develop further guidance documents on best practices in national reporting, including mechanisms for coordination among relevant governmental and other 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 nation reporting

g) Ensure and improve implementation of, and compliance with, specified obligations under articles 3, 4, 5 and 6 of the Convention

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## **Work programme 2009-2011 Results - Cases!**

The ICC

- adopted decisions on 10 submissions concerning compliance issues.
- considered how to address the low number of submissions to the Committee
- developed recommendations relating to options for triggering the mechanism, the lack of resources to assist parties facing compliance difficulties and general issues of implementation and compliance.
- reviewed national reports and, noting with concern that the level of reporting was declining, had produced related training materials.

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## Work programme 2009-2011

### Results - Cases!

On illegal traffic, the ICC

- developed a directory of institutions offering training in detection and prosecution
- recommended the establishment of a partnership to prevent and combat illegal traffic.

On communications with parties, -

- noted that as at December 2010 18 parties had designated neither focal points nor competent authorities,

The ICC also

- reviewed the status of existing national legislation and had identified needs for assistance
- reviewed notifications about national definitions and import or export restrictions recommending procedures for the reporting and notifying of such information should be harmonized.

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## ICC Products – Guidance

- National legislation: [Check list for the legislator](#)
- National reporting:
  - [Guidance document on improving national reporting](#)
  - Training CD on improving national reporting
- Illegal traffic: [Directory of Training Institutions](#) (Offering Activities Aimed at Improving Capacity for Detection, Prevention and Prosecution of Cases of Illegal Traffic)
- Leaflets:
  - [Functions and procedures of the Committee](#)
  - [Competent Authorities and Focal Points](#) (updated by the Secretariat following COP-7)
  - [Controlling transboundary movements of hazardous wastes](#)

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## **The future - work programme 2012-2013**

### **National Reporting:**

- a) Classify and publish parties' individual compliance performance with regard to the annual national reporting obligations for 2009-2011, based on provided criteria
- b) Update the training DVD on national reporting
- c) Develop guidance on the development of inventories
- d) Develop further electronic tools to improve national reporting- web-based seminars and online training courses
- e) Guide and review the Secretariat's training activities on improving national reporting
- f) Establish a dialogue with other multilateral environmental agreement compliance bodies dealing with national reporting issues.

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## **Work programme 2012-2013**

### **National legislation:**

(Improve implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention)

Identify parties' needs for assistance, assess the adequacy of existing tools and training activities to meet those needs and develop a legal capacity-building strategy under the Convention to improve the implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention

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## **Work programme 2012-2013**

### **Illegal traffic**

(Prevent and combat illegal traffic )

(a) Undertake the activities mentioned in paragraphs 3 and 5 of the present decision pertaining to the development of draft terms of reference for the cooperative arrangements on preventing and combating illegal traffic;

(b) Review parties' implementation of and compliance with the take-back provision set forth in paragraph 2 of Article 9 of the Convention, including the difficulties faced by parties, and develop a guidance document based on best practices and suggesting a harmonized approach to the implementation of this provision;

(c) Guide and review the Secretariat's development of tools and training activities for Customs and other enforcement officials

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## **Revised Secretariat Trigger**

By decision of the 10<sup>th</sup> Conference of the Parties:

"(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 concerned"

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## ICC Successes and Evaluation

- The work programme has been extended through successive cycles of the committee
- The Committee has successfully dealt with several cases on reporting
- The Committee has produced useful guidance on reporting and illegal traffic
- Experience has identified a need for modification of the ToR - adopted at the 10<sup>th</sup> Conference of the Parties
- The regular turnover of Committee members has enhanced rather than detracted from the performance of its tasks
- This current biennium's tasks are the most challenging, with less time to carry them out before the next Conference of the Parties
- Intersessional and electronic working are essential to enable work programmes to be delivered

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## Challenges for the ICC

- **Standing** - as a subsidiary body
- **Recognition** - as an effective implementation tool
- **Resources** - to deliver on its work programme (mostly by voluntary contributions to date)
- **Working Practice** – meeting constraints
- **Expectation** – within limited powers
- **Reputation** -maintenance

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## Conclusion

- The Basel Convention ICC is designed to be a facilitative rather than proscriptive or punitive mechanism
- It is unlikely that adopting a more stringent approach to measures would be feasible, practicable or desirable
- The ICC has demonstrated it can work effectively within its terms of reference and it is still developing
- It has promoted better implementation of the obligations of the Convention both with respect to general issues of compliance and specific cases
- The ICC has become progressively better aligned, relevant to and integrated with that of the Convention's whole work programme
- While this experience underlines the merits of compliance mechanisms for MEAS, its future success and value will rely on the continuing commitment of current and future Committee members and parties

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**Thank you for listening**

Roy Watkinson  
Director RWEC Ltd  
rvw@rwec ltd.com

The British Institute of International  
and Comparative Law  
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- [British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London WC1B 5JP](#)
- **Participants**
- **Chair: Jill Barrett**, British Institute of International and Comparative Law
- **Speakers:**
  - Alistair McGlone**, Department for Environment, Food and Rural Affairs (Defra)
  - Stephen Hockman QC**, 6 Pump Court Chambers
  - Roy Watkinson**, Roy Watkinson Environmental Consulting Limited