



**Report by the chairperson of the enforcement branch and the Secretary
to the Compliance Committee of the Kyoto Protocol on the first
session of the dialogue with other compliance bodies held in
Paris, France on 6 December 2013**

Background

1. On 28 June 2012, the co-chairpersons of the plenary of the Compliance Committee of the Kyoto Protocol (KP Compliance Committee) received correspondence from the Chair of the Committee for Administering the Mechanism for Promoting the Implementation and Compliance of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Implementation Committee) regarding the establishment of an informal dialogue between the two committees. The letter from the Chair of the Basel Implementation Committee is contained in Annex I to this note.

2. At its eleventh meeting held from 24 to 25 October 2012, the plenary of the Compliance Committee discussed the correspondence referred to in paragraph 1 above. The plenary expressed interest in the proposal and acknowledged the value of such a dialogue. It agreed to bring the request to the attention of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and to request guidance from the CMP on the establishment of a dialogue with other compliance bodies under other treaties.¹

3. At its eighth session held in Doha, Qatar from 26 November to 8 December 2012, the CMP adopted decision 12/CMP.8, through which it acknowledged the value to the work of the Compliance Committee of establishing a dialogue with compliance bodies under other treaties to exchange information on compliance-related matters. Through the same decision, the CMP encouraged the Committee to respond positively to invitations from such compliance bodies to exchange information.

4. Pursuant to the guidance received from the CMP and on the basis of discussions at the eleventh meeting of the plenary, the co-chairpersons of the plenary of the Compliance Committee of the Kyoto Protocol wrote to the Chair of the Basel Implementation Committee, welcoming the opportunity to share experiences with the compliance bodies of other multilateral environmental agreements (MEAs). The letter of the co-chairpersons of the plenary is contained in Annex II to this note.

Report on the first session of the dialogue

5. The dialogue with other compliance bodies that was initiated by the Basel Implementation Committee (the dialogue) seeks to contribute to improving timely and complete national reporting under the Basel Convention. It is being implemented by the Basel Implementation Committee as

¹ CC/11/2012/4, paragraph 18.



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part of its mandate to review general issues of compliance and implementation under the Convention.

6. The first session of the dialogue took place during the 10th meeting of the Basel Implementation Committee. It was attended by the chairs and/or secretariats of the following MEAs:

- (a) The Cartagena Protocol on Biosafety to the Convention on Biological Diversity;
- (b) The Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) and its Protocol on Strategic Environmental Impact Assessment in a Transboundary Context (the SEA Protocol);
- (c) The Convention on the International Trade of Endangered Species of Wild Fauna and Flora;
- (d) The International Treaty on Plant Genetic Resources for Food and Agriculture;
- (e) The Kyoto Protocol;
- (f) The London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter; and
- (g) The Montreal Protocol on Substances that Deplete the Ozone Layer.

7. The chairs of the groups negotiating the compliance mechanisms for the following MEAs were also present:

- (a) The Minamata Convention on Mercury;
- (b) The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and
- (c) The Stockholm Convention on Persistent Organic Pollutants.

8. The chairperson of the enforcement branch and the Secretary to the Compliance Committee attended the first session of the dialogue on behalf of the KP Compliance Committee. A brief oral presentation on the compliance mechanism under the Kyoto Protocol was made. Questions were raised relating to the mandates of the two branches of the KP Compliance Committee, the differentiated reporting obligations of Parties under the Kyoto Protocol, issues raised regarding the transparency of decisions adopted by the enforcement branch, and the compliance action plan required from Parties found in non-compliance by the enforcement branch.

9. Background information provided before the meeting² and discussions during the meeting highlighted the following points that may be relevant to the work of the KP Compliance Committee:

² National reporting: dialogue with other compliance bodies (Note by the Secretariat), document UNEP/CHW/CC.10/7, available at <http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/MeetingDocuments/tabid/3396/Default.aspx>.



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- (a) The principle of common but differentiated responsibilities is reflected through differentiation in the substantive obligations under the Kyoto Protocol. This leads to differentiated reporting requirements, a feature not shared by the other MEAs represented at the meeting.
 - (b) Several compliance mechanisms feature a strong secretariat trigger. These other regimes do not, however, have a review process that is comparable to the expert review process under Article 8 of the Kyoto Protocol.
 - (c) Compliance and implementation committees exercise a wide variety of functions. Several of these bodies exercise dual functions, i.e., they look at both general matters relating to implementation, and specific matters relating to implementation and/or compliance. All of the compliance and implementation bodies represented at the session exercise a facilitative function.
 - (d) Challenges in reporting have often been rooted in the lack of clear consequences for late or non-submission of the relevant reports, or the absence of national legislation that supports the preparation of these.
 - (e) Meetings of the KP Compliance Committee are, by default, held in public, and are only closed for overriding reasons. In contrast, for several compliance bodies, discussions relating to particular compliance or implementation cases are, by default, closed, and consent of the Party involved is sought before a part of a meeting that concerns such Party is held in public.³
10. The report of the tenth meeting of the Basel Implementation and Compliance Committee (UNEP/CHW/CC.10/14) is available on this page
<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/tabid/3355/mctl/ViewDetails/EventModID/9267/EventID/418/xmid/10712/Default.aspx>

Next steps

11. Noting the usefulness of the initial exchange as well as the limited time available at the meeting, the Basel Implementation Committee will explore the possibility of organizing a further session of the dialogue during its eleventh meeting.

³ The report of the tenth meeting of the Basel Implementation and Compliance Committee (UNEP/CHW/CC.10/14) is available at
<<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Meetings/ICC10/tabid/3355/mctl/ViewDetails/EventModID/9267/EventID/418/xmid/10712/Default.aspx>>



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Annex I



Libertad y Orden

Ministerio de Ambiente y Desarrollo Sostenible
Despacho Ministro de Ambiente y Desarrollo Sostenible
República de Colombia

**Prosperidad
para todos**

Bogotá, D. C., 28 June 2012

Dr. René Lefeber

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Mr. Khalid M. Abuleif

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cc: **Mr. Dan Bondi Ogolla**

Chief Legal Adviser, Secretariat of the UNFCCC
(Email: dbondiogolla@unfccc.int)
Members of the Basel Convention Implementation and Compliance Committee

Dear Mr. Lefeber and Mr. Abuleif,

Establishing a dialogue with other multilateral environmental agreement compliance bodies dealing with national reporting issues.

I am writing to you in my capacity as Chair of the Committee administering the Mechanism for promoting implementation and compliance (ICC) with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention).

Article 13 paragraph 3 of the Basel Convention establishes an obligation for Parties to submit annual national reports. The Conference of the Parties (COP) and the Committee have identified the problem of non-reporting or incomplete or late reporting by Parties as a serious one. In this context, the Committee, as directed by the COP, has undertaken various activities aimed at improving compliance from Parties, for instance, elaborated guidance for Parties on how to improve their national reporting and national reporting training activities.

During its last meeting, the COP required the Committee to establish a dialogue



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with other multilateral environmental agreement compliance bodies dealing with national reporting issues (decision BC-10/11). This request is based on the assumption that problems with reporting are not unique to the Basel Convention and that there would be value in exchanging information on experiences from other compliance mechanisms in this regard.

With this letter, I would like to invite you to share your experiences, if any, as Chairpersons of the Compliance Committee of the Kyoto Protocol on national reporting issues. I stand ready to establish such a dialogue with you by email, telephone or in person should the opportunity for a face-to-face meeting arise in the near future.

I thank you in advance for your kind attention and look forward to hearing from you in due course.

Yours sincerely,

for 

**Ms. Jimena Nieto
Chair (Colombia)**

Basel Convention Implementation and Compliance Committee



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Annex II

7 February 2013

Ms. Jimena Nieto
Chair
Basel Convention Implementation and
Compliance Committee
c/o Secretariat of the Basel Convention
11–13, Chemin des Anémones
1219 Châtelaine
Switzerland

Subject: Establishing an informal dialogue with the Compliance Committee of the Kyoto Protocol

Dear Ms. Nieto,

Thank you for your letter dated 28 June 2012 regarding the establishment of a dialogue between the Compliance Committee of the Kyoto Protocol (“Kyoto Committee”) and the Committee Administering the Mechanism for Promoting the Implementation and Compliance of the Basel Convention (“Basel Committee”). On 30 October 2012, the Secretary to the Kyoto Committee provided an initial response to your letter, indicating that a further response would be provided by us following conclusion of the eighth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP).

At its eighth session, the CMP acknowledged the value to the work of the Kyoto Committee of establishing a dialogue with compliance bodies under other treaties to exchange information on compliance-related matters and therefore encouraged the Kyoto Committee to respond positively to invitations from such compliance bodies to exchange information. An advance unedited version of the CMP’s decision is attached for your reference.

In this regard, the Kyoto Committee welcomes the opportunity to share experiences with the compliance bodies of other multilateral environmental agreements.

In response to the request contained in your letter referred to above, we wish to make some initial observations, which may be of benefit to the Basel Committee, regarding the Kyoto Committee’s experience with reporting under the Kyoto Protocol.

The Kyoto Committee consists of two branches: a facilitative branch and an enforcement branch. As their names suggest, the facilitative branch aims to provide advice and assistance to Parties in order to promote compliance by Parties with their commitments under the Kyoto Protocol, whereas the enforcement branch has the responsibility to determine whether a Party is not in compliance with specific commitments under the Kyoto Protocol and to apply consequences for Parties not meeting these commitments. Based on the experience of the Kyoto Committee, compliance is largely assessed on the basis of Parties’ reports and the technical review of these.

Parties included in Annex I (“Annex I Parties”) have two regular, ongoing reporting requirements: an annual report and a periodic national communication. For the annual report, each Annex I Party is required to submit a national greenhouse gas inventory, as required by the



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United Nations Framework Convention on Climate Change (“Climate Change Convention”), plus supplementary information on its implementation of its commitments under Article 3 of the Kyoto Protocol. For the national communications submitted under the Climate Change Convention, Annex I Parties are to incorporate supplementary information to demonstrate compliance with commitments under the Kyoto Protocol. Each report submitted by an Annex I Party is subject to review by an international expert review team (“ERT”), the purpose of which is to provide a thorough technical assessment of the Party’s implementation of the Kyoto Protocol. This technical assessment is relied upon by the branches of the Kyoto Committee in the exercise of their respective mandates.

The review process under the Kyoto Protocol is more rigorous than the review process under the Climate Change Convention. In particular, if the ERT identifies a problem with a Party’s implementation of a particular commitment that is not resolved by the Party during the review, the ERT has the authority to list the problem as a ‘question of implementation’ in its final review report. An ERT can raise questions of implementation only when there is an unresolved problem regarding implementation by a Party of requirements pertaining to language of a mandatory nature, as contained in relevant decisions of the CMP. To date, all questions of implementation with respect to the eight Parties that have come before the enforcement branch have been based on ERT reports identifying such questions of implementation, and the reinstatement of Parties that have been suspended from participating in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol has been based on ERT reports that demonstrate the resolution of the questions of implementation that led to their suspension. All review reports, including those that do not list any questions of implementation, are forwarded to the Kyoto Committee for its consideration.

Where a national communication has not been submitted within six weeks after the due date, the delay shall be brought to the attention of the Kyoto Committee and made public.¹ On two occasions, the plenary of the Kyoto Committee has invited the CMP to clarify whether it requests the Committee to take any specific actions in relation to late submissions of national communications.² Apart from urging Parties that are late in submitting their national communications to do so as a matter of urgency, the CMP has not indicated what the consequences of late submission of a national communication would be.³

At its eighth meeting, the facilitative branch noted the need to take proactive action with respect to Parties that had not yet submitted their fifth national communications, which were due on 1 January 2010. On 28 July 2010, the chairperson of the branch wrote to Monaco, expressing the concern of the facilitative branch with regard to the delay in the submission of Monaco’s fifth national communication and inquiring as to whether the branch could provide advice and facilitation in order to help Monaco implement its reporting obligations.⁴

In a letter dated 16 September 2010, Monaco stated that it was planning to submit its fifth national communication at the end of October or in early November. On 16 November 2010, the chairperson of the facilitative branch wrote to Monaco to enquire again whether the branch could

¹ See paragraph 139 of the annex to decision 22/CMP.1 (document FCCC/KP/CMP/2005/8/Add.3).

² See paragraphs 4 (b) and 22 of the fourth annual report of the Compliance Committee to the CMP (document FCCC/KP/CMP/2009/17) and paragraphs 4 (b) and 22 of the second annual report of the Compliance Committee to the CMP (document FCCC/KP/CMP/2007/6).

³ See paragraph 2 of decision 6/CMP.5 (document FCCC/KP/CMP/2009/21/Add.1) and paragraph 2 of decision 5/CMP.3 (document FCCC/KP/CMP/2007/9/Add.1).

⁴ See annex to document CC/FB/2010/2.



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provide Monaco with any advice and facilitation in view of the fact that Monaco had not yet submitted its fifth national communication. By letter dated 2 December 2010, Monaco replied indicating that its fifth national communication was finalized and was under internal validation. Monaco submitted its fifth national communication on 25 March 2011.


The action by the facilitative branch in the case of Monaco's delay in submitting its fifth national communication is an example of the branch exercising its mandate for providing advice and facilitation to Parties in implementing the Kyoto Protocol. The facilitative branch is also continuing to refine its indicative working arrangements for providing early warning for potential non-compliance.⁵ Its initial work on early warning has been based on observations made by ERTs in its in-depth reviews of national communications, in particular, on the observations regarding trends in the greenhouse gas emissions of some Annex I Parties.


We hope to further share our experiences with providing advice and facilitation and the emerging "early warning" indicative working arrangements as the Kyoto Committee's experiences in these areas continue to grow.

In contrast to the lack of guidance regarding consequences for the late submission of national communications, it is clear that failure by a Party to submit its annual inventory within six weeks of the submission date established by the CMP can result in the suspension by the enforcement branch of a Party's eligibility to participate in the market-based mechanisms since such delay constitutes a failure to meet the methodological and reporting requirements under Article 7 of the Kyoto Protocol.⁶ The enforcement branch has not had occasion to suspend a Party on that basis as Annex I Parties have, to date, been able to submit their annual inventories within the six-week period.

On behalf of the Kyoto Committee, we thank you for your invitation to engage in an informal dialogue. We look forward to your further representations as to how an evolving dialogue may be of most beneficial assistance to both Kyoto Committee and the Basel Committee and to receiving information on your own experience with regard to national reporting issues.

Yours sincerely,


Mr. René Lefeber
Chairperson
Enforcement Branch of the Compliance
Committee of the Kyoto Protocol


Mr. Khalid Abuleif
Chairperson
Facilitative Branch of the Compliance
Committee of the Kyoto Protocol

⁵ Ibid.

⁶ See paragraph 3 (a) of decision 15/CMP.1 (document FCCC/KP/CMP/2005/8/Add.2) and section V, paragraph 4 (b), of the procedures and mechanisms.