



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

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## 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?



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