



**BRIEFING PAPER:**  
MAXIMISING THE EFFECTIVENESS OF THE  
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL:  
THE NEED FOR IMPLEMENTATION REVIEW MECHANISMS AND  
PROCEDURES

Second Session of the Conference of the Parties to the WHO FCTC  
Bangkok, Thailand  
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## **Recommendation**

**At the second session of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (FCTC), the COP should request the Secretariat to prepare a report for the third session of the COP, outlining possible systems for implementation review that might be adopted by the COP.**

**The report should:**

- **draw on relevant precedents from other international agreements;**
- **outline in detail the various procedures and mechanisms that might be adopted, and discuss the merits of alternative approaches; and**
- **be designed to facilitate informed discussion at the third session of the COP about whether and, if so, how the COP might proceed with the establishment of such systems for implementation review.**

## **Executive Summary**

The WHO Framework Convention on Tobacco Control (FCTC) is aimed at protecting present and future generations from the devastating health, social, environmental and economic consequences of the global tobacco epidemic (Article 3). Having negotiated the Convention and brought it into force, the next challenge for States Parties is to bring the provisions of the treaty to life through strong implementation of the substantive obligations they have assumed and further development of the Convention and its processes to allow its effectiveness to be maximised.

The Conference of the Parties to the FCTC (COP) is required by Article 23.5 to ‘keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation’, and may for this purpose undertake a number of activities, including the establishment of subsidiary bodies. In other areas of international cooperation, particularly under multilateral environmental agreements, States Parties to a treaty commonly establish ‘systems for implementation review’ (SIRs) to assist the COP in its efforts to monitor the effectiveness of the treaty and to identify ways in which its effectiveness may be enhanced.

SIRs commonly establish a standing implementation/compliance committee elected by the COP, which: engages in ongoing monitoring of the implementation of the treaty; facilitates implementation by working with Parties, the treaty Secretariat and relevant intergovernmental and non-governmental organizations to provide advice and assistance to Parties; addresses cases of possible non-compliance with treaty obligations, usually in consultation with the COP; and reports periodically to the COP to enable the COP to perform its ongoing implementation review role. Examples of such mechanisms from the environmental, human rights and trade fields are provided in this paper.

By establishing an appropriate system for implementation review under the FCTC, the COP will enhance cooperation between Parties to address the global tobacco epidemic by:

- **facilitating information sharing and learning on effective ways of implementing the provisions of the Convention;**

- facilitating the provision of assistance in implementation, including capacity building where required;
- identifying issues on which attention or action by the COP – such as the development of guidelines or protocols or the elaboration of international cooperative arrangements – can help facilitate implementation;
- assisting the informed and meaningful participation of civil society in international action on issues addressed by the treaty; and
- ensuring that the momentum for implementation is maintained between meetings of the COP.

The functions that could be performed by a standing implementation/compliance committee cannot be adequately performed either by the COP itself or by the Secretariat. Meetings of the COP are likely to be attended by a large number of countries – the FCTC already has 147 Parties – to be held only annually or biennially, and to have a number of issues packed into a tight time-limited agenda. The treaty Secretariat is likely to have limited resources and to be pressed in trying to meet the wide range of demands of inter-sessional work. It will also often find it difficult to address cases of non-compliance, which might challenge it in its role as Secretariat to the Conference of the Parties as a whole. The establishment of a standing committee would allow for the necessary ongoing, and often complex and detailed, work to be carried out through a transparent process in a targeted and geographically representative forum. Regular reporting by this group to the COP, and cooperative work undertaken with the Secretariat, would facilitate informed discussion on implementation issues by the larger body of Parties to the treaty, and play a significant role in ensuring that the effectiveness of the FCTC can be maximized.

In accordance with best practice examples from other international agreements, an FCTC SIR should include:

- a geographically representative standing Committee comprised of 10-20 individuals elected by the COP;
- provision for the Committee to meet at regular intervals, supported by the Secretariat;
- procedures for States Parties, and the Secretariat and/or other subsidiary bodies established by the COP, to bring implementation issues to the attention of the Committee;
- procedures to govern the Committee's powers to make decisions and recommendations regarding implementation of the provisions of the Convention and future development of the Convention, and to govern its interaction with the COP; and
- procedures allowing the Committee to consult with other relevant bodies, with particular recognition given to the essential role of civil society in achieving the objective of the Convention, as recognised in Article 4.7 and preambular paragraph (17) of the Convention.

## **Introduction**

The making of multilateral treaties has become more common in recent years across a range of fields of international concern, including the environment, human rights, trade, and health. As the practice of treaty-making has expanded, attention has been focused on ways in which the promise offered by treaties can best be realized in practice. Central to these efforts is the recognition that the success or failure of a treaty lies in its implementation. The adoption of a treaty, and its entry into force through ratification by States, are just early steps in its life. Equally important as the wording of the treaty itself is the meaning that the treaty's Parties bring to it through their subsequent actions, in the form of both in-country implementation and international cooperation, and the manner in which Parties are able to discuss both common endeavours and any disagreements that arise in implementation.

## **Mechanisms and Procedures Necessary to Maximise a Treaty's Effectiveness**

### *Keeping the Treaty's Operation under Regular Review*

The WHO Framework Convention on Tobacco Control (FCTC) recognises that the legal instrument itself is just the beginning of the process of cooperative action to combat the global tobacco epidemic. Article 23.5 of the FCTC requires the Conference of the Parties (COP) to 'keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation', including the adoption of protocols, annexes and amendments. Article 7 requires the COP to propose guidelines for the implementation of a number of the key substantive provisions of the Convention (Articles 8 to 13).

A number of activities must be undertaken by the COP to enable it to perform its ongoing implementation review role. Under Article 23.5, the COP is required to:

- promote and facilitate the exchange of information;
- promote and guide the development and periodic refinement of comparable methodologies for research and collection of data;
- promote, as appropriate, the development, implementation and evaluation of strategies, plans and programmes, as well as policies, legislation and other measures;
- consider reports submitted by the Parties under Article 21 and adopt regular reports on the implementation of the Convention;
- promote and facilitate the mobilization of financial resources for the implementation of the Convention;
- establish subsidiary bodies necessary to achieve the objective of the Convention;
- request, where appropriate, the services and cooperation of, and information provided by, competent and relevant bodies as a means of strengthening the implementation of the Convention; and
- consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its implementation.

Under Article 21, Parties to the FCTC are required to submit periodic reports on their implementation of the Convention. The link between reports and implementation review is recognized in the decision of the Parties at the first session of the COP (FCTC/COP1(14) Reporting and exchange of information) which records that '[t]he Parties' reports will form the basis for consideration on implementation of the Convention consistent with Article 23.5(d)'. In accordance with this decision, the Secretariat is

expected to provide feedback to each reporting Party, and to provide an annual analysis of international progress in the implementation of the FCTC.

The aim of the activities outlined in Articles 21 and 23.5 of the FCTC is to enable the collection, exchange and analysis of information that is required to monitor how the Convention is working in practice, to address difficulties encountered in implementation, and to take the measures required to ensure effective implementation. This allows the Conference of the Parties to determine how the words of the treaty that they have ratified are being lived out in the real world and how their effectiveness can be maximised.

#### *Addressing Disputes over Interpretation or Application*

In addition to mechanisms to monitor implementation, treaties also need to provide mechanisms enabling disputes between Parties about implementation of the treaty to be addressed. As treaties are generally exercises of international cooperation between States designed to address common problems, in circumstances in which the actions or inactions of one State can affect the welfare of the citizens of another, a disagreement over the content of a treaty or implementation of its obligations can leave one State believing itself to be harmed by the actions or inactions of another.

As is the case with most international instruments, the FCTC includes an Article dealing with the settlement of disputes ‘concerning the interpretation or application of this Convention’. Under Article 27, Parties are to seek to settle disputes through diplomatic channels such as negotiation, mediation or conciliation. Parties may also accept compulsory ad hoc arbitration in accordance with procedures adopted by the COP. However, the FCTC does not yet embody any of the kinds of procedures or mechanisms used in other treaties, outlined below, to enable disputes to be addressed in ways other than through such confrontational dispute settlement procedures operating between particular States Parties.

#### *The Role of Mechanisms and Procedures for Implementation Review*

Both regular implementation review mechanisms and dispute settlement procedures are critical to the success of a treaty in practice. While the FCTC is a well-drafted document that has already delivered great benefit to global tobacco control, it needs such mechanisms and procedures to ensure that it can live up to its full potential.

It is now common for Parties to international legal instruments to establish mechanisms and procedures known as ‘systems for implementation review’ (SIRs) to assist in monitoring and enhancing their effectiveness. Such systems – involving a combination of regular reporting by Parties, a dedicated implementation/compliance committee, and provision for various forms of assistance to be given to Parties in achieving compliance with their obligations – allow for both the implementation review and dispute settlement needs of States Parties to a treaty to be addressed on an ongoing, multilateral basis.

The development of SIRs has, in part, marked a shift away from confrontational dispute settlement procedures towards a more ‘managerial’, multilateral approach to compliance. The managerial approach recognises that non-compliance is not necessarily the result of States’ desire to violate their treaty obligations, but can result from a number of implementation difficulties including limited financial, scientific, technical and bureaucratic capacity, ambiguity and indeterminacy in treaty language, and the time lag for the complex social, economic and political changes multilateral treaties often require.

The adoption of SIRs is now particularly common practice in the environmental field. These compliance management systems – overseen by a standing committee of experts, whose members are nominated by Parties to the treaty and appointed by the COP – are designed to: engage in ongoing monitoring of the implementation of the treaty; facilitate compliance by working with States, the treaty Secretariat, other subsidiary bodies, and relevant intergovernmental and non-governmental organizations to provide advice and assistance to Parties; and deal with cases of non-compliance, usually in consultation with the Conference of the Parties to the relevant treaty. In cases of clear breach of treaty obligations, implementation/compliance committees may be empowered to make recommendations to the COP, and, in some cases, to impose consequences on the non-compliant Party. SIRs enhance cooperation between States to address common problems by:

- facilitating information sharing and learning on effective ways of implementing treaty provisions;
- facilitating the provision of assistance in implementation, including capacity building where required;
- identifying issues on which attention or action by the COP may help facilitate implementation;
- assisting the informed and meaningful participation of civil society in international action on issues addressed by the treaty; and
- ensuring that the momentum for implementation is maintained between meetings of the COP.

The establishment of standing implementation/compliance committees reflects a recognition that the functions they perform cannot adequately be performed either by the COP itself or by the treaty Secretariat. Meetings of the COP are likely to be attended by a large number of countries, to be held only annually or biennially, and to have a number of issues packed into a tight time-limited agenda. The treaty Secretariat is likely to have limited resources and to be pressed in trying to meet the wide range of demands of inter-sessional work. It will also often find it difficult to address cases of non-compliance, which might challenge it in its role as Secretariat to the Conference of the Parties as a whole.

The establishment of standing implementation/compliance committees allows for the necessary ongoing and often complex and detailed, work to be carried out through a transparent process in a targeted geographically representative forum. Regular reporting by this group to the COP, and cooperative work undertaken with the treaty Secretariat and other relevant organisations, facilitates informed discussion on implementation issues by the larger body of Parties to the treaty.

### **Systems for Implementation Review in the Environmental, Human Rights and Trade Fields**

SIRs are most prevalent in the environmental field, where a similar structure has been repeated across various different areas of international concern. A significant number of multilateral environmental agreements have adopted comprehensive implementation/compliance management procedures, overseen by standing committees. These include the Implementation Committee of the Montreal Protocol on Substances that Deplete the Ozone Layer,<sup>1</sup> the Implementation Committee of the Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution,<sup>2</sup> the Mechanism for Promoting Implementation and Compliance of the Basel Convention on the Control of

Transboundary Movements of Hazardous Wastes and their Disposal,<sup>3</sup> the Compliance Committee of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity,<sup>4</sup> and the Compliance Committee of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.<sup>5</sup> A table outlining the procedures of these Committees in detail is appended to this paper.

A similar trend is also observable in the human rights field, in which all of the core agreements now have independent expert committees tasked to examine regular reports submitted by States Parties and to outline concerns and recommendations in response.<sup>6</sup> These committees include the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights and its Protocols;<sup>7</sup> the Committee on Economic, Social and Cultural Rights, which monitors implementation of the International Covenant on Economic, Social and Cultural Rights;<sup>8</sup> the Committee on the Elimination of Racial Discrimination, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>9</sup> the Committee on the Elimination of Discrimination Against Women, which monitors implementation of the International Convention on the Elimination of All Forms of Discrimination Against Women;<sup>10</sup> the Committee Against Torture, which monitors implementation of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;<sup>11</sup> the Committee on the Rights of the Child, which monitors implementation of the Convention on the Rights of the Child;<sup>12</sup> and the Committee on Migrant Workers, which monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>13</sup>

In international trade, the very strong dispute settlement procedures of the World Trade Organization (WTO) are complemented by the activities of the Trade Policy Review Body (TPRB). The TPRB undertakes periodic review of Member States' national trade policies in order to improve adherence by Member States to their obligations under the multilateral trade agreements 'by achieving greater transparency in, and understanding of, the trade policies and practices of Members'.<sup>14</sup> In addition, some of the trade agreements have specialised procedures to monitor their implementation and operation, such as the TRIPS Council, which monitors the operation of the Agreement on Trade-Related Aspects of Intellectual Property, and, in particular, Member States' compliance with their obligations under it, creating dialogue on implementation in a less confrontational forum than that of the Dispute Settlement Body.<sup>15</sup>

### **Elements of Effective Implementation Review Mechanisms**

The environmental SIRs – created by decision of the COP to the relevant treaty, either under specific provisions mandating the development of implementation/compliance procedures or under general provisions giving the COP power to create subsidiary bodies – are the most comprehensive and well-developed systems for implementation/compliance management developed thus far. All of the environmental procedures mentioned above are overseen by a small standing committee of around 10-20 members, the seats of which are designated to nominees from States Parties to the agreement, having relevant expertise, on the basis of equitable geographical representation through a rotation system. The committees usually meet at least twice each year and their responsibilities include such matters as promoting compliance, providing advice and assistance to Parties to facilitate compliance, considering cases of possible non-compliance, making recommendations to the COP, and, in some cases, applying appropriate consequences for non-compliance. The committees' procedures may be invoked by a number of methods,

generally including communications from States Parties regarding implementation/compliance concerns – in relation to themselves, or in relation to other States Parties (supported by corroborating information) – and information forwarded by treaty Secretariats or other bodies involved in reviewing annual implementation reports submitted by States Parties.

While all environmental implementation/compliance committees report annually to the COP to the relevant treaty, their relationships with the COP differ significantly according to the powers conferred on them. Most committees – with the prominent exception of the Kyoto Protocol Compliance Committee – have very few decision-making powers. They are usually empowered to make recommendations, which the COP may then decide whether or not to implement, for example by providing a Party with assistance, technology transfer or capacity building, issuing a caution to a Party, or suspending rights and privileges of a Party under the treaty. The Committees may also, in most cases, make recommendations directly to a Party. The Kyoto Committee has extensive powers to apply consequences to non-complying Parties directly, and receives only general guidance from the COP. The committees also differ in the extent and manner of their interaction with other bodies. Most may consult with other subsidiary bodies to the treaty. Some, such as the Montreal Committee, exchange information with funding bodies regarding provision of capacity building and financial assistance. Others – such as the Basel, Cartagena, and Kyoto Committees – are permitted to draw on outside expertise, for example by receiving information from relevant non-governmental and inter-governmental organizations.

Most of the human rights treaty expert committees, which review Parties' periodic reports under the treaties, meet twice each year, and have the power to adopt decisions, statements or recommendations to States Parties as 'early warning procedures' where they identify potentially serious violations, and to publish official interpretations of treaty provisions, known as 'general comments'. A number of treaties also provide for Parties to complain to the expert committee about specific violations by another Party, but to date these provisions have never been used. In the trade context, the WTO TPRB subjects all WTO Member States to review at intervals varying according to the size of their economy (conducted on the basis of a policy statement made by the Member and a report prepared by economists in the WTO Secretariat's Trade Policy Review Division), while the TRIPS Council meets around five times each year, receives notifications of Member States' implementing legislation, reviews general TRIPS-related national legislation, and reports annually to the WTO's General Council.

### **Conclusion: A System for Implementation Review for the FCTC**

The adoption of implementation review mechanisms and procedures under various multilateral agreements is becoming increasingly significant in ensuring the effective implementation of internationally agreed obligations. Indeed, no recent major environmental or human rights treaty operates without such mechanisms and procedures to facilitate the implementation in practice of the commitments made in the treaty text. Without an appropriate system for implementation review, Parties to a treaty will find it difficult to keep the treaty under 'regular review' and 'take the decisions necessary to promote its effective implementation', as the FCTC COP is required to do under Article 23.5 of the Convention.

To ensure that the FCTC lives up to its full potential, and in accordance with its mandate under Article 23 to take the decisions necessary to promote implementation of the

Convention, the COP should establish a system for implementation review to assist Parties in bringing the provisions of the FCTC to life. In accordance with best practice examples from other international agreements, the SIR should include:

- a geographically representative standing Committee comprised of 10-20 individuals elected by the COP;
- provision for the Committee to meet at regular intervals, supported by the Secretariat;
- procedures for States Parties, and the Secretariat and/or other subsidiary bodies established by the COP, to bring implementation issues to the attention of the Committee;
- procedures to govern the Committee's powers to make decisions and recommendations regarding implementation of the provisions of the Convention and future development of the Convention, and to govern its interaction with the COP; and
- procedures allowing the Committee to consult with other relevant bodies, with particular recognition given to the essential role of civil society in achieving the objective of the Convention, as recognised in Article 4.7 and preambular paragraph (17) of the Convention.

An implementation review system which includes the elements listed above will enhance cooperation between States Parties to the FCTC in addressing the global tobacco epidemic by:

- facilitating information sharing and learning on effective ways of implementing the provisions of the Convention;
- facilitating the provision of assistance in implementation, including capacity building where required;
- identifying issues on which attention or action by the COP – such as the development of guidelines or protocols or the elaboration of international cooperative arrangements – can help facilitate implementation;
- assisting the informed and meaningful participation of civil society in international action on issues addressed by the treaty; and
- ensuring that the momentum for implementation is maintained between meetings of the COP.

### **Further Reading**

For further information on the role of implementation review mechanisms and procedures under multilateral treaties, see:

Abram Chayes and Antonia Chayes, 'On Compliance' (1993) 47(2) *International Organization* 175; *The New Sovereignty: Compliance with International Regulatory Agreements* (1998)

Kal Raustiala, 'Compliance and Effectiveness in International Regulatory Cooperation' (2000) 32(3) *Case Western Reserve Journal of International Law* 387

Michael Faure and Jurgen Lefevere, 'Compliance with Global Environmental Policy', in Regina Axelrod et al (eds), *The Global Environment: Institutions, Law and Policy* (2005) 163

### Systems for Implementation Review under Multilateral Environmental Agreements

		<b>Montreal Implementation Committee (established 1992)</b>	<b>ECE Compliance Committee (established 1997)</b>	<b>Basel Mechanism (established 2002)</b>	<b>Cartagena Compliance Committee (established 2004)</b>	<b>Kyoto Compliance Committee (established 2005)</b>
<b>Members</b>						
	<b>Number</b>	10	9	15	15	20 (10 in each of two Branches)
	<b>Term</b>	2 years	2 years	2 years	4 years	4 years
	<b>Qualifications</b>	Nominees of States Parties, elected by COP/MOP. <sup>16</sup> Equitable geographical representation.	Representatives of States Parties, elected by Executive Body (COP).	Nominees of States Parties, elected by COP, having relevant expertise and serving objectively.	Nominees of States Parties, elected by COP/MOP, having recognised competence in relevant field/s. Equitable geographical representation.	Elected by COP/MOP, having recognised competence and serving in individual capacities. Equitable geographical representation.
<b>Meetings</b>		3-4 each year	2 each year	1 each year	2 each year, unless the Committee decides otherwise.	At least 2 each year, unless the Committee decides otherwise.
<b>Process</b>						
	<b>A Party in respect of itself</b>	Can make submissions with implementation concerns. Committee can gather information in territory, with consent.	Can make submissions when it considers itself unable to comply.	Can make submissions regarding difficulties achieving compliance. Committee can gather information in territory, with consent.	Can make submissions regarding compliance.	Can make submissions raising questions of implementation. Has significant procedural rights throughout process of review.
	<b>A Party in respect of another Party</b>	Can make submissions regarding implementation by a Party, supported by corroborating information.	Can make submissions with reservations about compliance of a Party, supported by corroborating information.	Can make submissions with respect to a Party's failure to comply.	Can make submissions regarding a Party's compliance, where the Party making the submission is affected or likely to be affected.	Can make submissions raising a question of implementation with respect to a Party, supported by corroborating information.

		<b>Montreal Implementation Committee</b>	<b>ECE Compliance Committee</b>	<b>Basel Mechanism</b>	<b>Cartagena Compliance Committee</b>	<b>Kyoto Compliance Committee</b>
<b>Process</b>						
	<b>Secretariat</b>	Can make submissions regarding implementation, when it receives a submission from a Party in respect of itself, or from a Party in respect of another Party (supported by corroborating information); or it discovers possible non-compliance when preparing reports. Provides and facilitates provision of information to the Committee, when requested.	Can draw matters to the attention of the Committee when it is aware of possible non-compliance, and has attempted to resolve the matter with the Party directly.	Can make submissions regarding a Party's compliance with its reporting obligations. Provides and facilitates provision of information to the Committee, when requested.	May be requested by the Committee to provide relevant information.	Publicises information provided to it by the Committee.
	<b>COP; COP/MOP</b>	COP/MOP receives annual report of Committee.	EB receives annual report of Committee. May require Committee to prepare reports on compliance with specified obligations in a protocol.	COP receives annual report of Committee.	COP/MOP receives annual report of Committee. Committee may request relevant information from COP/MOP and COP.	COP/MOP receives annual report of Committee. Committee is to consider relevant information in reports of COP/MOP and COP.

		<b>Montreal Implementation Committee</b>	<b>ECE Compliance Committee</b>	<b>Basel Mechanism</b>	<b>Cartagena Compliance Committee</b>	<b>Kyoto Compliance Committee</b>
<b>Process</b>						
	<b>Other bodies</b>	Multilateral Fund (MLF) exchanges information with the Committee regarding capacity and financial assistance. <sup>17</sup>	No.	Committee may consult with other subsidiary bodies of the Convention.	Committee may request information from the Biosafety Clearing-House, <sup>18</sup> and other subsidiary bodies of the Protocol and the Convention.	Expert review teams, which review Parties' reports under the Protocol, can make submissions raising a question of implementation. Committee is to consider relevant information from expert review teams and other subsidiary bodies of the Protocol and the Convention.
	<b>Outside expertise</b>	No.	No.	May be drawn on, with the consent of the Party concerned, or under direction from the COP.	Committee may request information from relevant international organizations.	Committee may seek expert advice. Competent intergovernmental and non-governmental organizations are entitled to submit relevant technical and factual information.
	<b>Consult reports provided under the treaty</b>	No.	No.	Yes, Committee may review national reports provided by Parties under the Convention.	No, except in undertaking general review.	Yes, Committee receives all final reports of expert review teams.
	<b>Undertake general review</b>	No.	Yes, periodically with respect to compliance with reporting requirements of protocols.	Yes, may be initiated by a decision of the COP.	Yes, taking into account Parties' national reports under the Protocol.	No.

		<b>Montreal Implementation Committee</b>	<b>ECE Compliance Committee</b>	<b>Basel Mechanism</b>	<b>Cartagena Compliance Committee</b>	<b>Kyoto Compliance Committee</b>
<b>Powers</b>						
	<b>Recommend to COP; COP/MOP</b>	Yes. On recommendation of the Committee, the COP/MOP may provide assistance, issue cautions, and suspend rights and privileges under the Protocol.	Yes. EB decides whether to implement recommendations.	Yes. Recommendations may include provision of support to a Party, issue of caution to a Party.	Yes. Recommendations may include provision of assistance, technology transfer, capacity building, and issue of caution to a Party. COP/MOP may also request Executive Secretary to publish cases of non-compliance through the Biosafety Clearing-House.	No. COP/MOP can only provide Committee with general guidance. COP/MOP may also hear an appeal from a Committee decision regarding compliance with article 3(1) of the Protocol. <sup>19</sup>
	<b>Recommend to Party</b>	Yes. Has used ongoing 'plan and review' approach.	No.	Yes. Can provide advice, non-binding recommendations, and information.	Yes. Can provide advice and assistance.	Yes. Facilitative Branch can provide advice, assistance, recommendations; and facilitate provision of assistance, technology transfer, capacity building.
	<b>Recommend to Funding Body</b>	Yes. Links to MLF and Global Environmental Facility (GEF). <sup>20</sup>	No.	No.	No.	No.

		<b>Montreal Implementation Committee</b>	<b>ECE Compliance Committee</b>	<b>Basel Mechanism</b>	<b>Cartagena Compliance Committee</b>	<b>Kyoto Compliance Committee</b>
<b>Powers</b>						
	<b>Develop compliance action plan</b>	No. But, in practice, the Committee has used 'plan and review'.	No.	No.	Yes. Committee can request or assist Party concerned to develop plan for achievement of compliance within an agreed timeframe.	Yes. Enforcement Branch can require development of a compliance action plan with timetable to assess progress, and regular submission of progress reports.
	<b>Declare non-compliance</b>	No.	No.	No.	No.	Yes. Enforcement Branch must issue declaration of non-compliance before applying consequences.
	<b>Suspend rights and privileges</b>	No.	No.	No.	No.	Yes. Enforcement Branch may suspend rights to participate in flexible implementation mechanisms.

## References

- <sup>1</sup> Opened for signature 16 September 1987, 1522 UNTS 3 (entered into force 1 January 1989). See generally UNEP Ozone Secretariat, 'Implementation of the Montreal Protocol', online at <[http://ozone.unep.org/Treaties\\_and\\_Ratification/montreal\\_protocol\\_implementation.asp](http://ozone.unep.org/Treaties_and_Ratification/montreal_protocol_implementation.asp)>; and 'About the Montreal Protocol: Non-Compliance Procedures', online at <<http://www.unep.ch/ozone/issues.shtml#NonComplianceProcedure>>.
- <sup>2</sup> Opened for signature 13 November 1979, 1302 UNTS 217 (entered into force 16 March 1983). See generally UNECE, 'Convention on Long-range Transboundary Air Pollution Implementation Committee', online at <<http://www.unece.org/env/lrtap/ic/welcome.htm>>; and Decision 1997/2 Concerning the Implementation Committee, Its Structure and Functions and Procedures for Review of Compliance, Annex III to the ECE Executive Body for the Convention on Long-Range Transboundary Air Pollution, *Report of the Fifteenth Session of the Executive Body*, UN Doc ECE/EB.AIR/53 (7 January 1998), available online at <<http://www.unece.org/env/documents/1998/ece/eb/ece.eb.air.53.e.pdf>>.
- <sup>3</sup> Opened for signature 22 March 1989, 1673 UNTS 57 (entered into force 5 May 1992). See generally UNEP Secretariat of the Basel Convention, 'Compliance Committee', online at <<http://www.basel.int/legalmatters/compcommittee/index.html>>; and Decision VI/12 'Establishment of a Mechanism for Promoting Implementation and Compliance', annexed to Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal, *Report of the Sixth Meeting of the Conference of the Parties*, UN Doc UNEP/CHW.6/40 (10 February 2003), available online at <<http://www.basel.int/meetings/cop/cop6/english/Report40e.pdf#VI12>>.
- <sup>4</sup> Opened for signature 15 May 2000, 39 ILM 1027 (entered into force 11 September 2003). See generally Convention on Biodiversity, 'The Cartagena Protocol on Biosafety: Compliance', online at <<http://www.biodiv.org/biosafety/issues/compliance.shtml>>; and Decision BS-I/7 of the COP/MOP, 'Establishment of Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety' (2004), available online at <<http://www.biodiv.org/decisions/default.aspx?m=MOP-01&id=8289&lg=0>>.
- <sup>5</sup> Opened for signature 16 March 1998, 37 ILM 22 (entered into force 16 February 2005). See generally UNFCCC, 'An Introduction to the Kyoto Protocol Compliance System', online at <[http://unfccc.int/kyoto\\_protocol/compliance/introduction/items/3024.php](http://unfccc.int/kyoto_protocol/compliance/introduction/items/3024.php)>; and Decision 27/CMP.1, 'Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol', in *Report of the COP/MOP on its First Session: Addendum, Part 2 – Action Taken by the COP/MOP at its First Session*, UN Doc FCCC/KP/CMP/2005/8/Add.3 (30 March 2006), available online at <<http://unfccc.int/resource/docs/2005/cmp1/eng/08a03.pdf#page=92>>.
- <sup>6</sup> See generally Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Human Rights Treaty Bodies: Monitoring the Core International Human Rights Treaties', online at <<http://www.ohchr.org/english/bodies/treaty/index.htm>>.
- <sup>7</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 302 (entered into force 23 March 1976) ('First Optional Protocol'); *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, opened for signature 15 December 1989, 1642 UNTS 414 (entered into force 11 July 1991) ('Second Optional Protocol'). See generally OHCHR, 'Human Rights Committee: Monitoring Civil and Political Rights', online at <<http://www.ohchr.org/english/bodies/hrc/index.htm>>.
- <sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976). See generally OHCHR, 'Committee on Economic, Social and Cultural Rights: Monitoring the Economic, Social and Cultural Rights', online at <<http://www.ohchr.org/english/bodies/cescr/index.htm>>.
- <sup>9</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969). See generally OHCHR, 'Committee on the Elimination of Racial Discrimination: Monitoring Racial Equality and Non-Discrimination', online at <<http://www.ohchr.org/english/bodies/cerd/index.htm>>.
- <sup>10</sup> *International Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). See generally United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, 'Convention on the Elimination of All Forms of Discrimination Against Women: Committee on the

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Elimination of Discrimination Against Women’, online at <<http://www.un.org/womenwatch/daw/cedaw/>>.

<sup>11</sup> *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 112 (entered into force 26 June 1987). See generally OHCHR, ‘Committee Against Torture: Monitoring the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment’, online at <<http://www.ohchr.org/english/bodies/cat/index.htm>>.

<sup>12</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). See generally OHCHR, ‘Committee on the Rights of the Child: Monitoring Children’s Rights’, online at <<http://www.ohchr.org/english/bodies/crc/index.htm>>.

<sup>13</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 2 May 1991, 30 ILM 1517 (1991) (entered into force 1 July 2003). See generally OHCHR, ‘Committee on Migrant Workers: Monitoring the Protection of the Rights of All Migrant Workers and Members of Their Families’, online at <<http://www.ohchr.org/english/bodies/cmw/index.htm>>.

<sup>14</sup> *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 3 (*Trade Policy Review Mechanism*) Section A(i). See generally WTO, ‘Overseeing National Trade Policies: The TPRM’, online at <[http://www.wto.org/english/tratop\\_e/tpr\\_e/tpr\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm)>.

<sup>15</sup> *Marrakesh Agreement*, above n 38, annex 1C (*Agreement on Trade-related Aspects of Intellectual Property Rights*) 1869 UNTS 299, article 68. See also WTO, ‘TRIPS: Work of the TRIPS Council’, online at <[http://www.wto.org/english/tratop\\_e/trips\\_e/intel6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel6_e.htm)>.

<sup>16</sup> The term COP/MOP refers to the Conference of the Parties to a Convention, serving as the Meeting of the Parties to its Protocol.

<sup>17</sup> The MLF is a funding mechanism established under the Montreal Protocol, primarily to help developing countries comply with its terms. See Multilateral Fund for the Implementation of the Kyoto Protocol, online at <<http://www.multilateralfund.org/>>.

<sup>18</sup> The Biosafety Clearing-House is an information exchange mechanism established under the Protocol: see <<http://bch.biodiv.org/>> (accessed 15 December 2006).

<sup>19</sup> Article 3(1) of the Kyoto Protocol states: ‘The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012’. A Party in whose respect a decision has been made by the Enforcement Branch of the Compliance Committee regarding compliance with article 3(1) may appeal the decision to the COP/MOP, if the Party believes it has been denied due process.

<sup>20</sup> The GEF is a fund that provides grants to developing countries ‘for projects that benefit the global environment’: see ‘What is the GEF?’, online at <[http://www.gefweb.org/What\\_is\\_the\\_GEF/what\\_is\\_the\\_gef.html](http://www.gefweb.org/What_is_the_GEF/what_is_the_gef.html)> (accessed 17 January 2007)).

Although no formal relationship is established, the Implementation Committee’s relationship with the GEF is in practice similar to its relationship with the MLF.