



Convention on the Conservation of Migratory Species of Wild Animals

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1st Meeting of the Working Group on the Development of a Review Process under the Convention on Migratory Species

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MEETING REPORT

1. Welcome

Bradnee Chambers, the Executive Secretary of CMS, welcomed the participants to the meeting. He explained that the meeting was meant as a forum for discussion and no final decisions would be made. The Working Group had the task of preparing advice for consideration at COP12 in 2017.

Appreciation was expressed to the Ramsar Convention, the Aarhus Convention, the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) and the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), all of which were represented at the meeting to share their experience of implementation and review mechanisms.

A *tour de table* was conducted allowing participants to introduce themselves. Unfortunately, the Asia region would not be represented at the first meeting because of last minute difficulties, but it was hoped that the region would attend subsequent meetings. The list of participants appears at Annex 12 to this report.

2. Election of a Chair and Vice Chair

Mr Chambers referred to paragraph 5 of the terms of reference for the Working Group which concerned the election of officers. He asked for nominations for the posts of Chair and Vice-Chair.

Narelle Montgomery on behalf of Australia accepted nomination as Chair of the meeting, stressing that as a regional representative she would need to continue to express the views of her region. George Owoyesigire on behalf of Uganda accepted nomination as Vice-Chair.

3. Background

Mr Chambers described the background to the Working Group. COP11 had passed [Resolution COP11.7](#) establishing the Working Group and the Standing Committee had agreed [terms of reference](#) at its 44th meeting in 2015. In the interests of economy, physical meetings would wherever possible be held in conjunction with other meetings. A voluntary contribution had been received from the Swiss Government to cover the costs of the Working Group meetings, for which Mr Chambers expressed his gratitude. The second meeting of the Working Group had been scheduled to take place back-to-back with the 45th meeting of the CMS Standing Committee. A third meeting of the Working Group might have to be scheduled for 2017.

Mr Chambers gave a presentation on the background to the Working Group, saying that all MEAs had some review or compliance mechanism and two CMS daughter instruments already had one. Article VII Paragraph 5 (g) of the Convention paved the way as it read “*At each of its meetings the Conference of the Parties shall review the implementation of this Convention and may in particular: ... (g) make recommendations to the Parties for improving the effectiveness of this Convention*”.

The “Future Shape” process established by Resolution 10.9 had also sought to improve mechanisms to measure implementation of the Convention.

The Working Group might wish to make a comparative analysis of best practices considering the pros and cons of different approaches and the costs involved. Consideration should also be given to determining the appropriate body to oversee a review process, using an existing institution such as the COP or Standing Committee or establishing a dedicated one. The areas to be covered by the process should also be identified and these might range from just Appendix I species to all aspects of the Convention's work.

The slides making up Mr Chambers' presentation can be found at Annex 1 of this report and have been posted on the [Working Group](#) pages of the CMS website.

4. General Overview of implementation review mechanisms

In the absence of Chris Wold, the consultant who had prepared the main background paper, Mr Chambers gave a general presentation on review mechanisms. The paper was still a draft and had not been circulated more widely to the Parties, as the Secretariat wanted feedback from the members of the Working Group first.

The 2000 Malmö Declaration emanating from the First Global Ministerial Environment Forum had highlighted an "*alarming discrepancy between commitments and action*", and after years of negotiating new instruments, the time had come to start implementing them. Environmental problems were becoming more acute and the world faced an extinction crisis, and climate change was leading to human displacement.

The document, "The Future We Want", arising from the Rio+20 summit, the 2030 Sustainable Development Goals and the Paris Climate Agreement contained respectively 151, 49 and 33 references to implementation.

Implementation covered a variety of actions, including some discretionary, "soft" undertakings and some legally-binding commitments set out in the Convention text. There were also several approaches to monitoring implementation. All processes carried out in the context of a treaty could be tracked, or just the core, "hard" obligations. Implementation could be encouraged through facilitative means or enforced punitively. Unlike some other MEAs, CMS did not have a dedicated financial mechanism to use as a "carrot" through incentives and support (or as a "stick" through withdrawal of access); there was also no trading mechanism from which a country could be suspended for non-compliance as was the case with the Basel Convention or CITES. The most obvious course for CMS appeared to be to adopt a facilitative approach to bring Parties not in compliance back into line.

Mechanisms could be based on existing structures (e.g. the Standing Committee) and established reporting requirements (e.g. national reports which relied on Parties self-reporting and monitoring by the Convention Secretariat). A more elaborate approach was to have a reporting system, a dedicated compliance committee and a fund to support Parties.

An important aspect was how cases could be triggered. Parties could instigate a case through self-reporting, or the Standing Committee could act on information received, the sources of such information often being NGOs (this was how AEWA and ACCOBAMS operated). The Secretariat also had a possible role as the repository of national reports.

The action ensuing from a case being triggered could be the Convention giving advice to the Party, the commissioning of reports, the organization of fact-finding missions, cautions being issued and assistance being offered.

Experience showed that facilitative mechanisms worked just as effectively as punitive ones. Support in providing know-how and through financial aid encouraged engagement on the part of Parties.

In conclusion, Mr Chambers posed a number of questions: did CMS need a review mechanism? What system did CMS currently have, was it suitable and what system could or should it adopt? What trigger mechanism was needed, i.e. who could instigate a case and in what circumstances? Should reviews be carried regularly or on an ad hoc basis? What structures were needed (i.e. a dedicated review body or should the Standing Committee or other existing body be given the task?) and what remedies or sanctions should be provided?

Mr Dereliev citing the case of the Bern Convention said that it operated a hybrid system in that it conducted a comprehensive review on one country each year examined at the annual Standing Committee meeting, as well as having individual case files. With regard to AEWA, he doubted whether the high reporting rates achieved could be explained by the Agreement having adopted the Implementation Review Process (IRP).

The representative of France said that an electronic consultation carried out this summer showed that the view of several European countries was that establishing a review procedure might not be a priority and so the zero option should remain on the table.

The representative of Norway said that Norway supported having a review mechanism provided that the mechanism is cost-effective. Due account should be taken of the costs of the different options. The representative of Switzerland said that Switzerland favoured the idea of reviewing implementation, as such mechanisms were also a means of fostering synergies and identifying priorities.

Mr Dereliev (AEWA) said that AEWA had adopted its own process in 2008, having previously relied on working through the Ramsar and Bern Conventions. AEWA could now act independently and the approach adopted was cost-efficient.

Mr Ebbesson (Aarhus Convention) commented that in Europe there were many forums with some overlaps – CMS, the European Union Habitats and Birds Directives and the Bern Convention being some examples. There was nothing similar in Africa or Latin America, so a review procedure under CMS would fill a gap in those regions.

The Chair closed discussion on this agenda item noting that members had expressed divergent views about the desirability of having a review process.

The slides making up Mr Chambers' presentation can be found at Annex 2 of this report and have been posted on the [Working Group's](#) pages of the CMS website.

Scope of CMS review mechanism

The Chair invited Clara Nobbe (Secretariat) to give an overview of the types of obligation that might be covered in a review process.

Ms Nobbe highlighted some obligations under CMS that might serve as the “anchors” for implementation review.

The key CMS objective was to stop migratory species becoming endangered, through research and positive steps to protect Appendix I species and conclude agreements for Appendix II species. For Appendix I species defined as “endangered”, criteria had been elaborated, based broadly on the IUCN Red List. Parties had to provide strict protection for these species with limited scope for exceptions; the Secretariat was rarely notified of any such exceptions.

Species could be listed under both Appendix I and II. Agreements could provide detailed conservation measures for a particular species or group of species and there was a role for the CMS COP in overseeing the effectiveness of these instruments.

The Global Biodiversity Outlook 4 found that despite individual successes, the risk of extinction for birds, mammals and amphibians was growing, meaning Aichi Target 12 would be missed. Target 11 requiring that 17 per cent of terrestrial land should be protected by 2020 was likely to be met globally taking current commitments into account, although protected area networks remained ecologically unrepresentative and many critical sites for biodiversity were poorly conserved. Thus, there was a continuous need for implementing biodiversity-related Conventions, including CMS.

Some of the obligations on Parties under CMS were that they should inform the Secretariat of the species for which they were Range States, and that they contributed to the core budget of the Convention. Some Parties did not pay their contributions, and after arrears accumulated beyond a certain period, the Party lost its

eligibility for funding. In advance of the triennial COP, Parties were required to submit a national report, but in 2014 for COP11 only 49 Parties out of 122 had done so.

Concerted and Cooperative Actions had been set up at early COPs to facilitate action for Appendix I and II species. These were now being consolidated under a single name (Concerted Actions) but it was unclear how this process had contributed to the effectiveness of CMS.

Ms Nobbe said that in the CMS Family only AEWA and ACCOBAMS had developed a review procedure. There was no formal platform for review other than through the Cooperative and Concerted Actions under CMS itself.

The Secretariat promised to compile a list of the strict obligations in the CMS text (those with “shall”) and a secondary list of other issues where a review could examine implementation (e.g. the Concerted Action species).

Mr Ebbesson (Aarhus Convention) said that it was common practice in MEAs established since 1979 for there to be some provision of overseeing implementation.

The Chair said that there was a provision for the COP to establish subsidiary bodies to which tasks could be delegated. She also recalled that the national reports asked Parties for details of any derogations to the strict protection to be afforded to Appendix I species. Regarding Appendix II, Parties were obliged to consider the need for an Agreement rather than being obliged to have an Agreement.

Mr Stroud (Ramsar) said he saw two levels of review. One concerned the administration of the Convention and the other concerned improving the conservation status of the listed species. The latter was the more important and it would be easier to convince Parties to take action.

Ms Garforth (CBD) said that CMS had similar provisions to Article 23 of CBD on the need to review implementation. CBD COP12 had established a review committee which had first met in May 2016, so CBD was in the early stages of discussing its review mechanism. A tracking tool was under consideration for decisions in part to prevent the circular process of repeating what had been agreed before and a voluntary peer review system was in operation for National Biodiversity Strategies and Action Plans.

Mr Ebbesson (Aarhus Convention) said that it would be necessary to decide which obligations needed to be actively complied with. Some Articles were general, while others were more specific. Parties that were Range States to those Appendix II species listed for cooperative action might have obligations, just as they had for Appendix I species.

Marco Barbieri (Secretariat) said that his understanding was that Concerted and Cooperative Actions had been devised by the Scientific Council relating respectively to Appendices I and II as a means of highlighting species through the COP. Cooperative Action was often seen as a possible first step towards concluding or as a substitute for an Agreement. COP11 agreed to streamline the two threads under the name “Concerted Action”. It had been agreed that at the time of listing, some indication of the type of action and a timeframe were also needed. This guidance was new and had yet to be tested. The obligations arising from Concerted Actions were less formal than listing on Appendix I, but did entail an undertaking by Parties to act through a conservation plan or enhanced capacity-building.

The representative of Argentina raised the issue of the procedures when reports were requested, asking what Parties would be required to do. It would be helpful to have a list of all the obligations from the Convention text differentiating between where the wording was firm (shall) and more flexible (should).

The Chair agreed that these were fundamental questions to be addressed in devising a review process, but stressed that there was no intention of amending the Convention itself.

Mr Chambers said that currently Parties were meant to submit national reports to the COP and the UNEP-WCMC prepared an analysis. There was however little follow-up action to take measures to fill gaps, address failings, learn lessons or identify priorities for remedial action.

Ms Bolshakova (UNFCCC) said that UNFCCC had found it useful to look at how Parties report but was alarmed at low submission rates. Ms Nobbe said that the CITES COP had issued specific guidance to Parties on compliance prioritizing their obligations to submit reports, designate national authorities and pay their subscriptions as priority actions, amongst others, for which the Standing Committee could recommend compliance measures, if Parties did not comply.

Explaining why reporting rates were lower under CMS than AEWA, Mr Chambers said that CMS had used the online system for the first time in the run-up to COP11 and some of the questions were too long, leading to a reversal in the trend of improving the number of reports received. The reporting template would also be aligned more closely with the Strategic Plan, which itself was aligned to the Aichi Targets and the Sustainable Development Goals, and more support would be offered to Parties in drafting their national reports.

Mr Stroud (Ramsar) said that the Ramsar Convention achieved reporting rates of 82 per cent because the Secretariat took steps to encourage Parties to comply by ensuring that they saw an added value in providing the information.

Mr Dereliev (AEWA) said that AEWA's success with reporting was the result of efforts on the part of the Secretariat to make Parties respond. The first time that online reporting was used the response rate had been 71 per cent. Reporting and monitoring were linked and aligned to the Strategic Plan and the analysis included a performance table so Parties could see how well they were doing.

Ms Garforth (CBD) said that with regard to the Biosafety Protocol the Compliance Committee had been instrumental in pushing up reporting rates and in the second round a response rate of 95 per cent had been achieved (it had dropped to just over 70 per cent in the third round, however).

The slides making up Ms Nobbe's presentation can be found at Annex 3 of this report and have been posted on the [Working Group's](#) pages of the CMS website.

Examples of review mechanisms within the CMS Family

- **AEWA Experience**

Mr Dereliev (AEWA Secretariat) gave an overview of the operation of the AEWA Implementation Review Process (IRP) and the four cases dealt with so far.

The IRP had been established at the Fourth Meeting of the Parties (MOP) in 2008 under the terms of Article VI 9 (e) of the Agreement which foresaw the establishment of "such subsidiary bodies as [the MOP] deems necessary to assist in the implementation of this Agreement". The Standing Committee had developed a mandate for addressing incidents with (potentially) adverse effects.

An information sheet had been prepared allowing anyone to submit a case. When a submission was received, it was reviewed by the Secretariat, which could either seek further information or refer the case straight to the Technical Committee. The Technical Committee then advised on whether to proceed. Where a case was to be pursued, the Secretariat wrote to the Government of the Party concerned, asking about sending a mission including an independent international expert.

The non-punitive procedure worked well when the government concerned cooperated. In this regard, AEWA had two good and two bad experiences. It was also frustrating when the process was drawn out. The cases took a long time, but they could just as easily be settled quickly in the right circumstances.

The process needed a Focal Point in the secretariat staff (not necessarily a dedicated staff member working full time on the IRP) and adequate funding. Missions might typically cost €20,000 for travel and consultancies, but there was no core budget allocation, so voluntary contributions had to be sought.

Some submissions did not pass the initial screening by the Secretariat and were withdrawn when further information was not provided or alternative solutions were found. The Technical Committee could also turn down the case as could the Standing Committee. Some cases were not considered significant enough to merit opening an IRP case.

There was scope for using the IRP to address an emergency, but these would require swifter action, and so far no such case had arisen.

Mr Owoyesigire (Vice-Chair, Uganda) asked what happened when the Party in non-compliance did not cooperate.

Mr Dereliev said that there were no direct sanctions but indirect pressure could be applied. For example, Montenegro was a candidate applying for EU membership, while Bulgaria as an EU Member State could be referred to the European Court of Justice (ECJ) under the Birds Directive, and could have daily penalties imposed until remedial action was taken.

Mr Ebbesson (Aarhus Convention) asked on what grounds had any of the three filters in the AEWA System (Secretariat, Technical Committee or the Standing Committee) rejected a case and whether there were intermediate options between dropping a case and referring it to the ECJ. He also asked what output was received by the Meeting of the Parties when a case had been concluded and how momentum was maintained in cases which became long and drawn out.

Ms Bolshakova (UNFCCC) asked if there was a clear point at which it could be determined that a Party was in non-compliance and would the complainant have to show that all domestic avenues had been exhausted before recourse had been taken to an international forum.

Mr Dereliev said that it was clear in the four cases that had occurred to date that the Agreement's provisions were being infringed. It was expected that action should have been taken nationally before reference to AEWA.

Mr Dereliev said that reports were supposed to be published when the cases were concluded. The only one available was the one relating to the Syrian Arab Republic; the one relating to Iceland would be posted soon. It was also possible for countries to settle cases through correspondence.

Mr Dereliev said that so far all the cases had been initiated through complaints made by NGOs. It was possible that in future there might be cases resulting from self-referrals by Parties, where the Government needed advice on dealing with a problem. Such cases might not result in a full IRP but instead advice would be offered to support a Party in resolving a case.

Mr Chambers found it interesting that AEWA had an IRP, which it did not necessarily use. He had been approached by NGOs, that had seen news reports of damaging acts on migratory species and the criticism was made that CMS was not taking any action. While this was often not the case, as CMS did write to governments behind the scenes asking for explanations or for changes in plans or policy, outside of a formal procedure, a formal review process, such as the IRP of AEWA, would allow CMS to respond officially to complaints and raise issues with Parties.

The slides making up Mr Dereliev's presentation can be found at Annex 4 of this report and have been posted on the [Working Group's](#) pages on the CMS website.

- **ACCOBAMS Experience**

Florence Descroix-Commanducci, (Executive Secretary of ACCOBAMS) gave her presentation over the phone.

The five-member Follow-up Committee had been established in November 2013 through Resolution 5.4. Parties had not wanted a compliance committee but a procedure following up on implementation. The committee was elected at the Meeting of the Parties (MOP) with three members from the Parties and two from the recognized partner organizations. The committee was to meet annually and had only had one meeting so far (in March 2016). Cases were initially submitted to the Secretariat, which had one week to contact the Party concerned, which in turn had three months to respond to the Follow-up Committee. There was no set format for submissions.

There was one submission pending as it had been received too late for consideration by the March meeting. The recommendations of the Committee were to be sent to the MOP in the form of a report.

As the process was new, it was impossible to say how useful it had been, but the number of complaints from NGOs had fallen, possibly because there now was a formal procedure in place.

The Follow-up Committee had to assess the submission and determine whether the complaint was valid and substantiated.

An allocation of €5,000 had been made in the budget to cover the costs of a one-day meeting of the Committee. Most of the Committee's work could be conducted through email, so physical meetings were kept to a minimum.

In response to a question on confidentiality from Mr Ebbesson (Aarhus Convention), Ms Descroix-Comanducci said that the discussions in the Follow-Up Committee were confidential but their report was made public when it was submitted to the MOP.

In response to a question about site visits from the representative of Norway, Ms Descroix-Comanducci said that there was no provision for expert missions as it was not a compliance committee and there had been no suggestion so far that sending in an expert would be necessary, but this option might be considered.

Examples of implementation review mechanisms outside of the CMS Family

- **CBD (Cartagena & Nagoya Protocols) Experience**

Ms Garforth (CBD Secretariat) provided some background information on the Convention on Biological Diversity and its two protocols.

CBD had come into effect in 1993 and had near universal membership with just the USA and the Holy Sea not having ratified it. The Cartagena Protocol on biosafety had been negotiated in 2000 and had entered into force in 2003 and now had 170 parties. The Nagoya Protocol had been negotiated in 2010, entered into force in 2014 and had 85 Parties (more ratifications were expected as the COP approached). It dealt with access and benefit sharing.

The Cartagena Protocol had a 15-member compliance committee (three members per geographic region) with the members serving in personal capacity. The committee had met 15 times. Parties could either refer themselves or other Parties under the procedure adopted. There was also a general provision requiring compliance under the Protocol as a whole to be kept under review.

The 2010 Conference of the Parties/Meeting of the Parties (COP-MOP) extended the mandate to cover Parties failing to issue a report or where there was evidence of a Party struggling to comply. Under the Protocol a biosafety clearing house had been established; this was an online system for Parties to enter their data.

The Nagoya Protocol had a similar committee with 15 regional members plus two indigenous and local community (ILC) representatives with observer status. There had only been one meeting to date. The procedure was based on Parties' self-referral, Parties referring each other or as a recommendation of the COP-MOP. Learning from the Cartagena experience, the Nagoya process had a wider remit from the outset covering non-reporting and evidence of difficulties. Article 12(1) required Parties *"to take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources"*.

The Committee under the Biosafety Protocol had not received a valid submission triggering compliance procedures – two submitted from NGOs had been ruled inadmissible. The Committee had focused on general compliance issues brought to light from national reports, and the COP-MOP welcomed the advice provided. Dialogue was maintained with Parties on compliance, with letters from the Secretariat and later direct contact from the Chair of the Committee. One recommendation made was that the GEF should provide financial support to Parties with their national reports.

At its 13th meeting the Committee had recommended that COP-MOP8 should issue cautions to three Parties that had never submitted a national report. One of three had subsequently sent in a report.

The Cartagena Compliance Committee in practice met annually, although provision had been made for two meetings a year, but as no cases had been submitted meetings had been deferred. There was an allocation of US\$45,000 in the core budget to cover the costs of the Committee. The participation of all members even those coming from developed countries was funded including the indigenous and local community observers.

It was difficult to estimate the staff time committed to the process. A number of staff members gave small amounts of time. There was no one staff member for who the compliance procedures was their main task.

Regarding actions, Ms Garforth said that the Committee could provide advice, make recommendations to the COP-MOP about financial and other assistance, or request that the Party prepare a compliance action plan. The COP-MOP in addition could ask the Executive Secretary to add a note in the Clearing House. As there were no Parties that persistently failed to comply, there were no examples of stricter measures being imposed, but these were unlikely to include withdrawal of eligibility to GEF funding.

The slides making up Ms Garforth's presentation can be found at Annex 5 and have been posted on the [Working Group's page](#) of the CMS website.

- **Bern Convention Experience**

Ms Nobbe read from a written submission provided by Iva Obretenova of the Council of Europe's Bern Convention.

The Standing Committee was practically the Convention's governing body. It had a range of tools at its disposal, including an extensive reporting system (biennial reports, general reports, legal reports, thematic reports and follow-up reports on the implementation of recommendations) as well as a case filing system. While all Parties are obliged to submit biennial reports on the use of exceptions under Article 9 of the Convention, the general reports are voluntary and cover Parties' implementation of the Convention over four-year cycles. The Secretariat prepares a compilation of all reports as an analysis of the overall implementation of the Convention. Legal reports and thematic reports are Party-specific and based on the work of independent experts with Parties having the possibility to comment on reports. Follow-up reports on the implementation of specific recommendations are prepared by Parties themselves. All reports are submitted to the Standing Committee for consideration and possible findings of recommendations.

The case file system was a unique tool and it allowed NGOs and private individuals to have a case opened. The Bureau submitted serious cases to the Standing Committee, which decided whether a file should be opened, operating by consensus. Some case files dragged on and the actions taken came too late to prevent the harm being done. One problem was the capacity of the small Secretariat to deal with the amount of cases submitted.

The representative of France said the Bern Convention system represented a huge reporting burden on Parties with the biennial report for which there were some overlapping issues with EU reporting but the species list was not identical, all the other requirements and case files. Any citizen could raise a complaint which multiplies the potential file to deal with.

The representative of Norway agreed that while anyone could make a complaint, a case had to have the support of at least one Party to be taken forward. She agreed that more could be done to close files more quickly, although some files were closed if they had been taken up through European Union processes.

Mr Dereliev (AEWA) described how cases were sent to the Bureau, which either upheld them and submitted them to the Standing Committee or dismissed them. The Bureau met twice a year. The Standing Committee decided whether the cases referred to it should have a file opened.

In answering a query about the filtering system given that Bern had such large amount of cases compared with AEWA's four, the representative of Norway said that the Bern Convention Secretariat received the complaints and referred them to the Bureau. The decision on a case rested with the Standing Committee, and usually the Bureau's recommendation was followed.

Mr Dereliev said that it was a considerable burden and time commitment for meetings to examine all the cases. At the Bern Convention Standing Committee, examining the case files took 1-2 days, often overwhelming the agenda so that some cases received insufficient attention. The Standing Committee with 44 member countries was too large for the task.

Mr Dereliev said that the Iceland case had been a joint effort between AEWA and the Bern Convention. It had started under the Bern Convention before being taken up under AEWA. It had been good to bring in a second legal framework as this had added to the pressure on Iceland, and Bern and AEWA had been able to share resources.

The representative of Norway said that the Bern Convention Standing Committee could not impose sanctions but only make recommendations to a Party.

Mr Ebbesson (Aarhus Convention) said that it was not necessarily for the COP to decide cases. It would be more appropriate to give this role to the Standing Committee or a body specially created.

The text of the Bern Convention Secretariat's submission is attached to this report as Annex 6.

- **Ramsar Convention experience**

David Stroud (on behalf of the Ramsar Secretariat) described Article 3.2 case files, the Montreux Record and Ramsar Advisory Missions, which had evolved from the Ramsar Monitoring Procedure. While the original draft of the Ramsar Convention had no reference to a budget or Conferences of the Parties, it did mention compliance.

The Ramsar Convention had a good record with regard to Parties submitting national reports. The format was linked to the Strategic Plan and was designed to help assess implementation.

Regarding compliance, Article 3.2 of the Convention related to changes that had happened, were happening or were likely to happen to the ecological character of wetlands (with climate change, probably therefore all sites qualified). Dialogue with the Secretariat could be opened when a Party reported itself or was reported by third parties. Opening a file was less serious than under the Bern Convention. At the time of the last COP, there were 144 open files.

COP4 set up the Montreux Record for sites under threat and partially linked to Article 3.2. This system was not working well and no new cases had been reported since 2010.

Ramsar Advisory Missions (RAMs) were started in 1988 and 79 had been undertaken so far. These were a solution-based process drawing on the best expertise available to the Convention to address problem cases. Missions might involve public meetings and all resulted in a draft report which was sent to the Party concerned for consultation before being published and used as the basis for follow-up action. The cost of a mission varied depending on its complexity and the number of experts involved. There was no core funding and the process was dependent on voluntary contributions.

A review of RAMs had been carried out and they were found to be more effective than the Montreux Record. The process had been revamped and was constantly evolving as lessons were learnt from best practice. Elements that did not work were abandoned and those that did were fine-tuned.

Article 8.2 set out the duties of the Secretariat including maintaining a list of wetland sites and to receive information regarding changes to their ecological character. Reviewing the status of sites was a standing item at the COP, with a summary prepared for each Party and the list of all open Article 3.2 cases was presented. Currently 66 cases resulted from self-reporting and 64 from third parties. While this system provided a reasonable overview, there was little follow-up at the COP.

Despite the growth in the number of designated Ramsar Sites, there was no parallel increase in the number of RAMs or entries on the Montreux Record. Both were in decline, in the case of RAMs because of the lack of funds and the Montreux Record because the process was withering away.

The representative of Switzerland said that the Swiss Government paid voluntary contributions towards RAMs but on condition that the Party concerned did some preparatory work, had at least some idea of what action it would take and was committed to finding a solution.

The representative of Uganda made a comparison with the UNESCO Man and Biosphere (MAB) programme where cases might take ten years to resolve.

Mr Stroud explained that Ramsar Parties were required to report every six years on the status of wetlands, but some Parties were behind. This regular reporting should help trigger Article 3.2 where changes were apparent. Verification of complaints made by third parties was a difficult issue, especially where the Party concerned did not confirm the situation. The COP had also asked for a report on the state of the world's wetlands report and this was likely to be produced for each triennium and would rely on remote sensing. Its focus would be ecological rather than political.

In answer to a question about how cases were closed, Mr Stroud said that the process had the strength that it encouraged dialogue, and informal, early discussions often led to cases never formally being opened.

Mr Stroud said that the original idea was for the process to be a conveyer belt (notification, addition to the Montreux Record, action, denotification), but the system broke down as missions became too expensive. Organic development over the 40-year history also meant that the system had evolved. Were it to be freshly invented now, it would be designed completely differently.

Sending a RAM indicated that an international body was aware of a case and put pressure on Governments often helping Environment Ministries in their arguments with other Government departments. One case in the UK resulted in Dutch experts providing new advice on hydrological problems which had led to a solution.

The representative of Australia commented that Australia had faced 30 cases notified by third parties entailing considerable burdens on the ministry. She asked whether the bar had been set too low. Mr Stroud assumed that trivial complaints were filtered out but was unable to assess the workload arising from the process for the Secretariat.

The slides making up Mr Stoud's presentation can be found at Annex 7 of this report and have been posted on the [Working Group's pages](#) on the CMS website.

- **CITES Experience**

Ms Nobbe (CMS-CITES Officer) said that CITES was considered to be an effective MEA and had a powerful tool in being able to recommend trade sanctions for a country in species or specimens. It had other tools available to it too. CITES decisions were made by voting and many votes were held at each COP.

The CITES treaty included review obligations and Article 13 required the Secretariat to communicate to management authority if trade in species was considered detrimental. An enquiry (similar to a mission) could be called for with the participation of experts. Amongst other measures, Parties could be asked to elaborate a plan setting out remedial actions.

Sectoral reviews were done regularly, including periodic reviews of species (under which the listing of a species was examined), significant trade (under which the volume of trade was examined and recommendation made to Parties on controlling trade), national legislation (funded by the EU, which found that half of CITES Parties did not have appropriate legal provisions in place), reporting (Parties reported annually on their trade) and wildlife trade policy (which had examined governance issues, including what worked and what did not).

Regarding compliance, the threat of trade sanctions was the main deterrent. Resolution 14.3 included a non-binding guide to the compliance procedure to ensure fair, quick, effective and transparent application of the compliance measures. The guide also provides that compliance measures be taken with regard to Parties' strict obligations and sets out a range of measures available to enforce compliance. The COP and the Standing Committee were the main bodies dealing with compliance, and should adopt a supportive and non-adversarial approach, and they should react mainly but not exclusively to information in national reports.

An example of a compliance tool was the National Ivory Action Plans (NIAPs) process, where twenty-two Parties had been selected for closer scrutiny because of their record on illegal trade in ivory after data provided by the ETIS Report of TRAFFIC. The Parties concerned had been given leeway in the type of actions that they should implement and timeframe in which to comply. Support was being received from the Secretariat and outside experts and NGOs relating to capacity-building and other activities and some had access to GEF funding.

The costs of operating the process were quite high and there was one dedicated professional staff member and consultants supporting the NIAP process.

The slides making up Ms Nobbe's presentation can be found at Annex 8 and have been posted on the [Working Group's pages](#) on the CMS website.

Recap of Day 1

The Secretariat circulated the list of obligations from the CMS Convention text.

Examples of review mechanisms outside of the CMS Family (II)

- **Aarhus Convention Experience**

Jonas Ebbesson (Chair of the Aarhus Compliance Committee) explained that the Aarhus Convention had 47 Parties from Iceland to Kazakhstan, including all EU Member States and the EU itself. The Convention's three pillars were (i) access to information, (ii) the right to participate and (iii) access to justice.

The compliance review process was not confrontational and was non-judicial. Its current nine members were not government employees, but were mainly lawyers, and included one former civil servant.

Communications could be triggered by the public, self-referrals or Parties complaining about other Parties. There had been 140 communications and two submissions, one past and one current one involving Lithuania and Belarus.

The communication was sent to the Party for a response and hearings took place in Geneva. The Committee prepared its findings in draft and the Parties had the opportunity to comment.

The position at the time of MOP5 in 2014 was that 14 Parties were in non-compliance. So far the MOP had always upheld the Committee's findings in cases.

At first, it was Eastern European countries that had the most cases against them, but the geographic spread was now wider. Parties in non-compliance had to report on the remedial actions that they were taking. Turkmenistan had been on the list for a long time, but was now making progress after ten years.

Problems dealt with under the Aarhus Convention fell into two categories. The first were failings of a general nature, such as inadequacies of legislation. The second category related to specific events, acts, omissions or situations leading to concerns from the neighbouring country.

The cost of the system was quite high as nine experts had to travel to Geneva for four days four times a year. Some Secretariat staff time was needed to support the meetings. The Committee worked mainly in English, but there were some interpretation costs, as reports needed to be translated.

Crucial elements of the Aarhus system were that the committee was independent, had integrity (with conflicts of interest addressed) and had the trust of Parties. It was seen as effective and fair and was looking at ways of speeding the process up to deal with the workload without compromising quality.

Mr Ebbesson estimated that a quarter of communications led to findings of non-compliance, and the MOP usually endorsed the Committee's findings. He also estimated that a quarter was rejected, although some had some merit and needed to be rewritten and resubmitted. In terms of complying with the Committee's recommendations, Governments did not have the excuse of excessive costs, as revealing information did not involve much expense.

The representative of Norway asked whether Parties agreed that it was preferable to have members of the Committee who were independent of government, as people with experience of how ministries worked would have practical insights. Mr Ebbesson said that not all Parties were entirely content. The Committee members were appointed at the MOP and could be nominated by Parties, non-Signatory States and NGOs.

Regarding the aims of missions, Mr Ebbesson said that the one to the UK was principally about explaining the Convention to the devolved authorities in Scotland, Wales and Northern Ireland. In Armenia the aim was to encourage the Government to take the last step of enacting the proposed legislation.

There had also been interest in acceding to the Convention from countries outside of Europe and some of the guidelines had been translated into Chinese. The new Argentinian Government was interested in becoming a Party to the Aarhus Convention and Mr Ebbesson recalled that Argentina had made enquiries about the Convention some time before.

The slides making up Mr Ebbesson's presentation can be found at Annex 9 of this report and have been posted on the [Working Group's page](#) of the CMS website and more information about the Compliance Committee can be found on the [Aarhus Convention's website](#).

- **UNFCCC Experience**

Marianna Bolshakova (on behalf of the UNFCCC Secretariat) said that reporting lay at the heart of the UNFCCC. There were three agreements: UNFCCC, the Kyoto Protocol directed at developed countries and the Paris Agreement, which with 180 Signatories and 28 Parties to date, was likely to enter into force soon.

UNFCCC contained general principles, while the Kyoto Protocol had more focus on mitigation measures for developed countries. The Paris Agreement had universal obligations taking into account the level of development of a country, the country's needs and its history of CO₂ emissions.

The biennial reports submitted by Parties were subject to expert scrutiny and peer review and were open to inter-Party discussion. The reviews were undertaken in batches as it was not feasible to deal with all 190 at the same time.

Expert Review Teams (ERT) were drawn from a roster of people nominated by Parties from various sectors. These experts underwent training and had to sit examinations and so far 469 had passed the tests. Despite these numbers it was often quite difficult to construct a team with the requisite knowledge, as people were not available at the same time.

The Kyoto Compliance Committee had two streams – the Facilitative Branch (FB) and the Enforcement Branch (EB), with 20 members and 20 alternates (ten of each for the two branches). The FB issued a warning if it was likely that a case would be referred to the EB. Dialogue often led to erroneous assurances being given by a Party that all was in order when no action was being taken and the situation was deteriorating.

“Questions of implementation” (QOI) related to the mandatory language contained in decisions rather than the treaty itself. QOIs were referred to the Bureau and then to either the FB or EB, with most being passed to the latter, triggering a complex series of steps, starting with a “decision to proceed”, submission of information, hearings, calls for expert advice, preliminary findings, the Party's comments and a final decision. The Party concerned could be subject to trade sanctions and would be expected to produce a plan to address the failings identified. The duration of the process was typically 4-5 months for final decision and one year to 18 months for compliance.

Eight Parties were subject of QOIs, there had been eight findings of non-compliance and six suspensions of eligibility. All Parties found to be in non-compliance had with one exception been brought back into compliance. Efforts were being made to improve the consistency of reviews, as over the years so many different people had been involved.

New opportunities and challenges would arise following the conclusion of the Paris Agreement, with its provisions on transparency and mechanism for facilitating implementation and compliance. Article 15 provided for a small committee of twelve experts which was to act in a non-adversarial, non-punitive way.

Some of the more punitive provisions of the Kyoto Protocol such as trade sanctions would disappear, and the language of the Paris Agreement was softer so as not to deter countries from signing.

Ms Bolshakova explained that the Kyoto Protocol would remain but as its targets would expire in 2023 it would become obsolete. Its final fate rested with the Parties. The Paris Agreement would take over some of the existing processes and the experts would have to be retrained, but as the guidance had evolved, they had had to undergo retraining any way. The new system would not have centrally imposed targets but nationally determined contributions, upon Parties would have to report.

The slides making up Ms Bolshakova's presentation can be found at Annex 10 of this report and have been posted on the [Working Group's page](#) of the CMS website.

Discussion of pros and cons of presented implementation review mechanisms

The Secretariat circulated a list of eleven key questions, which the Working Group should consider:

- Is there a need for implementation reviews?
- Is there a need to establish thresholds to raise issues of non-implementation?
- How important have regular versus ad hoc reviews been?
- What have been useful triggers to alert cases of non-implementation?
- What have been useful sources of information of non-implementation?
- Is there a need to filter cases of non-implementation, and if so, how could they be filtered?
- What have been effective methodologies to carry out reviews?
- What is an effective institutional set-up for implementation reviews?
- Is there a need for allocation of resources to review implementation?
- What consequences have proven to be effective to support Parties' implementation?
- Are there any "do nots"?

The representative of France said that the AEWA model was the most appropriate for CMS, as it concentrated more on species conservation than processes, and was not expensive to operate. It should be recognized that the CMS budget was kept under close scrutiny by Parties. Mr Dereliev (AEWA) stressed that costs (€20,000 might be the typical cost) would vary considerably, being higher if several experts had to go on mission. He added that while Europe had many MEAs and political structures, this was not the case in some other regions, where a review process would be a valuable addition.

Mr Ebbesson (Aarhus Convention) said that looking at MEA development over the years, review or compliance elements were a major feature and this prevented Parties from claiming unwarranted good records in implementation. Implementation reviews showed that MEAs took their responsibilities seriously. With CMS having much in common with EU legislation and the Bern Convention, a system could be devised that took account of these parallel processes.

The representative of France said that his Ministry was facing cut-backs and that there were concerns over cost-effectiveness. Together with Germany and the UK, France did not consider establishing a process to be a high priority at this time. The representative of Norway reiterated Norway's view that a mechanism was necessary, but that it did not need to be an elaborate system. The ACCOBAMS Committee met once each year and cost little.

Ms Bolshakova (UNFCCC Secretariat) sought clarification on the main purpose of a review process. If it was to identify failings in implementing the Convention as a whole, then a light process examining why the submission rate for national reports was so poor might suffice. Investigating specific cases would need more infrastructure, but costs could be minimized by working through email or video links rather than face-to-face meetings. The amount of staff time dedicated to the process in UNFCCC amount to less than 10 per cent of one officer, and synergies could be found with other treaties (e.g. UNFCCC and the chemicals cluster).

On the issue of whether CMS could afford a review process, Mr Stroud (Ramsar Convention) turned the question round, asking whether CMS could afford not to have one, given that it could lead to better implementation in the longer term.

In summarizing the existing structures from other bodies, it was noted that the Bern Convention dealt with its cases through the annual Standing Committee (the Bern Convention's body closest to a COP). It seemed more appropriate to give responsibility for the review process to a smaller body. A filter system should be put in place to eliminate trivial cases. A dual approach to triggering cases should be considered, using the Parties' national reports which were already analysed as well as submissions from third parties such as NGOs. Existing structures could be adapted as had happened with AEWA and its Technical Committee, so it was not necessary to create new tiers of bureaucracy. Non-compliance was an issue for many treaties, and having a procedure was an incentive for Parties to meet their obligations. A range of responses should be available both "carrots" and, more rarely, "sticks", based on examples of good practice.

Mr Ebbesson (Aarhus Convention) cautioned against reliance on national reports provided by the Parties themselves, because of the risk that the Parties would try to put a positive gloss on their achievements. He opposed the zero option as there were low-cost alternatives that would not create too many additional burdens on Parties or the Secretariat.

Ms Garforth (CBD Secretariat) said that under the Biosafety Protocol the combination of self-reporting and Party-to-Party reporting had not led to many cases. The Committee meetings looked at problems of implementation in general, so some general issues get aired informally without cases. Messages were relayed from the Committee back to the regions and specific countries, facilitating dialogue which helped the Committee to draft its recommendations.

The representative of Uganda observed that the UNFCCC process seemed too complex for CMS, and the examples with smaller committees appeared more suitable. In addition, the Convention needed to know what was happening on the ground, and one could not rely on what the national reports contained.

The representative of Australia stated that the Ramsar Convention, looking at potential impacts, had opened the floodgates, so it would be important to build sufficient filters into the system to eliminate trivial cases. Not all MEAs allowed third parties to trigger cases, and used self-reporting, party-to-party reports or relied on the Secretariat as custodian of national reports to initiate cases.

Mr Ebbesson (Aarhus Convention) said that with filters it should be defined who could and could not trigger a case and a *de minimis* threshold to determine the seriousness of cases that would be accepted. A contact address could be provided on the website together with a form to complete.

Ms Bolshakova (UNFCCC) said that the Espoo process had a committee trigger rather than third party complaints, but this did not preclude third parties from approaching the Committee.

Mr Dereliev (AEWA) said that trigger in the AEWA process was the decision of the Standing Committee to open a case on the basis of information received from whatever source. This could be the media as was the case with the bird netting in North Africa. The trigger was not the receipt of the information. Having a checklist, based on the obligations arising from the Convention would help to keep the number of cases down. CMS also benefitted from a long-standing and close working relationship with NGOs, so it would be controversial to be seen to exclude them from the process.

Mr Chambers said that CMS already approached Parties on the basis of news reports and communications from concerned NGOs. There had been instances involving the fishing of manta rays, the construction of roads through national parks and hunting of antelopes in the Sahara.

Mr Ebbesson (Aarhus Convention) said that most treaties contained provisions to settle disputes, but these were only invoked as a last resort, since using them could sour relations and governments were unwilling to commit the resources. The low number of cases did not mean however that the underlying problem did not exist.

Ms Garforth (CBD) on the use of media reports said that it would be unwise to use such on genetic modifications, as such reports were often of questionable objectivity. This problem might be less likely under CMS.

With regard to establishing non-compliance and bringing Parties back into compliance, Ms Nobbe said that CITES cooperated with other Partners, such as the UN Office on Crime and Drugs, the World Bank, UNDP and NGOs to support Parties with implementation and return to compliance.

Mr Ebbesson (Aarhus Convention) said that sanctions had a marginal effect compared with adverse publicity. "Naming and shaming" was too negative. Opening dialogue was the better option as it helped raise awareness in Government circles. The case involving Turkmenistan was protracted but in the end a solution was found. He said that some treaties had assigned a role to the Secretariat in monitoring implementation, an example being the Air Pollution treaty. One criterion for accepting cases could be that all domestic avenues had been explored and exhausted.

The representative of France said that it was important to ensure that any process brought added value. The European Commission served as a watchdog and deterred EU Member States from not complying with EU legislation. There was a need for synergies between various compliance mechanisms where overlaps existed, and agreement should be reached which body would act as champion for each case. The format of the CMS national reports should also be re-examined to ensure that it was suited to assessing compliance and implementation.

Both UNFFCCC and CBD had looked at the procedures used by the WHO and guidance notes had been prepared. Ms Garforth (CBD) said that she would circulate the guidance that CBD had prepared for the Biosafety Committee.

Presentation of Consultant's Paper on Options and Scope for Potential CMS Review Process

Mr Chambers made a presentation outlining the options contained in the consultant's paper. The consultant had been asked to prepare a range of concrete options including the status quo.

Option 1 was based on the CITES Model (see paragraph 60 of the paper); Option 2 was based on the AEWA model (paragraph 61 of the paper); Option 3 was based on the information contained in the National Reports (paragraph 62) while paragraph 64 described a customized approach. Paragraphs 68-70 described the status quo.

Comments on Paper by Working Group members

The representative of Uganda said that the steps set out under Option 3 did not seem to give the Party a chance to respond. Mr Chambers agreed but said that elements from different options set out on the paper could be combined.

Ms Bolshakova (UNFCCC) said that there would be some common elements while others would be unique to one option. This could be clearly reflected in the presentation of the options. Regarding Option 3, she said that it was better for the sake of transparency not to have small subgroups, as the debate in Plenary was an important part of the process. It was also important to maintain a roster of experts on call to deal with different types of case.

Mr Chambers said that the idea of a roster should be explored at the next meeting of the Working Group. CMS had a source of expertise in its Scientific Council with COP-appointees and those nominated by the Parties.

The representative of Norway saw some problems with Option 3 as there was just one entry point via the national reports and the process would be tied to the three-year cycle of the COP. It was also pointed out that basing the process on national reports would be difficult given the low response rate.

Mr Ebbesson (Aarhus Convention) felt that the zero option was not viable and it would be an anti-climax having set the review process in motion. He said that it would be preferable for the Secretariat to have a neutral, administrative role and leave the decisions to other bodies. He agreed with Norway that national reports while

useful should not be the only trigger. Looking at the AEWA and ACCOBAMS models, an option taking elements from both of those might be a suitable approach.

Mr Dereliev (AEWA) asked whether the Working Group was expected to identify one preferred option or a series of options highlighting the advantages and disadvantages of each. In any case, he felt that some of the wording could be modified and the heading titles changed. He also suggested that the options might be better presented in tabular form rather than having the sequence of steps.

The Chair referred to the terms of reference for the Working Group which stated that it was to forward options (plural).

Mr Stroud (Ramsar Convention) suggested that the body responsible for the review process could be a sub-group of the Standing Committee and could meet the day before the full Committee to minimize costs. As the main objective of the exercise was to ensure better implementation of the Convention, at the very least existing reports should be used more effectively.

The suggestion that the Standing Committee as a whole should initially be responsible received some support. If the burden was too great, then a sub-Committee could be established.

Mr Dereliev (AEWA Secretariat) commented that the national reports did not present the information necessary for considering implementation reviews and Parties might edit them to present themselves in a better light. Using the COP to review the reports and deal with compliance cases would be time-consuming, with ten cases needing several days' deliberation. National reports should be a trigger included in other options, falling under a broad definition of the source of information. Self-reporting systems led to fewer cases as Parties tended not to want to have cases opened against them.

The representative of Uganda said it was important to consider who initiated cases. Parties should have a role in order for them to feel ownership of the process and to become involved.

The Chair suggested that initial dialogue between the Secretariat and the Party should be built into any process to see whether opening a formal case could be avoided.

Assessment of existing bodies of CMS to exercise the functions of a review process

The Chair said that the possible candidates for assuming the leading role in a review process had been identified as the Standing Committee, a Sub-Committee similar to the Budget Sub-Committee and the Sessional Committee of the Scientific Council. The COP had been mentioned, but some opposition had been voiced to this option.

Mr Chambers asked about the role of the technical bodies within the AEWA and Ramsar processes.

For Ramsar, Mr Stroud said that the STRP was used for RAMs (its members were the pool of potential experts) and for adding or removing sites from the Montreux Record. The CMS Scientific Council could well have the requisite expertise.

Mr Dereliev (AEWA Secretariat) said that when the IRP was set up, no role was foreseen for the AEWA Technical Committee. However, the Technical Committee was now one of the primary filters in the process. This was something that CMS might emulate with the Scientific Council being assigned a similar role.

The representative of Norway stressed that dialogue with the Party concerned should be part of any process. Mr Dereliev agreed, stating that any questions should be referred to the Scientific Council in all appropriate circumstances, learning from the Bern Convention experience, as some cases were complex and needed expert intervention and advice. There was a risk of politicizing the Secretariat, so all cases could automatically be referred to the Scientific Council, leaving it to say whether it needed to become involved.

Mr Ebbesson (Aarhus Convention) said that under the Aarhus compliance process most cases are legal in nature rather than scientific. He advocated retention of the option of referring cases to the Scientific Council and allowing it to draw in outside expertise. He questioned using the whole Standing Committee as the body responsible, as smaller groups were better suited to drafting reports. Mr Dereliev (AEWA) however pointed

to the imbalance of expertise on the Scientific Council, where ornithologists were well represented but there were few experts for some other taxa. There would also be cases with no biological aspect and the Scientific Council would not have any input. The AEWA Technical Committee did have a legal expert and it might well be that members of the CMS Scientific Council had other relevant specialisms or experience.

Mr Chambers said that the Standing Committee examined the details of budgetary matters through a dedicated sub-Committee and a similar arrangement could be made for a review process. He also said that “Amicus briefs” could be another source of useful information. Mr Ebbesson agreed but advised against using the term because of its legal overtones. In the Aarhus Convention evidence presented by NGOs was read and used, but it should be for the responsible body to decide what evidence to consider.

The representative of Norway wondered about the suitability of the Sessional Committee with 15 regional representatives and all the COP-appointed Councillors as it might be too large. Mr Stroud added that in the experience at AEWA, using the whole Technical Committee served as a buffer to protect the Secretariat’s impartiality.

Ms Bolshakova (UNFCCC) felt that a body of 15 members was the optimal size. It was also important to have set deadlines for the submission of evidence as problems had arisen with UNFCCC when documents arrived on the day of a meeting. She then raised the question of conflicts of interest. Mr Dereliev (AEWA) said that one member of the Technical Committee was excluded from examining the IRP case in the Syrian Arab Republic because he was a Syrian national. Formal rules on conflicts of interest had been adopted at the most recent AEWA MOP.

Mr Ebbesson (Aarhus Convention) said that it was important to engender trust through openness. Allowing any person to trigger a case was part of the answer, and the review committee should be allowed discretion in deciding which evidence to take into account. The Secretariat should publish an announcement on its website publicizing the procedure.

The representative of Norway said that at the Bern Convention cases were usually brought by an NGO and supported by a Party. Although this was an unequal partnership, as cases had to be supported by the Parties, it was necessary as Parties generally were reluctant to accuse each other.

Mr Ebbesson said that it would be helpful if some incentives scheme could be developed such as assisting Parties through a mechanism similar to the GEF. Mr Chambers suggested that consideration be given to setting up a voluntary fund for compliance or using the Small Grants Fund in the event of it being replenished to help Parties meet their obligations. With regard to sanctions, suspension of voting rights and support for sponsored delegates could be used.

Way Forward

The Secretariat would circulate a preliminary list of best practice and lessons learned elements within two weeks and elaborate a range of worked-up options using the AEWA model as a basis but taking into account other good practice and elements from other models. The slides of the presentations would be posted in PDF format on the CMS website.

It had been very useful to have had people at the table with practical knowledge of other review and implementation processes.

The next meeting of the Working Group would be all day on 7 November and the morning of 8 November 2016 (the Standing Committee was scheduled to start on 9 November and the Budget Sub-Committee would meet on the afternoon of 8 November). These dates might facilitate the presence of more observers.

The representative of Switzerland requested sight of a copy of the AEWA IRP pro forma. Mr Dereliev confirmed that this was publicly available but pointed out that it was very specific to the AEWA circumstances.

Mr Ebbesson (Aarhus Convention) said that the Working Group should present a full range of options, from the status quo, through minimalist procedures to comprehensive ones.

The Secretariat would prepare a paper for circulation outlining the main issues in addition to the full report of the meeting. Any comments of a factual nature on the consultant's paper were to be submitted to [Clara Nobbe](#) at the CMS Secretariat within two weeks.

Wrap-up

The Chair said that she had found the past two days very informative and thanked all the participants for their active participation, the Secretariat for having organized the meeting and Switzerland for its voluntary contribution. Mr Chambers thanked Ms Montgomery for chairing the meeting and Mr Owoyesigire for his support as Vice-Chair. The meeting closed at 16:00.

1st Meeting of the Working Group on the Development of a Review Process under the Convention on Migratory Species

Bonn, 19-20 September 2016

Background

Introduction to the origin and the mandate of the Working Group

CMS Secretariat

COP11 Resolution: Preamble

Elements to take into consideration:

- Most major multilateral environmental agreements have established a process for facilitating implementation and providing support to those Parties experiencing difficulties with implementation
- Two agreements have review mechanisms
- Compliance with the Convention's obligations and the effectiveness of implementation measures are critical to the conservation and management of migratory species
- Paragraph 5, of the Convention, which provides that “the Conference of the Parties shall review the implementation of this Convention” and may, in particular, “make recommendations to the Parties for improving the effectiveness of this Convention

COP11 Resolution: Preamble

- Resolution 10.9, Activity 16, of the Future Structure and Strategies for CMS, which establishes a medium-term priority (by COP12–2017) to “improve mechanisms to measure implementation of CMS and its Family ... and identification of gaps and propose measures to close these gaps”
- Article IX, paragraph 4, of the Convention, which directs the Secretariat “to invite the attention of the Conference of the Parties to any matter pertaining to the objectives of this Convention”;

COP11 Resolution: Operational Parts

- Launches an intersessional process to explore possibilities for strengthening implementation of the Convention through the development of a review process
- Instructs the Secretariat to propose terms of reference for a working group to be considered for adoption by the Standing Committee at its 44th Meeting
- Instructs the Standing Committee at its 45th Meeting to review any progress, if a working group is established, and report to the 12th Meeting of Conference of the Parties

COP11 Resolution: Operational Parts

- Instructs the Secretariat to support the process;
- Requests UNEP, Parties and other donors to provide financial assistance to support the development of the review process;
- Requests the Secretariat, where possible, to reduce costs by convening potential meetings of the Working Group in the most cost-effective way

Terms of Reference of 44th Standing Committee

Objective

To compare existing review mechanisms that strengthen implementation of other Multilateral Environmental Agreements (MEAs), including the agreements established under Article IV(3) of CMS; define the most appropriate, cost-efficient and effective options of a review process for CMS; and prepare a report with recommendations for consideration to the 12th Meeting of the Conference of Parties to CMS.

Terms of Reference of 44th Standing Committee

- Discuss a comparative analysis of best practices of existing review mechanisms of MEAs, including the CMS Family agreements, taking into account their advantages, disadvantages and the cost involved;
- Discuss an assessment of the feasibility for an existing body within CMS to exercise the functions of a review process (e.g. Standing Committee);
- Prepare options for a CMS review process, including: determination of what parts of the instrument and its resolutions be part of the review process; cost analyses; and financial and institutional implications for CMS.

Terms of Reference of 44th Standing Committee



1

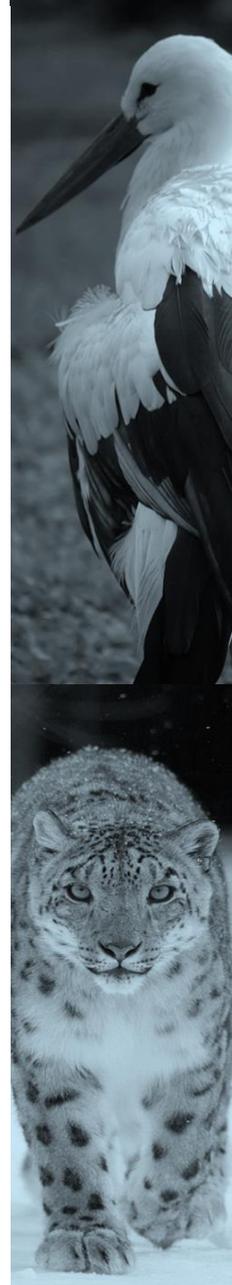
- 44th Meeting of the CMS Standing Committee (14-15 October 2015)
- Adoption of Terms of Reference for and establishment of Working Group



2

- First Meeting of Working Group – stand-alone (June 2016)
- Determination of structure of work and consideration of existing review mechanisms; Discussion of options for review mechanism and recommendations to CMS Conference of Parties

3

- Second Meeting of Working Group back-to-back with 45th Meeting of the CMS Standing Committee (2016)
 - Submission Review of Progress
- 

Terms of Reference of 44th Standing Committee

4

- If required - Third Meeting of Working Group (First half of 2017)
- Continuation of discussion started at First Meeting if required

5

- 12th Meeting of the CMS Conference of Parties (October/November 2017)
- Submission of Report

Terms of Reference of 44th Standing Committee

All options will be considered under the principles of cost-efficiency and effectiveness as well as practicality and practicability for the Convention. The option of retaining the status quo ('zero option') will also be considered.

Work Arrangements

The Working Group will determine the structure of its work at its first meeting. Where at all possible, the Working Group will utilize existing meetings to conduct its work in order to reduce costs. The Secretariat will make available all expertise as required, including that of external consultants and experts if needed.



THANK
YOU



1st Meeting of the Working Group on the Development of a Review Process under the Convention on Migratory Species

Bonn, 19-20 September 2016

General Overview of Implementation Review Mechanisms

CMS Secretariat

Overview

- General overview of implementation review mechanisms.
- Introduction to the objectives and general features of review mechanisms.
- How they work.
- Why they are important.
- What is their scope.

Background

- 2000 Malmö Declaration, environment ministers and heads of delegation recognized the “alarming discrepancy between commitments and action” and “the central importance of environmental compliance, enforcement and liability” for reversing negative global environmental trends.
- Concern over implementation will grow as environmental problems become more acute and gain more political concern

Living up to Commitments

- That time is upon us, clearly countries are concerned with “implementation” of commitments
- “The Future We Want” has 151 references for the need or implementation
- Resolutions on the 2030 Agenda adopting the SDGs has 49 references to “implementation”
- Paris Agreement makes 33 references to “implementation”

Are we Implementing our Commitments?

- CITES which is one of the best enforced and implemented conventions and which is drawing close to universal membership has found in its National Legislation Projects that only 85 countries are thought to generally meet the implementation of CITES (category 1).
- Even CBD, which has capacity-building and assistance through the GEF for enabling activities such as the development on the NBSAPs, has only 87 countries that have submitted national strategies that take into account the Aichi Targets and 97 countries still have not submitted post 2010 NBSAPs.
- At CMS we have no monitoring or any means of evaluating the level of implementation at the national level. Reporting levels indicate a low level of implementation. COP 11 only 49 countries filed national reports.

What is Implementation?

- What is implementation? It's the fulfilment of commitments and undertakings made to other countries. It encompasses all action by countries to fulfill the objectives of the Convention.
- What types of commitments are there?
 - There are soft commitments such as pledges, expressions of support, promises of best endeavors etc
 - There are legally binding obligations clearly stated in international treaties or agreements.
- International law uses both approaches to promote cooperation between countries on a given subject

Approaches to Implementation

- Tracking and measuring overall progress
- Tracking hard Obligations only
- Facilitative vs punitive



What does a Implementation Review Mechanism look like?

- It is a process to examine whether commitments and/or obligations have been met by a party to a convention.
- Review processes are designed to facilitate the fulfilment by the Contracting Parties of their obligations by constructively engaging the Party alleged not fulfilling implementation commitments
- A Compliance mechanisms does not fit MEAs that do not have an incentive system to instigate compliance. A facilitative approach is more appropriate
- The process can be elaborate or it can be simple:

Example of “Simple” Institutional Approach

- Uses existing institutional structures in the MEAs
 - Subsidiary bodies such as advisory committees, technical/scientific bodies, standing committees,
- Uses existing reporting and monitoring systems to assess implementation
- Uses self-reporting, secretariat for launching reviews
- Only deals with “triggered” cases no all cases or scheduled reviews
- Relies on voluntary commitments and actions to promote implementation
- **Examples:** Basel Convention, ACCOBAMS, AEWA, and many others, rely solely on a facilitation approach to non-compliance. Instead of imposing sanctions for non-implementation, these review processes depend on collaborative assistance through the provision of technical and other support to assist the non-complying Party come into implementation.

Example of “Elaborate” Institutional Approach

- Creates new structures for monitoring and reviewing non-implementation (e.g compliance committee)
 - Dedicated reporting system and reviews
 - Scheduled Implementation reviews
 - Provides dedicated funding for assisting implement or become compliance
 - Examples: Montreal Protocol, Kyoto Protocol, Espoo Convention, and Basel Convention have established separate review committees and scheduled reviews

Institutional Structures

- MEAs have adopted different institutional structures for their review processes:
- CITES, AEWA, and the Bern Convention rely on existing institutional structures—specifically, their secretariat, Standing Committee, and meeting of the Conference of the Parties—to fulfil various roles of their respective review processes.
- In contrast, ACCOBAMS, the Montreal Protocol, Kyoto Protocol, Espoo Convention, and Basel Convention have established separate review committees to undertake the necessary tasks.
- Within these two approaches, variations exist. For example, the Basel Convention allows non-Parties to be members of the review committee; the Montreal Protocol does not. The Montreal Protocol's review committee includes ten Parties; the Basel Convention's review committee includes 15 members. The Montreal Protocol requires recommendations of its review committee to be adopted by the Meeting of the Parties; AEWA does not. The Basel Convention's review committee may recommend actions that a non-complying Party should take to come into compliance; further action by the Conference of the Parties is needed only after the review committee has failed to bring the non-complying Party into compliance.
- The CITES and AEWA Standing Committee have authority to make final recommendations to the Party under review. Because the CITES and AEWA Parties meet as Conference/Meeting of the Parties roughly every three years, delegating this responsibility to these Standing Committees ensures that non-compliance issues get addressed as quickly as possible.

How Does Review Mechanisms work? Triggers

- Raising a concern so called “triggers”
- A party through, for example that it receives documentation/information that raise compliance issues (e.g. Montreal Protocol, Kyoto Protocol, CITES)
- Secretariat (e.g. Montreal Protocol, Basel Convention, ACCOBAMS, and CITES) the MEA’s secretariat may initiate the review of a Party’s implementation. As the repository of national reports and other documentation
- Self-reporting, thus accessing the assistance to the party
- NGO can trigger, (e.g. AEWA resolution does not specify who may trigger the process, stating only that the AEWA Standing Committee’s role in the process is triggered “upon receiving information” concerning adverse impacts to waterbirds or their habitats.

How does a Review Mechanism Work?

Actions to Facilitate Implementation

- Provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
- Request special reporting from the Party concerned;
- Issue a written caution, requesting a response and offering assistance;
- Recommend specific capacity-building actions to be undertaken by the Party concerned;
- Provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;
- Send a public notification of a compliance matter through the Secretariat to all Parties advising that compliance matters have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- Issue a warning to the Party concerned that it is in non-compliance, e.g. in relation to national reporting and/or the National Legislation Project; and
- Request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion

Benefits of Reviewing Implementation

- *Protects the environment and natural resources* by ensuring that the goals of the MEA, for example, protection of migratory species, are met.
- Eliminating “Free riding” and *Ensures fairness* by helping to make all Parties pay the costs associated with providing conservation and other benefits resulting from compliance with treaty obligations.
- *Promote Credibility Promotes credibility* by ensuring that the MEA is seen as effective, not ineffective or dysfunctional.
- *Directs technical assistance efficiently* by identifies compliance issues of specific Parties so that technical and other assistance can be directed efficiently.
- *Identifies and resolves systemic compliance problems* affecting more than one Party.
- *Promotes the Rule of law and good governance* by ensuring respect for international treaty obligations.
- Provides Transparency

Do review Facilitative Mechanisms Work?

- Yes they are shown to be just as effective in ensuring compliance and implementation as punitive measures
- Studies in WTO, Human rights and in MEAs have shown this?
- Why?
- Engage parties, promote cooperation, and facilitate financing.

What must Parties think about for a Review Mechanism for CMS?

- What are key Considerations for a Implementation review mechanism?
 - What is the value added to a mechanism? Benefits vs Status Quo
 - What triggers the review process?
 - Scheduled or dedicated review?
 - Who may trigger the review process?
 - What is the institutional structure of the review process?
 - What actions are available to facilitate implementation?



THANK
YOU



Possible anchors for review in CMS



Clara Nobbe
Joint CMS-CITES Programme Officer
CMS/CITES Secretariat

Fundamental principles of CMS

- Take individually or in cooperation steps to conserve species and their habitat (Art. II 1.)
- Take action to avoid any migratory species becoming endangered (Art. II 2.)
- *Should* promote, cooperate in and support research relating to migratory species;
- *Shall endeavour* to provide immediate protection for migratory species included in Appendix I;
- *Shall endeavour* to conclude Agreements covering the conservation and management of migratory species included in Appendix II.



Specific objectives of CMS

Appendix I listed species (Art. III):

- Lists species, which are endangered
- Parties *shall endeavour*:
 - Conserve and restore habitats of importance
 - Prevent, remove, compensate for or minimize adverse effects of activities or obstacles impeding the migration of species
 - Prevent, reduce or control factors endangering the species
- Parties *shall prohibit the taking of animals*, except if it is for scientific purposes; for enhancing the survival; for accommodating needs of traditional subsistence users; or extraordinary circumstances.



Specific objectives of CMS

Appendix II listed species (Art. IV and V):

- Lists species, which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which could significantly benefit from international cooperation;
- Object of each agreement *shall be* to restore the species to a favourable conservation status or maintain it in that favourable status. Each agreement *should deal* with the with those aspects of conservation and management which serve to achieve that object.



Effectiveness of CMS

Global Biodiversity Outlook 4 provides:

- “Despite individual success stories, the average risk of extinction for birds, mammals and amphibians is still increasing (Target 12).”
- “Taking current commitments into account, the element of Target 11 on conserving 17 per cent of terrestrial areas by 2020 is likely to be met globally, *although protected area networks remain ecologically unrepresentative* and many critical sites for biodiversity are poorly conserved.”



How can we make CMS more effective?



Parties' review, report and financial obligations under CMS

Collective:

- Each Agreement *should* establish, if necessary, appropriate machinery to assist in carrying out the aims of the Agreement, to monitor its effectiveness, and to prepare reports for the COP. (Art. V 4. d))
- Where appropriate and feasible, each Agreement *should* provide for, but not be limited to periodic review of the conservation status of the species concerned and the identification of the factors which may be harmful to that status. (Art. V 5. a))



Parties' review, report and financial obligations under CMS

Individual:

- The Parties *shall* as soon as possible inform the Secretariat of any exceptions made pursuant to Art. III 5. (Art. III 7.)
- The Parties *shall* keep the Secretariat informed in regard to which of the species listed in Ap. I and II they consider themselves to be Range States, including provision of information on their flag vessels engaged outside national jurisdictional limits in taking the species concerned, and where possible, future plans in respect of such taking. (Art. VI 3.)
- Each Party *shall* contribute to the budget according to a scale agreed by the COP. (Art. VII 4.)



COP's authority to review and recommend

- At each of its meetings the COP *shall* review the implementation of this Convention and may (Art. VII 5.)
 - review and assess the conservation status of species;
 - review the progress made towards the conservation of species, especially those listed on AP. I and II;
 - make recommendations to the Parties for improving the conservation status of species and review the progress being made under Agreements;
 - make recommendations to the Parties for improving the effectiveness of this Convention;
 - decide on any additional measure that should be taken to implement the objectives of this Convention.
- The COP may recommend to the Parties that are Range States of a species listed in Ap. I that they take further measures considered appropriate to benefit the species (Art. III 6.).



Existing review and report measures

- National reporting: Currently refined in light of adoption of Strategic Plan.
- Concerted and cooperative action: Based on Article VII – review of conservation status of selected Ap. I and II species at each COP. Currently consolidated and refined.
- Contributions: No funding provided for participation in CMS meetings to Parties that have not paid their contributions for three consecutive years. (CMS Res 11.1, para. 8)



Questions arising:

- Based on which obligations could a review process be anchored?
- Based on the objectives of the Convention as well as collective and individual obligations on Parties:
 - What is the scope for collective and individual review of implementation?
 - What could be the subject of review to make collective and individual implementation more effective?
 - What could be the triggers for collective and individual reviews of implementation?
 - How can review be tailored to make collective and individual implementation more effective?





AEWA Implementation Review Process (IRP)

Enhancing the Implementation of the Agreement

Sergey Dereliev
UNEP/AEWA Secretariat



Presentation overview

- Background & procedure
- Brief overview of the IRP cases to date
- Lessons learned



Background & procedure

IRP established by MOP4 in 2008 (Resolution 4.6) in accordance with Article VI.9(e). Dedicated webpage: www.unep-aewa.org/en/activities/irp

Standing Committee (StC) mandated to address incidents of (potential) adverse effects on migratory waterbirds or on their sites/habitats as a result of human activities.

Procedure established after MOP4:

- IRP information sheet on possible cases available on AEWA website: www.unep-aewa.org/en/activities/irp;
- When the Secretariat is notified of a possible case, the information received is forwarded to the Technical Committee for advice;
- TC advice is then forwarded to StC for consideration and decision on whether to open an IRP case or not;
- The StC Chair / the Secretariat approach the CP requesting more information to assess the case and if needed to undertake an on-the-spot assessment mission by an independent international expert team;
- The StC submits its recommendations to the CP and invites reports on their implementation.

SYRIAN ARAB REPUBLIC: Illegal hunting of the critically endangered Sociable Lapwing (*Vanellus gregarius*)



- **TRIGGER:** IRP info sheet submitted by BirdLife Middle East about regular hunting incidents at SL roosts during migration. Case opened by the StC in September 2009.
- **ACTION TAKEN:** In February 2010 an AEWA on-the-spot assessment mission took place. Based on the missions report the AEWA StC submitted recommendations to the relevant national authorities.
- **STATUS:** Ongoing / on hold (due to ongoing political situation)

MONTENEGRO: Drainage of the Salina of Ulcinj for Tourism Development



- **TRIGGER:** In December 2011 both AEWA and CMS Secretariats received information from various sources and sent a letter in consultation with their respective Standing and Scientific/Technical Committees. Case opened by the AEWA StC in early 2012.
- **ACTION TAKEN:** The Secretariat undertook consultations for a possible joint mission with the CMS, Ramsar and Bern Conventions. Lack of response from the Government of Montenegro until early 2015. In April 2015 the Secretariat attended an international conference on Ulcinj Salina which resulted in a list of action points with clear deadlines and responsibilities. The StC adhered to these action points and asked the government to report regularly.
- **STATUS:** The StC is monitoring the progress of implementation by the Government and updating its recommendations.

BULGARIA: Windfarming project adjacent to Lake Durankulak posing risk to the globally threatened Red-breasted Goose (*Branta ruficollis*)



- **TRIGGER:** In February 2012 the Secretariat received IRP info sheet from BSPB/BirdLife Bulgaria concerning plans for a new windfarm to be situated directly between the roosting and feeding sites of Red-breasted Geese in the vicinity of Lake Durankulak.

Up to 90% of the global RbG population is known to winter in the Lake Durankulak and adjacent Lake Shabla area.

- **ACTION TAKEN:** Lengthy correspondence with the Government of Bulgaria. On-the-spot assessment mission declined by the Government due to ongoing appeals and hearing in the court of justice. The Secretariat met with representatives of the Ministry of Environment. One new protected area designated and another enlarged.
- **STATUS:** Further information and update expected before the StC to decide on the next steps of the procedure.

ICELAND: Icelandic forestry policy - lowland afforestation threatening breeding habitats of AEWA-listed waterbird species



- **TRIGGER:** In April 2014 the Secretariat received IRP info sheet from Fuglavernd (BirdLife partner in Iceland) concerning plans for large-scale state-subsidised lowland afforestation mainly for timber production and involving non-native species of trees.
- **ACTION TAKEN:** In July 2014 a joint AEWA/Bern/Ramsar/CAFF on-the-spot assessment mission was welcomed by the Ministry of Environment and finally took place in May 2016 (narrowed down by the Government to an AEWA/Bern mission). In September 2016 a detailed draft mission report was produced and submitted to relevant national authorities for review and comments.
- **STATUS:** Feedback on the report from the Icelandic Ministry of Environment is expected. The Report will be submitted to the StC to decide on the next steps of the procedure. The Bern Convention StC will consider this report too.

Lessons learned

- Useful and successful only when Government is committed to address the issue at stake
- Long-term commitment of all involved required
- Resource needs
 - Secretariat staff
 - Finances - ca. 20,000 EUR per case (mission costs); core budget allocation useful
- Critical review of potential cases necessary
- Possibly suitable for emergency cases (not attempted)

© Sergey Dereliev



Time for questions



Annex 5

Experience with the compliance procedures and mechanisms of the Cartagena & Nagoya Protocols to the CBD

Kathryn Garforth

Legal & Policy Officer

Secretariat of the Convention on Biological Diversity

Introduction



Cartagena Protocol on Biosafety

- Adopted in 2000
- Entered into force in 2003
- Currently has 170 Parties

Nagoya Protocol on Access and Benefit-sharing

- Adopted in 2010
- Entered into force in 2014
- Currently has 85 Parties

Both treaty texts mandated development and adoption of procedures and mechanisms on compliance

- Article 34

- Article 30

Compliance procedures and mechanisms adopted by first meeting of the Parties to the respective Protocols

- Decision BS-I/7 (2004)

- Decision NP-1/4 (2014)

Both decisions establish Compliance Committees and procedures on compliance

Cartagena Protocol on Biosafety – compliance procedures & mechanisms



- **Institutional mechanism → Compliance Committee**
 - 15 members (3 per region) elected by Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP)
 - Members serve in their personal capacity
 - 13 meetings of Committee to date
- **Cooperative procedures**
 - Committee shall receive, through the Secretariat, any submissions relating to compliance from:
 - (a) Any Party with respect to itself;
 - (b) Any Party, which is affected or likely to be affected, with respect to another Party.
 - Committee also reviews general issues of compliance
 - 2010: COP-MOP adopted decision BS-V/1 which expanded scope of intervention of Committee:
 - Committee may now take certain measures if a Party fails to submit its national report, or information has been received through a national report or the Secretariat, based on information from the Biosafety Clearing-House, that shows the Party concerned is faced with difficulties complying with its obligations under the Protocol
 - Based on experience from first 5+ years of the Protocol and Committee's emphasis on its supportive role

Nagoya Protocol on ABS – compliance procedures & mechanisms



- **Institutional mechanism → Compliance Committee**

- 15 members (3 per region) plus 2 representatives of indigenous and local communities (ILCs) who serve as observers. All are elected by Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP)
- Members + ILC observers serve in their individual expert capacity
- 1 meeting of Committee to date

- **Cooperative procedures**

- Committee shall receive any submissions relating to issues of compliance and non-compliance with the provisions of the Protocol from:
 - (a) Any Party with respect to itself;
 - (b) Any Party with respect to another Party
 - (c) The COP-MOP.

CBD

Nagoya Protocol on ABS – compliance procedures & mechanisms



- Cooperative procedures

- Development of procedures was also informed by experience of Biosafety Compliance Committee and so also incorporated the following procedure:

Committee may examine a situation where a Party fails to submit its national report, or where information indicates that the Party concerned is faced with difficulties complying with its obligations under the Protocol. Such information may be received:

- (a) Through a national report or from the ABS Clearing-House;
- (b) From the Secretariat based on:
 - (i) Information on the completeness or accuracy of a Party's national report;
 - (ii) Information on the completeness or accuracy of the information submitted by a Party to the ABS Clearing-House; or
 - (iii) Other information related to compliance with Article 12(1) of the Protocol; provided by a directly affected ILC, related to provisions of the Protocol.

CBD

Biosafety Compliance Committee - Experience to date



- Committee has not received a submission that would trigger compliance procedures
- Early work of Committee focused on general issues of compliance, particularly from analyses of national reports and completeness of information on the Biosafety Clearing-House
 - Recommendations from the Committee have been well received by COP-MOP and incorporated into decisions adopted by the meeting.
- More recent work has focused on implementation of supportive role of Committee as modified by decision BS-V/1
 - Committee has requested Secretariat to contact Parties on specific compliance issues. Followed by letters from Chair of Committee
 - Committee developed recommendation that led to GEF providing financial support to assist Parties to complete their national reports.
 - Contributed to very high rate of reporting for 2nd national reports (95%)
 - 13th meeting: Committee recommended that COP-MOP 8 issue a caution to 3 Parties that had not submitted a national report to date
 - One of these three Parties has now submitted their 3rd national report
- Committee now meets 1/year
 - US\$45,000 per meeting
 - Included in the core budget

CBD



Thank you

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**Convention on
Biological Diversity**



**COP12 / MOP7 / MOP1
PYEONGCHANG KOREA 2014**

Monitoring the implementation of the Bern Convention

By Iva Obretenova, Secretary of the Bern Convention, 16/09/2016

The Standing Committee of the Bern Convention,- its governing body composed of Contracting Parties and observer States and organisations, including INGOs and NGOs- has a range of tools for reviewing compliance of Parties and for supporting their efforts in implementing the Convention.

1. The reporting system

There are different types of reporting under the Convention, although only one of them is compulsory:

- **Biennial reports:** the only compulsory report for Parties, as provided for in Article 9 of the Convention. According to Art. 9 of the Convention, all Parties making use of the exceptions allowed in accordance with the provisions of the article, must submit a report on these exceptions every two years, including a scientific assessment of the impact of these exceptions on the protected species listed in the Appendices.

The Secretariat makes a compilation of these reports and presents these to the Standing Committee at its annual meeting.

- **Advantages:** Adopting the ORS (on-line reporting system) has triggered more and timely compliance by parties to their reporting obligations. The Secretariat extracts the reports from the system in order to make a compilation. These reports and the information they provide are thoroughly used when the alleged cases of violation (complaints through the case-files system of the Convention – see point 2) are debated.
- **Disadvantages:** These reports and the information they provide are still underused, mainly because making an analysis of the information they provide would result in additional costs.
- **General reports:** in 1995, the Standing Committee created a voluntary system of reporting by Parties on the national implementation of the Convention, covering the previous 4-year period. The last period covered by currently received general reports is 2010-2014.

The Secretariat makes a compilation of these reports and present these to the Standing Committee at its annual meeting each year.

- **Advantages:** The general reports provide important and very useful information on both the legal and scientific aspects of the application of the Convention.
- **Disadvantages:** These reports and the information they provide are largely underused, mainly because making an analysis of the information they provide would result in additional costs. Part of the difficulty in using these reports more is the fact that they are sent with important delays and that generally it is usually the same countries that are sending them.

- **Legal reports:** every year the Standing Committee has the possibility to commission a legal and policy report to an independent expert on the implementation of the Convention in a given Contracting party. The report is presented to the Standing Committee and the party concerned is given the opportunity to comment.

The Secretariat prepares the ToR for the independent expert, launches the procedure for the contract signature and manages its further production according to the contract.

- Advantages: the costs involved in the production of these reports (mainly expert fees) are not very high, depending on the specificities of the ToR and the report that is requested. These reports are extremely useful when a case-file (see point 2) is open against a country on which the report is commissioned.

- **Thematic reports:** Reports prepared under the different thematic Groups of Experts, addressing specific conservation problems, which may give birth to new standard setting through recommendations. In addition, Parties may be asked to report on different issues in relation to the topics of the agenda of the Groups of Experts. These are also reviewed and presented to the Standing Committee and might result in the adoption of new Recommendations.

Usually, these thematic reports are commissioned to independent experts. The Secretariat prepares the ToR for the independent expert and launches the procedure for the contract signature and manages its completion. The Secretariat usually supports and reviews the work of the expert in order to ensure an optimal result according to the expectation of the Committee and which could allow new standard setting when necessary.

- Advantages: the costs involved in the production of these reports (mainly expert fees) are not very high, depending on the specificities of the ToR and the report that is requested.

- **Follow-up of Recommendations:** The Standing Committee reviews the implementation of a selection of previous recommendations (184 Recommendations adopted by the Committee by September 2016). Parties are requested to submit their reports on the implementation of the given recommendation.

- Advantages: the review of implementation through follow-up of previous recommendations is practically non-existing, although the Secretariat is charged to prepare a summary of the reports received in order to facilitate the assessment by the Standing Committee.

2. Case-file system (including on-the-spot appraisals):

The case-file system of the Convention is a unique monitoring tool based on complaints for possible breaches of the Convention that can be submitted by NGOs or even private citizens. Its establishment results from a decision taken by the Standing Committee at its 3rd meeting in 1984. The complaints are processed by the Secretariat, the Bureau of the Convention and the Standing Committee according to the merits of the alert received.

The complains which are considered as serious are sent by the Bureau to the Standing Committee, which decides (after discussion and after giving the opportunity to the complainant to present its arguments and to the country to respond to the allegations) whether to open a case against the country concerned or not. The Committee has unfettered discretion regarding the procedure to be followed in cases where the case-file is open and may decide to close a case file. Normally, the Committee decides by consensus.

In some cases, the Committee may consider that further information is necessary and can instruct the Secretariat to organise an “on-the-spot” appraisal, but only if such a review visit is agreed by the relevant Party. The appraisals are entrusted to independent experts, who then provide the Standing Committee with their findings and propose recommendations to the Party. The experts’ recommendations can become those of the Standing Committee itself if adopted through an official Recommendation.

- **Advantages:** Through the case-file system, it is the Standing Committee that reviews the implementation of the Convention in a given Party and thus remains free to find a solution in each case, without being constraint by strict obligations. This flexibility of action for the Standing Committee is at the basis of the success of the case-file system. Contracting Parties voluntarily submit themselves to the peer review and thus to possible international pressure but also support in solving an eventual issue that may arise related to wild species and habitats under threat.

The system has proved to be a good tool for achieving the aims of the convention through international co-operation and peer review.

The costs involved in the production of these reports (mainly expert fees) are not very high. In the case of an on-the-spot appraisal, normally it is the hosting country that bears the costs for its implementation (aside of the expert fees and the costs for travel and subsistence for the expert and at least one Secretariat member).

- **Disadvantages:** The case-file system can be a lengthy tool and in some cases it has reached its limits, in particular when the complaint has been submitted too late and when for instance, the implementation of a development project has already started.

In addition, the case-file system is one of the most time-consuming tasks for the Secretariat of the Convention, but also for the Standing Committee. Around 10 to 15 new complaints are received each year and their processing represents a big work burden for a small Secretariat. These new complaints come on top of all the other files that are already open or considered as possible and still discussed by the Standing Committee.

Processes to review implementation of Ramsar Convention



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

Annex 7

1. Context of overall implementation

2. Article 3.2 of the Convention

Article 3.2 case files

Montreux Record

Ramsar Advisory Missions (formerly Ramsar Monitoring Procedure)

3. Article 8.2 of the Convention

Implementation overview



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

National reports

- Structure is highly linked to Strategic Plan
- Specifically designed to aid implementation assessment
- High reporting rate. At COP12 = 82% of 168 Parties

Implementation overview



CONVENTION ON WETLANDS
(Ramsar, Iran, 1971)

National reports

- Regional summaries – prepared for and discussed within Regional group meetings at each COP

The logo for the 12th Meeting of the Conference of the Parties to the Convention on Wetlands (Ramsar, Iran, 1971) features the word "Ramsar" in a stylized font with a sun and water elements, and the text "Punta del Este 2015 - COP12" and "Wetlands for our future" below it.

12th Meeting of the Conference of the Parties to
the Convention on Wetlands (Ramsar, Iran, 1971)

Punta del Este, Uruguay, 1-9 June 2015

Ramsar COP12 DOC.13 Rev.1
English only

Regional overview of the implementation of the Convention and its Strategic
Plan in Oceania

- Overall – process gives clear understanding of overall levels of implementation and future needs

'Compliance' processes



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

1. Ramsar Sites

- Article 3.2
- Montreux Record
- Ramsar Advisory Missions

2. International co-operation

3. Wise-use of all wetlands

} No compliance
processes

Article 3.2



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

Each Contracting Party shall arrange to be informed at the earliest possible time if the **ecological character of any wetland ... included in the List has changed, is changing or is likely to change** as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the [Secretariat].

Article 3.2 files



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

- Parties report Article 3.2 cases to Secretariat
- Third Parties can also report cases to Secretariat – then dialogue with Party
- Case files opened by Secretariat whilst issues remain unresolved
- Report to each COP on status of sites ‘at threat’ (Article 8.2 Report)
- Parties now asked to provide info on all open file cases for each Standing Committee meeting
- 144 open Article 3.2 files at COP 12 (2015)

Montreux Record



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

- Established at COP 4 (1990)
- "The Montreux Record is the principal tool of the Convention for highlighting those sites where an adverse change in ecological character has occurred, is occurring, or is likely to occur, and which are therefore in need of priority conservation attention."
- "A Contracting Party may request inclusion of a site in the Montreux Record, because of potential or actual adverse change in its ecological character, in order to draw attention to the need for action or support."

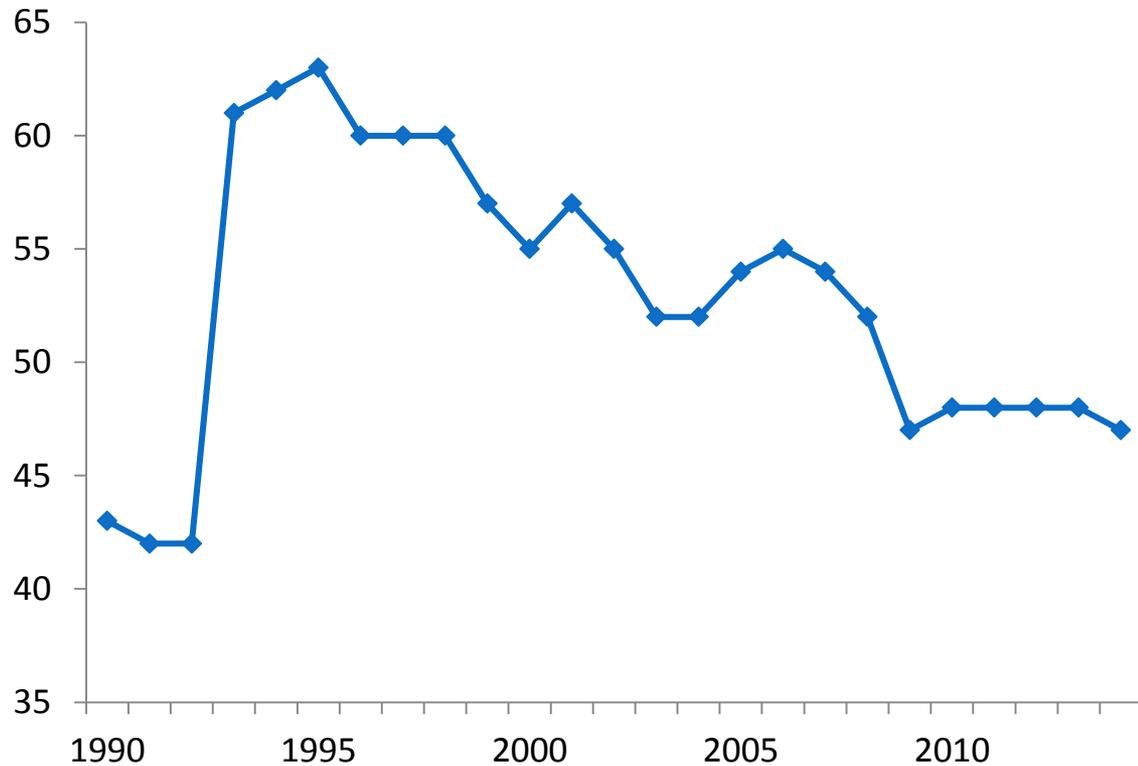
Montreux Record



CONVENTION ON WETLANDS
(Ramsar, Iran, 1971)

- List of Ramsar Sites 'in trouble'
- Unfortunately seen as 'black list'
- Self-reported by CP
- Not an effective process
- No new additions >2010

Number of Ramsar Sites on Montreux Record



Ramsar Advisory Missions



- Established 1988
- Missions to 79 Ramsar Sites
- At the request of Contracting Party
- Solutions focus using best expertise from within Ramsar family
- At least two experts but now typically multi-disciplinary teams
- Missions often joint with other MEAs/IGOs (e.g. Berne, AEW, WHC, IUCN)



Ramsar Advisory Missions



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

- Form and size of mission tailored to specific issues but typically:
 - Site visit(s) by team
 - Public meeting with interested third parties
 - Draft report prepared by mission team
 - Draft sent to Party for comment/correction of factual mistakes
 - Post-consultation report published on web-site
 - Secretariat works with Party to assist follow up and implementation of recommendations

Ramsar Advisory Missions



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

Cost issues

- Variable - according to complexity of issues
- Voluntarily funded often by Parties or international organisations
- Funding a major limitation

Ramsar Advisory Missions



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

Reviewing the review process

- Formerly called *Monitoring Procedure and Management Guidance Procedure*
- 'Learning from doing'

Article 8.2



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

The continuing [Secretariat] duties shall be, *inter alia*:

- to maintain the List of Wetlands of International Importance and to be informed by the Contracting Parties of any [changes] in accordance with paragraph 5 of Article 2;
- to be informed by the Contracting Parties of any changes in the ecological character of wetlands included in the List provided in accordance with paragraph 2 of Article 3;
- **to forward notification of any alterations to the List, or changes in character of wetlands included therein, to all Contracting Parties and to arrange for these matters to be discussed at the next Conference;**
- to make known to the Contracting Party concerned, [COP] recommendations in respect of such alterations to the List or of changes in the character of wetlands included therein.

Article 8.2



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)

- **'State of the Ramsar Site Network'** report to each COP
- Core duty of Secretary General
- Standing COP agenda item
- Summary given for each Contracting Party
- Includes list of all open Article 3.2 cases
- COP can make recommendations



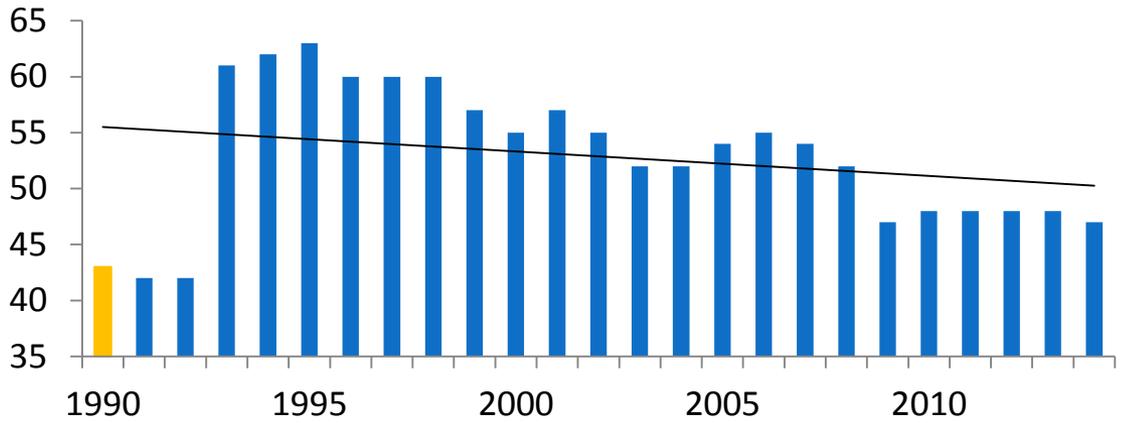
12th Meeting of the Conference of the Parties to
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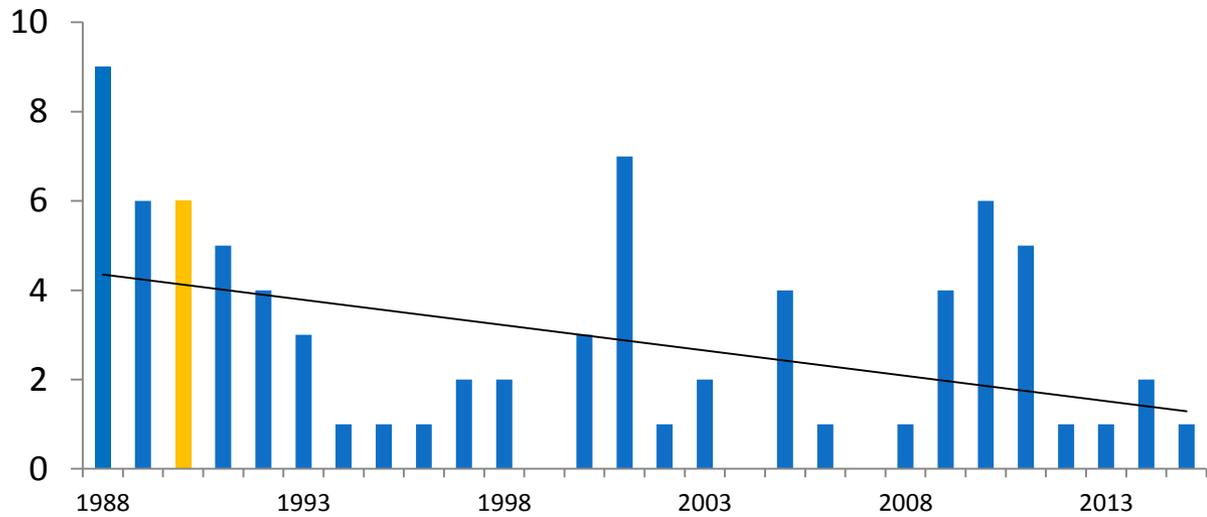
Ramsar COP12 DOC.7

Report of the Secretary General pursuant to Article 8.2 concerning the List of
Wetlands of International Importance

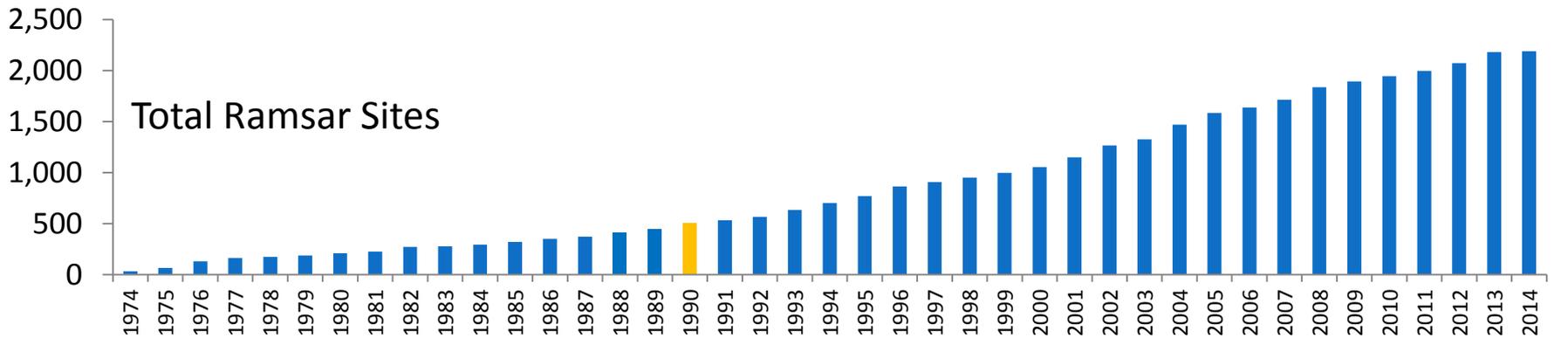
Montreux Record listed Sites



Ramsar Advisory Missions



Total Ramsar Sites

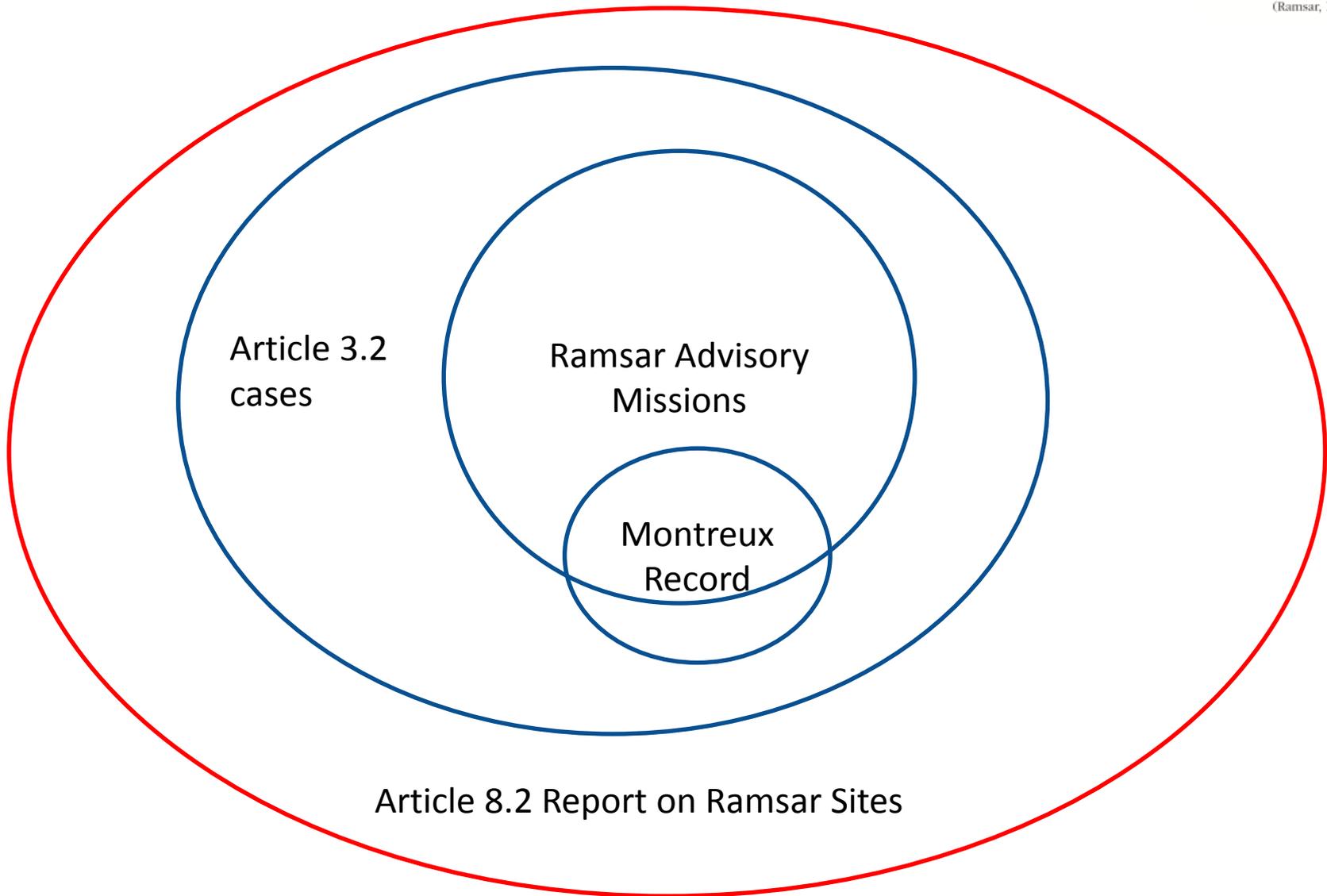


Summary



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)



Article 3.2
cases

Ramsar Advisory
Missions

Montreux
Record

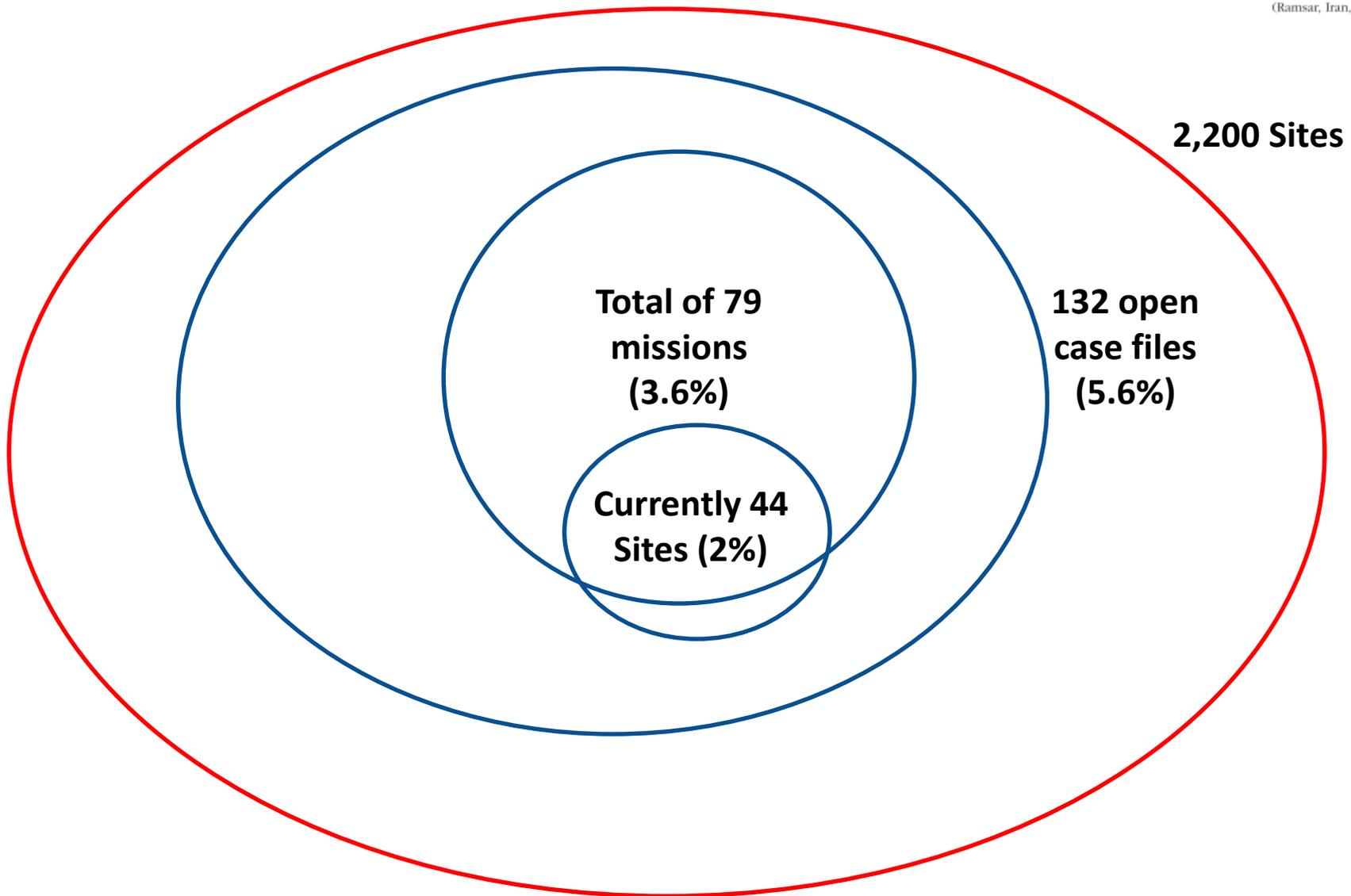
Article 8.2 Report on Ramsar Sites

Summary



CONVENTION ON WETLANDS

(Ramsar, Iran, 1971)



Summary



CONVENTION ON WETLANDS
(Ramsar, Iran, 1971)

	Contract. Party	Third parties	Secretariat	Funding
National reporting	✓		✓ Produces regional syntheses	National + Core budget (Secretariat time)
Article 3.2 cases	✓	✓	✓ compiles	Core budget (Secretariat time)
Montreux Record	✓		✓ Maintenance of list	Core budget (Secretariat time)
Ramsar Advisory Missions	✓	✓	✓	Voluntary contributions
Secretary General's Article 8.2 Report to COP			✓	Core budget (Secretariat time)

Summary: strengths & weaknesses



CONVENTION ON WETLANDS

	Strength	Weakness
National reporting	Parties self report Data used to generate other info products	Parties self report
Article 3.2 cases	Allows sustained dialogue with Party on specific issues	Criteria historically inconsistent & probably too inclusive Process unclear re Ramsar governance
Montreux Record	Process wasn't linked through to Article 3.2	Seen as 'black list' Requires Parties to self-list
Ramsar Advisory Missions	Focussed on finding solutions Inclusive of multiple views Uses best expertise within Ramsar family	Costly, unbudgeted and demanding of Secretariat time Demand exceeds resources
Secretary General's Article 8.2 COP report	Holistic global overview	Reporting mechanism only Little structured follow-through



Reviews of progress in implementing the Convention: the experiences of CITES

Bonn, Germany 20 September 2016

Clara Nobbe, CITES Secretariat



General review obligations

Treaty provides that:

1) Secretariat shall communicate to the Management Authority concerned if:

- App. I or II species adversely affected by trade; or
- Provisions not being effectively implemented.
- Party shall provide facts and suggest remedial action and may request an inquiry.

COP shall review information provided by the Party or resulting from inquiry and may make recommendations

2) COP shall review implementation of the Convention at meetings



Implementation reviews

External reviews authorized by Parties

- *Study on How to Improve the Effectiveness of CITES* (Environmental Resources Management/Price Waterhouse 1996)
- 23 recommendations. Most accepted and implemented. First Strategic Vision and Action Plan for the Convention arose from this process.

Strategic vision review

- CITES Strategic Vision indicators for SV objectives adopted (2008)
- Concern over reporting burden, so existing reporting obligations adapted to provide information required for Strategic Vision indicators
- Indicators developed by Standing Committee
- Together with mapping of CITES Strategic Vision, and its indicators against Strategic Plan for Biodiversity 2011-2020 and Aichi Targets
- Review of achievement of SV objectives by CoP

Ad hoc reviews established by CoP

- Implementation of CoP Resolutions (2000, 2013)



Implementation reviews

Principle sectoral regular reviews established by COP

- **Periodic Review:** Level of protection afforded particular species: Scientific subsidiary bodies
- **Review of Significant Trade:** Biological sustainability of trade being allowed: Scientific subsidiary bodies
- **National Legislation Project:** Adequacy of implementing legislation: Secretariat
- **Reporting:** Fulfilment of reporting obligations: Secretariat
- **Wildlife Trade Policy Review:** Governance systems: Parties



Implementation reviews

Other sector regular reviews established by COP

- Actions taken by Parties to implement the Convention for elephants: Standing Committee
- Status of Asian big cats in the wild, their conservation, trade controls and on measures by Parties to comply with related Resolution and Decisions: Standing Committee
- Progress on shark and ray activities: Animals Committee
- African and Asian rhinoceros species: conservation status, trade, horn stocks, illegal killing, enforcement, conservation actions and management strategies and measures by States to end the illegal use and consumption of parts and derivatives: IUCN/TRAFFIC/Secretariat



Implementation reviews

Compliance

Resolution COP 14.3 - non-legally binding Guide to CITES compliance procedure to:

- facilitate consistent, fair, effective, quick and transparent handling of compliance matters
- draw particular attention to the compliance with strict provisions contained in the Convention
- establish the COP and Standing Committee as principal bodies for handling compliance matters
- ensure that a supportive and non-adversarial approach is taken
- establish national reports, etc. as primary but not exclusive source for initiating compliance procedures
- provide for a range of compliance measures to be taken by the Standing Committee in no particular order



Summary

- No one mechanism but a variety of tools: Policy reviews, scientific reviews, action plans, targeted recommendations
- Several review bodies: COP, Standing Committee, Scientific Committees, Secretariat
- Compliance procedures: COP, Standing Committee,
- Costs are budgeted for each review / compliance tool
- Cooperation with many partners in review and compliance



Aarhus Convention: Structure, practice & experience of the Compliance Committee

Jonas Ebbesson

Convention on Migratory Species
1st Meeting of Review Mechanism Working Group
19-20 September 2016

Aarhus Convention: *Parties*

**Albania
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia & Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
European Union
Finland**

**France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Lithuania
Luxembourg
Malta
Montenegro
Netherlands**

**Norway
Poland
Portugal
Republic of Moldova
Romania
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
The FYROM
Turkmenistan
Ukraine
United Kingdom**

= 47 Parties (including the European Union)

Aarhus Convention: Objective

- In order to contribute to the protection of the **right** of every person of present and future generations to live in an environment adequate to his or her health and well-being, **each Party shall guarantee the rights** of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Aarhus Convention: *General Features*

- **Minimum standards** for:
 - (i) access to information,
 - (ii) public participation in decision-making, and
 - (iii) access to justice in environmental matters
- A clear, transparent and consistent **legal framework** required
- **Rights** of members of the **public**, including **NGOs**
- Broad notions of “the **public concerned**” and “**public authority**”
- **No discrimination** and **no harassments**
- Independent international **Compliance Committee**

Compliance Review – 1

- **Aarhus Convention Compliance Committee**
- **International** complaint procedure
- **Non-confrontational**, **non-judicial** and **consultative** nature
- **Examining** and **facilitative** function
- Fully **independent** from Parties; **9** members **not** employed by gvts
- Considers and reviews:
 - **Communications** from members of the public
 - **Submissions** by Parties,
 - **Referrals** by the secretariat, and
 - specific **Requests by MOP**

Compliance Review – 2

- So far about **140** Communications and **2** Submissions
- For Communications, first decision on **preliminary admissibility**
- Communication forwarded to **Party concerned** for comments
- Further **written** information from parties if needed
- A **hearing** in just about all cases with communicant(s) and Party concerned invited, plus observers
- Committee adopts **draft findings** and send to parties in the case
- Parties in the case make **comments** to be taken into account
- Committee adopts **final findings** – with recommendations if the Party concerned is found non-compliant

Compliance Review – 3

- **Compliance Committee reports** to the Meeting of the Parties (MOP)
- **General report** on compliance issues
- **Special report** for each Party in non-compliance; with findings and recommendations on measures to get in compliance
- **MOP decides** to endorse findings of non-compliance and to make recommendations for the Party concerned
- So far **all** Committee findings of non-compliance endorsed by MOP
- **After MOP5** there are **14 Parties** in non-compliance
- These Parties will have to **report on improvements** to the Committee
- **Compliance Committee** follows up on MOP decisions and reports

Compliance Review – 4

Nature of non-compliance

- **General failure** by a Party to take the necessary legislative, regulatory and other measures to implement the Convention
- **Failure of legislation**, regulations, other measures or jurisprudence to meet specific Convention requirements
- **Specific events, acts, omissions or situations** demonstrating a failure by public authorities or courts to comply with or enforce the Convention

Compliance Review – 5

Budgetary aspects: key items for financial support

- **Secretariat staff**
- **Travel, DSA** for Committee members (9 x 4 times x 4 days per year)
- **Travel, DSA** for communicants invited to hearings
- **Travel, DSA** for staff missions (so far quite minor)
- **Meeting room & facilities** (interpretation, equipment, conf. services)
- **Consultancy** (eg translations outside UN, preparation required mtrl)
- **Costs** decided by **MOP**:
 - **working programme** for 3 years, MOP—MOP (average cost/year)
 - **financial arrangements** of principle

Compliance Review – 6

Crucial elements

- Integrity, independence and trust
- Effectiveness *and* fairness for parties
- Facilitative function
- Transparency and accessibility
- Confirmation through MOP decisions
- Follow up of MOP decisions
- Committee webpage: <http://www.unece.org/env/pp/cc.html>

Aarhus Convention: *Experiences*

- Huge variety of **legal/political/economic systems** and **administrative decision-making structures** among parties
- **Multilevel** regime applicable to **multilevel** decision-making
- More than 25 percent of the communications led to findings of **non-compliance** (by more than 15 Parties, from all regions)
- **Endorsements** of Compliance Committee findings by **MOPs**
- **Compliance reviews matter** on the ground. In many states:
 - Changes in **legislation** and regulations
 - Changes of the **jurisprudence** of courts
 - Increasing **awareness** of participatory rights & opportunities

Further information:

www.unece.org/env/pp/pubcom.html

aarhus.compliance@unece.org

Aarhus Convention Implementation Guide (2nd ed.)

jonas.ebbesson@juridicum.su.se

Reporting, Review and Compliance in the Climate Change Regime

CMS
19-20 September 2016



Marianna Bolshakova

UNFCCC, Legal Affairs

Climate Change Framework

- The United Nations Framework **Convention** on Climate Change : 197 Parties
- The **Kyoto Protocol**: 192 Parties
- The **Paris Agreement**: 180 signatories, 28 Parties



CBDR

The principle of common but differentiated responsibilities and respective capabilities

Annex I Parties
(Developed country Parties)

Non-Annex I Parties
(Developing country Parties)



Reporting, review and compliance arrangements at a glance

MRV elements	Annex I Parties	Non-Annex I Parties
Reporting	<p>National communications (4 years)</p> <p>National GHG inventory (annually)</p> <p>Biennial reports (2 years)</p>	<p>National communications (contain GHG inventory) (4 years)</p> <p>Biennial update reports (contain GHG inventory) (2 years)</p>
Technical review or analysis	<p>Technical review of biennial reports (2 years)</p> <p>In-depth review of national communications (4 years)</p> <p>Annual review of national GHG inventories (annually)</p>	<p>Technical analysis of biennial update reports (2 years)</p>
Multilateral process and compliance	<p>Multilateral assessment (2 years)</p> <p>Compliance (standing arrangements)</p>	<p>Facilitative sharing of views (2 years)</p>

Color coding	
	Convention only
	Kyoto Protocol only
	Both Convention and Kyoto Protocol



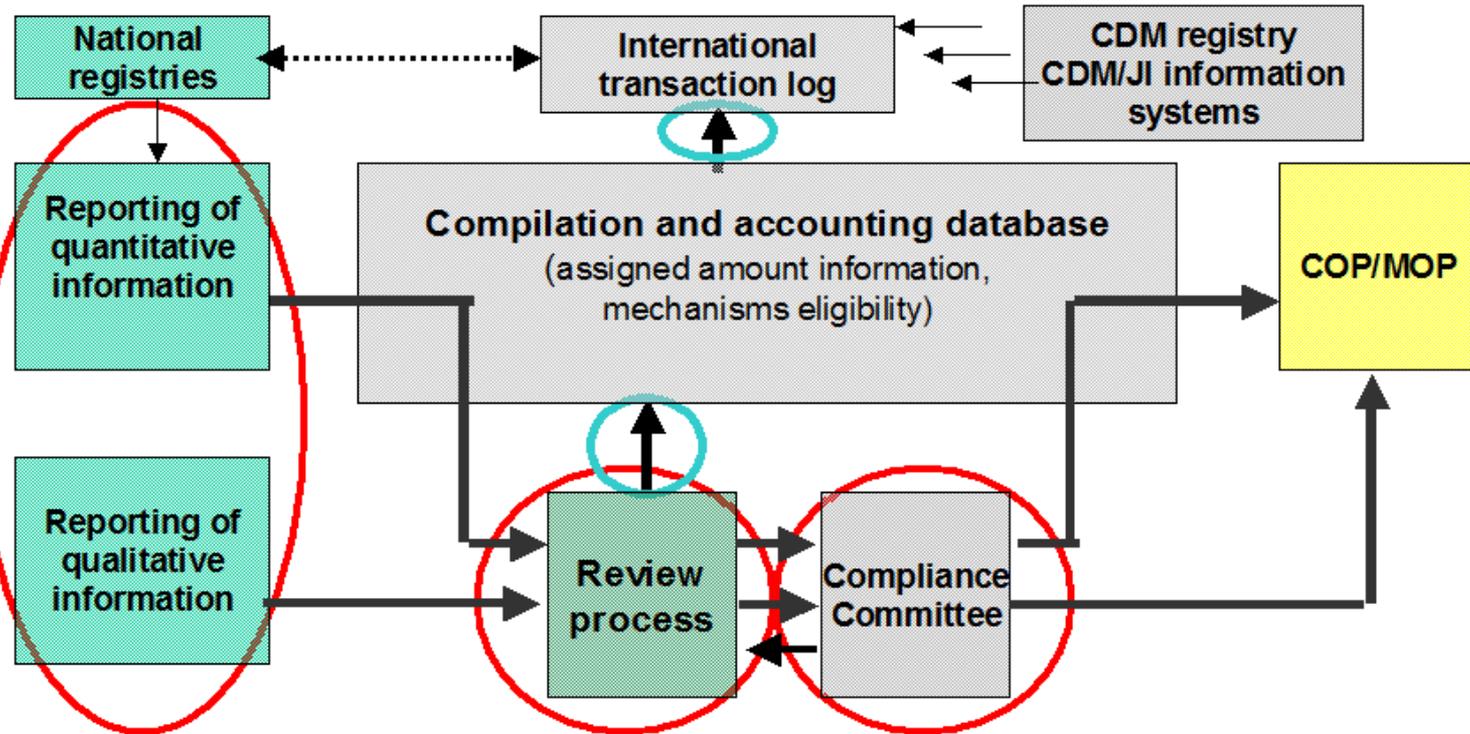
Expert review

- All reports submitted by Parties are reviewed by Expert Review Teams (ERTs)
- ERTs are composed of experts from rosters (generalists and specific fields (waste, agriculture, energy, etc)).
- To get rostered: nomination by Party - online training – online exams
- Reviews both centralized and in-country (frequency and rotation principles determined in decisions)

469 experts passed two or more examinations to become members of expert review teams in 2006-2015



Reporting, Review and Compliance



UNFCCC



UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE



KP Compliance Committee: process organization

- **Mandate – Article 18, Decision 27/CMP.1**
- Facilitate, promote and enforce compliance with the KP commitments
- Among the most comprehensive and rigorous systems of compliance in MEAs
- Mostly decision-based
- Transparency

Plenary (20 members +20 alternates)

Coordination of work, policy guidance,
reports to CMP, operational modalities
and RoP

Facilitative Branch (10 members+10
alternates)

Advice and facilitation
Promoting compliance
Early warning of non-compliance

Enforcement Branch (10 members +10
alternates)

Determines compliance/non-compliance with
emission reduction commitments, reporting
requirements, eligibility requirements
Applies adjustments and corrections
Applies consequence of non-compliance
(implementation plan, suspension of eligibility)



Triggers and (enforcement) process

- Self-trigger
- Party-to-Party trigger
- Questions of implementation arising from unresolved problems pertaining to language of **mandatory** nature (in **decisions**)

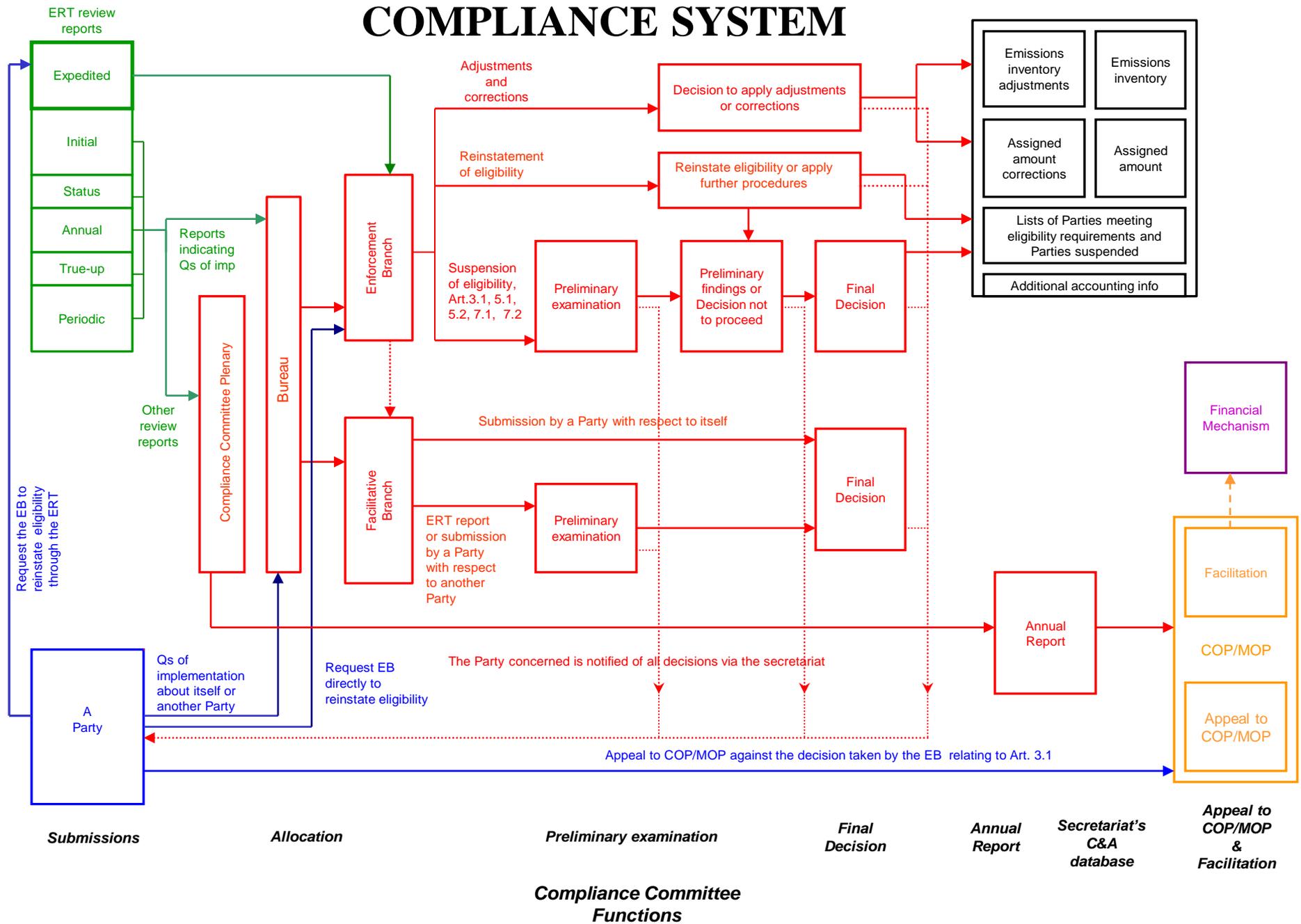
No Self-submission or Party-to Party submission made

No offer of facilitative assistance accepted

- Qols → Bureau → Facilitative or Enforcement branch
- EB → decision to proceed → Party can submit information and request hearing → decision on expert advice → meeting to consider the Qol (with technical experts and Party) → preliminary finding → to Party for comment → final decision → [if non-compliance → declaration of non-compliance, request to submit implementation plan, suspension of trade and mechanisms (and/or deduction from emission allowance) → re-evaluation based on the progress in the implementation of the plan (usually with expert input → reinstatement of compliance (and eligibility)
- ~ 4-5 mo to final decision; ~1 – 1.5 year to compliance



COMPLIANCE SYSTEM



Compliance Committee: since 2006

- **Meetings in 2006-2016**

- a) Plenary – 18 meetings
- b) EB – 29 meetings
- c) FB – 19 meetings

- **8 Parties with QoIs**

- 2007 (1), 2008 (1), 2009 (1), 2010 (1), 2011(3), 2012 (1); 2016 (1)
- 8 findings of non-compliance (6 with suspension of eligibility);
- All but one Parties found in non-compliance successfully implemented plans to bring them into compliance.

- **Improving consistency of reviews**

- Successful dialogue with inventory lead reviewers; 2 joint workshops



Opportunities and challenges

Opportunities	Challenges
Review process	
Detailed assessment	Resource-intensive
Pushes implementation	Lack of available experts
Advice and recommendations	Consistency within and between Parties
Kyoto Compliance mechanism	
Very effective enforcement	Facilitative function not clear/used
Clear and short procedure	Self-or Party-to Party trigger not used
Expert-based	No “carrots”



Paris Agreement

- Transparency arrangements – Art. 13 – build on the existing MRV framework (NCs, BRs, BURs , inventory submissions)
- Mechanism to facilitate implementation and promote compliance – Art. 15
 - a) Expert-based
 - b) Non-adversarial
 - c) Non-punitive
 - d) Transparent
 - e) 12 members Committee



1st Meeting of the Working Group on the Development of a Review Process under the Convention on Migratory Species

Bonn, 19-20 September 2016

Scenarios/Options Consultant's Paper on options and scope for potential CMS Review Process

CMS Secretariat

Option 1: CITES-Like

- **Step 1:** A Party or the Secretariat initiates a review if concerns are raised based on information included in national reports, national laws, or other sources.
- **Step 2:** The Secretariat communicates with the relevant Party to resolve the issue.
- **Step 3:** If the Secretariat is unable to resolve the matter with the relevant Party, the Secretariat puts the matter on the agenda of the next Standing Committee meeting and submits to the Standing Committee any relevant information for discussion.
- **Step 4:** The Standing Committee determines what actions, if any, should be taken.
- **Step 5:** The non-complying Party undertakes the actions specified by the Standing Committee.
- **Step 6:** The non-complying Party reports to the Standing Committee, either in person or in writing, on its progress in implementing those actions.
- **Step 7:** The non-complying Party continues to report to the Standing Committee until the Standing Committee is satisfied that the issue has been resolved.

Option 2: AEWA-Like

- **Step 1:** A Party or the Secretariat initiates a review if concerns are raised based on information included in national reports, national laws, or other sources.
- **Step 2:** The Secretariat submits the concerns, along with any relevant information, to the Standing Committee for consideration at the Standing Committee's next meeting.
- **Step 3:** The Standing Committee determines what action, if any, should be taken.
- **Step 4:** The non-complying Party undertakes the actions specified by the Standing Committee.
- **Step 5:** The non-complying Party reports to the Standing Committee, either in person or in writing, on its progress in implementing those actions.
- **Step 6:** The non-complying Party continues to report to the Standing Committee until the Standing Committee is satisfied that the issue has been resolved.

Option 3: National Report

- **Step 1:** The Secretariat reviews national reports and synthesizes the major themes relating to compliance or Party-specific compliance issues (or both). This review would be submitted to the Parties at a meeting of the Conference of the Parties.
- **Step 2:** At a meeting of the Conference of the Parties, the Parties meeting as the Committee of the Whole or a sub-set of Parties meeting as a working group would review the issues identified by the Secretariat and present recommendations to the Parties meeting either as the Committee of the Whole or in plenary. The recommendations would direct the Secretariat or perhaps a working group to undertake specific activities relating to a relevant compliance issue. The recommendations could direct the Secretariat to investigate the compliance issue further, provide specific services to the non-complying Party, or other action deemed appropriate.
- **Step 3:** The Secretariat, working group, or non-complying Party would report on its progress toward implementing the recommendations to the Standing Committee at its next meeting.
- **Step 4:** The Standing Committee would provide further guidance to the Secretariat or working group, if appropriate. The process could end at this step if the Standing committee believes the issue has been addressed. If not, then the process would continue to the next meeting of the Standing Committee or the meeting of the Conference of the Parties—until the Standing Committee or Conference of the Parties is satisfied that the issue has been addressed.

Option 4: Customized Approach

- The Parties to the Convention could also establish a customized review process, as some MEAs have done. If they did so, they would need to determine
 - the size of the committee;
 - who could be on the committee;
 - how frequently it would meet;
 - when it would meet; and
 - whether it, the Standing Committee or Conference of the Parties, has authority to direct non-complying Parties to implement recommendations of the committee.

Option 5: Zero Option

- Status Quo no option





THANK
YOU





Convention on the Conservation of Migratory Species of Wild Animals

Secretariat provided by the United Nations Environment Programme



1st Meeting of the Working Group on the Development of a Review Process under the Convention on Migratory Species

Bonn, Germany 19-20 September 2016

ANNEX 12

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