

**Montreal Protocol
on Substances that
Deplete the Ozone Layer**

Distr.: General
10 June 2022
Original: English

**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer
Forty-fourth meeting**
Bangkok, 11–16 July 2022
Item 5 of the provisional agenda¹

**Institutional processes to strengthen the effective
implementation and enforcement of the Montreal
Protocol**

**Possible ways of dealing with illegal production of and illegal
trade in controlled substances under the Montreal Protocol,
identifying potential gaps in the non-compliance procedure,
challenges, tools, ideas and suggestions for improvement²**

Note by the Secretariat

Introduction

1. The present note has been prepared in response to the request by the Implementation Committee, at its sixty-second meeting, in July 2019, that the Secretariat prepare a document that would help the Committee to reflect on how to deal with illegal production and illegal trade in controlled substances, identifying potential gaps in the non-compliance procedure, challenges, tools, and ideas and suggestions for improvement, for consideration by the Committee at its sixty-third meeting. In making the request, the Committee noted the importance of ensuring that any recommendations arising from its discussions involved actions within its mandate, as described in the non-compliance procedure. The Committee also noted the provisions in paragraphs 7 (c) and 9 of the non-compliance procedure, which allowed it to request further information on matters under its consideration and required it to report to the Meeting of the Parties, respectively.

2. In preparing the present note, the Secretariat has taken into account its report to the forty-first meeting of the Open-ended Working Group of the Parties to the Montreal Protocol (UNEP/OzL.Pro.WG.1/41/3), prepared in response to paragraph 6 of decision XXX/3, in which the parties requested an overview outlining the procedures under the Montreal Protocol on Substances that Deplete the Ozone Layer and the Multilateral Fund for the Implementation of the Montreal Protocol with reference to controlled substances by which parties review and ensure continuing compliance with the Protocol obligations and with the terms of agreements under the Fund. Where relevant, some information in that report has been used in the present note, which also takes into account the background document provided by the secretariat of the Multilateral Fund to the forty-first meeting of

¹ UNEP/OzL.Pro.WG.1/44/1

² The present note was originally issued as Annex II to the report of the 63rd meeting of the Implementation Committee, document UNEP/OzL.Pro/ImpCom/63/6.

the Open-ended Working Group.³ That document provided an overview of the procedures under the Multilateral Fund by which the parties review and ensure continuing compliance with the terms of agreements under the Fund. Annex III thereto was a document prepared by the secretariat of the Multilateral Fund for the Fund’s Executive Committee (UNEP/OzL.Pro/ExCom/83/38), which was made available to the Open-ended Working Group at the request of the Executive Committee. The present note also draws from a comparative review of implementation of compliance-related mechanisms by a range of institutions, as set out in greater detail in document UNEP/OzL.Pro/ImpCom/63/INF/R.3.

3. Section I of the present note summarizes, in tabular format, the existing framework and tools by which parties have been addressing issues of compliance with the Protocol and conformity with the agreements under the Multilateral Fund. Section II presents possible areas that the parties may wish to consider in order to improve monitoring under and compliance with the Protocol, while section III provides a comparative overview of arrangements under other instruments, including a number of multilateral environmental agreements, as further described in document UNEP/OzL.Pro/ImpCom/63/INF/R.3. The note concludes with observations on potential areas for improvement, in section IV.

I. Existing arrangements under the Montreal Protocol

4. Parties have been using the following existing framework and tools under the Montreal Protocol (derived from Articles of the Protocol itself as well as decisions of the Meeting of the Parties) and under the Multilateral Fund to address issues of compliance with the Protocol and conformity with Fund agreements, as well as related issues, including illegal trade in controlled substances. The Multilateral Fund was established to provide technical and financial assistance to Article 5 parties to enable them to achieve compliance with their Montreal Protocol obligations.

<i>Framework element</i>	<i>Tools under the Montreal Protocol (applicable to all parties)</i>	<i>Tools under the Multilateral Fund (applicable to only A5 parties)</i>
General	Non-adversarial non-compliance regime adopted ⁴ in accordance with Article 8 Indicative measures with respect to non-compliance, ⁵ emphasizing a facilitative approach Built-in flexibility, including delayed implementation for Article 5 parties	Institutional strengthening, capacity-building, technical support and compliance assistance provided through funding agreements, with tranches of funding linked to confirmation of measures taken by the party concerned
Controls on production and consumption	Articles 2, 2A–2J and 5 set out the phase-out and phase-down schedules for controlled substances Article 7 requires data reporting on annual consumption and production of controlled substances, as well as reporting of baseline data Consumption and production are calculated in accordance with formulae defined in Article 3 that allow for compliance with control measures to be assessed Article 10 on the financial mechanism provides for financial and technical support, including the transfer of technologies to Article 5 parties (under Article 10A) Provision for the transfer of production allowance is made under Article 2 Exemptions provide flexibility in the absence of appropriate alternative	Financial and technical support with support for technology transfer Supported countries commit to meeting phase-out targets, in line with or in advance of their obligations under the Protocol, and to undertaking defined actions Detailed country programme data are reported annually and detailed progress reports on the implementation of phase-out activities are submitted, usually as part of tranche requests Verification reports are submitted with funding requests (a prerequisite for the release of funds unless the Executive Committee decides otherwise) Detailed reviews of reported data, progress reports and verification reports by the secretariat of the Multilateral Fund, which raises potential concerns or issues for the

³ Entitled “Overview of the procedures under the Multilateral Fund by which the parties review and ensure continuing compliance with the terms of agreements under the Fund: reissued”. Available at <http://conf.montreal-protocol.org/meeting/oewg/oewg-41/presession/SitePages/Home.aspx>.

⁴ Adopted by the Meeting of the Parties on an interim basis in decision II/5, permanently established in decision IV/5, with some amendments introduced, following a review, in decision X/10 and annex II to the report of the Tenth Meeting of the Parties (UNEP/OzL.Pro.10/9).

⁵ Adopted in decision IV/5.

<i>Framework element</i>	<i>Tools under the Montreal Protocol (applicable to all parties)</i>	<i>Tools under the Multilateral Fund (applicable to only A5 parties)</i>
	substances, as envisaged in Articles 2, 2A-2J and 5 and as implemented through various decisions of the parties, with associated data reporting requirements	immediate attention of and possible action by the Executive Committee Evaluations of project implementation are undertaken to identify and share lessons learned Information-sharing, awareness-raising, capacity-building and training; regional networks of national ozone officers, with associated institutional-strengthening and capacity-building activities. Compliance Assistance Programme established by the United Nations Environment Programme to provide specific compliance services to all Article 5 parties, including the development of tools and services
Controls on trade	Ban on trade with non-parties (Article 4) and ban on certain trade with parties where a party is unable to cease its own production (Article 4A) Requirement to establish a licencing system covering imports and exports of controlled substances (Article 4B) Voluntary reporting under decisions of the Meeting of the Parties (e.g., XIV/7 and XIX/12) on issues such as proven cases of illegal trade and information on sources and destinations of imports and exports, as well as sharing of other information on trade Illegally traded quantities of ozone-depleting substances reported by a party are not counted against its consumption if they not placed on its domestic market (XIV/7, para. 7)	Country programme data reports include updates on functioning of licensing systems As a condition for approving funding for tranche requests, confirmation is required that enforceable licensing and quota systems are in place Establishment of quota systems for trade in controlled substances Verification reports also look at the overall regulatory framework, including licensing and quota systems for controlled substances Issuance of an import ban soon after a controlled substance has been completely phased out in a country An informal prior-informed-consent procedure is implemented domestically, on a voluntary basis Other tools to assist with compliance, including training of customs officers and providing kits to identify the most commonly used controlled substances, in particular through the Compliance Assistance Programme

II. Possible areas that the parties may wish to consider

5. Since 1990, the Meeting of the Parties and Implementation Committee have considered a wide range of issues relevant to compliance with Montreal Protocol obligations, as described in some detail in paragraphs 46–53 of document UNEP/OzL.Pro.WG.1/41/3. However, the provisions of the Protocol and the decisions by the parties do not provide guidance on how to deal with the situations that are set out in paragraphs 6 and 7 below. In addition, the Secretariat has identified five key aspects of the implementation of the Montreal Protocol that could render the monitoring of compliance with the Protocol obligations more comprehensive (paragraphs 8–17 below).

A. Issues not addressed as compliance issues

6. The following issues have not been defined, nor have they been treated as compliance issues:

(a) **Illegal production:** neither the Montreal Protocol nor any decision of the parties has provided a definition of “illegal production” of controlled substances. The Protocol has defined “production” only, as meaning “the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the parties and minus the amount to be entirely used as feedstock in the manufacture of other chemicals. The amount recycled and reused is not to be considered as ‘production’” (Article 1, para. 5). The Implementation Committee and the parties consider only reported production that exceeds the limits permitted by the control measures.

(b) **Illegal trade:** neither the Montreal Protocol nor any decision of the parties has defined “illegal trade” in controlled substances, although contravening the ban on trade with non-parties under

Article 4B is one clear example of illegal trade and is dealt with by the Implementation Committee. As detailed in document UNEP/OzL.Pro.WG.1/41/3, a number of decisions address the importance of national approaches in curbing illegal trade and provide for voluntary actions that parties may take to achieve this. However, those decisions do not require subsequent monitoring by Montreal Protocol institutions of the approaches adopted by parties as a compliance requirement, nor is there any follow up by the Implementation Committee on the matter.

(c) Illegal consumption: neither the Montreal Protocol nor any decision of the parties has defined “illegal consumption” of controlled substances, nor has the potential diversion of controlled substances from the uses for which they were licensed or permitted received any significant attention in the decisions of the parties, apart from the situation of stockpiles (see footnote 5 below). The Implementation Committee and the parties consider only reported consumption that exceeds the limits permitted by the control measures.

(d) Polyols: under decision I/12 A, especially subparagraph (e) (iii) therein, polyurethane prepolymers are regarded as a product under the terms of the Montreal Protocol. Accordingly, controlled substances in these products are not to be counted as consumption by the importing country. The Meeting of the Parties, in decision XXII/9, endorsed the approach taken by the Executive Committee to this issue⁶ rather than taking direct decisions on it. In practice, however, there is no agreed definition of polyols, nor a consistent approach by parties to dealing with them. When the Secretariat receives data on imports of a controlled substance contained in pre-blended polyols, the Secretariat simply excludes it from the calculation of consumption.

7. The following categories or uses of controlled substances are not subject to control measures: stockpiles;⁷ quarantine and pre-shipment uses;⁸ recovered, recycled and reclaimed substances;⁹ and feedstocks.¹⁰ However, parties are required to report data on these items to the Secretariat, for consideration by the Implementation Committee and the Meeting of the Parties.

B. Reporting, monitoring, verification and implementation review

1. Reporting of data

8. Reporting of data to the Secretariat under Article 7 of the Montreal Protocol relies on self-reporting by each party. There is no provision for verification of the reported data under the Protocol. Under paragraph 7 (e) of the non-compliance procedure, the Implementation Committee can undertake information-gathering in the territory of a party only upon the invitation of the party concerned. The Secretariat, for its part, reviews information reported by the parties and may seek clarification on any apparent inconsistencies. Some verification of data is undertaken by the Multilateral Fund for Article 5

⁶ In paragraph (b) of decision 61/47, the Executive Committee confirmed that “the phase-out of HCFC-141b contained in pre-blended polyol systems that were imported and/or manufactured domestically, and counted as consumption under Article 7, was eligible for assistance according to existing guidelines”. Paragraph (d) of the same decision provided for Article 5 parties with eligible enterprises manufacturing HCFC-141b pre-blended polyol systems to be provided assistance, subject to specified conditions.

⁷ In decision XXII/20 on treatment of stockpiled ozone-depleting substances, parties were reminded to report all production of ozone-depleting substances, whether intended or unintended, to enable the calculation of their production and consumption in accordance with Article 3 of the Protocol. Parties were requested when reporting Article 7 data to identify any excess production and consumption that is a consequence of production of ozone depleting substances in the reporting year: (a) for domestic destruction or export for destruction in a future year; (b) for domestic feedstock use or export for that use in a future year; and (c) for export to meet the basic domestic needs of developing countries in a future year. No follow-up action from the Implementation Committee is necessary if the party reports that it has the necessary measures in place to prohibit the use of ozone depleting substances for any purpose other than those specified. The Secretariat was requested to include that information in the documentation for each meeting of the Implementation Committee and in the report on data under Article 7.

⁸ Paragraph 6 of Article 2H of the Protocol excludes quarantine and pre-shipment applications of methyl bromide from the calculated levels of a party’s consumption and production of the substance.

⁹ The definition of production in Article 1 excludes recycled and reused quantities of controlled substances. In addition, paragraph 2 of decision IV/24 provides that parties should not take into account, for calculating consumption, the import and export of recycled and used controlled substances (except when calculating the base year consumption under Article 5), provided that data on such imports and exports are subject to reporting under Article 7. However, Article 4B provides that the licensing system to be established by each party should cover imports and exports of used, recycled and reclaimed substances.

¹⁰ The definition of production in Article 1 excludes feedstock, although paragraph 3 of Article 7 requires parties to provide annual data on amounts of controlled substances used as feedstock.

parties,¹¹ in the context of their funding agreements with the Executive Committee and of the decisions of the Committee, as summarized in paragraphs 82–88 of document UNEP/OzL.Pro.WG.1/41/3 and described further in the background document made available to the forty-first meeting of the Open-ended Working Group.

2. Licensing systems

9. Article 4B of the Montreal Protocol requires each party to establish and implement a system for licensing the import and export of controlled substances within three months of becoming a party. Each party is also required to report to the Ozone Secretariat the establishment of a licensing system within three months of its establishment. The Secretariat is required to circulate periodically information on the establishment of licensing systems to the parties and the Implementation Committee. There is no provision for confirmation, review or oversight in respect of that information or of the licensing systems themselves, except in the context of Multilateral Fund agreements with Article 5 parties. Article 5 parties receiving support through the Multilateral Fund are required to demonstrate that there is an operational licensing and quota system in place, with bans on imports of phased-out substances and bans on the manufacture or import of controlled substance-based equipment. In a number of decisions of the parties, information-sharing in respect of licensing is encouraged but not required.

3. Trade controls

10. Illegal trade is not defined under the Montreal Protocol. It is only trade with non-parties or trade that results in excess consumption that is dealt with under the non-compliance procedure. The sharing of information on illegal trade and on national approaches taken to address it is voluntary, as are other actions aimed at the exchange of information and experience among parties. For example, paragraph 7 of decision XIV/7 only invites parties to report to the Ozone Secretariat fully proved cases of illegal trade in ozone-depleting substances in order to facilitate the exchange of information. There is no requirement that such information be reported, nor any consequences for any party that may choose not to report information on any illegal trade in ozone-depleting substances. Legal processes and penalties in dealing with instances of illegal trade are left to each country to determine, under the principle of national sovereignty, although some suggestions for action by parties have been proposed. For example, under paragraph 3 of decision XIX/12, parties wishing to improve the implementation and enforcement of their licensing systems to combat illegal trade more effectively are called upon to consider implementing domestically and on a voluntary basis the measures outlined in that paragraph.

4. Trade through free trade zones

11. Trade through free trade zones is not fully tracked under the Protocol, although decisions IV/14 and IX/34 provide some guidance on how parties should treat trans-shipments of controlled substances for the purpose of reporting data on imports and exports of those substances. The issue is also only partially dealt with by the Executive Committee in its policies, procedures, guidelines and funding criteria in the case of Article 5 parties.¹²

C. Functions and membership of the non-compliance procedure body

1. Functions of the Implementation Committee

12. The functions of the Implementation Committee, as described in paragraph 7 of the non-compliance procedure, are primarily to receive and consider reports (in response to the triggers described below, including the report of the Secretariat), request further information where needed, undertake information-gathering upon invitation by the party concerned, identify the facts and potential causes of any non-compliance referred to it and make appropriate recommendations to the Meeting of the Parties, and maintain an exchange of information with the Executive Committee. Paragraph 8 of the procedure requires the Implementation Committee to perform its functions with a view to securing an amicable solution to the issue, on the basis of respect for the provisions of the Montreal Protocol.

¹¹ Verification is undertaken for every funding tranche requested by a non-low-volume-consuming country and for a sample of low-volume-consuming countries in a given year.

¹² For example, in its decision 48/11, the Executive Committee, among other things, took note of the recommendations contained in the report of the Committee on the evaluation of customs officer training and licensing system projects to the Open-ended Working Group at its twenty-fifth meeting (UNEP/OzL.Pro/ExCom/48/13, annex I); and requested implementing agencies and bilateral agencies to prepare and implement national phase-out plans and terminal phase-out management plans in a manner that would ensure, where feasible, implementation of those recommendations.

2. Membership of the Implementation Committee

13. No specific technical expertise is required for any member nominated to serve in the Implementation Committee. Paragraph 5 of the non-compliance procedure provides for the establishment of the Implementation Committee, with a membership consisting of 10 parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution.

D. Triggering the non-compliance procedure

14. The non-compliance procedure of the Montreal Protocol provides for three ways in which a matter may be brought before the Implementation Committee in respect of a party's compliance with Protocol obligations: (a) by parties with reservations regarding another party's implementation of its obligations under the Protocol (under paragraphs 1 and 2 of the procedure); (b) by the Secretariat where it, in the course of preparing its report, becomes aware of potential non-compliance by a party with its obligations under the Protocol (under paragraph 3 of the procedure); and (c) by a party in potential non-compliance when it concludes that it is unable to fully comply with its obligations under the Protocol (under paragraph 4 of the procedure). There is no provision for any other means by which information on potential non-compliance can be brought to the attention of the Implementation Committee, such as from the Secretariat (except through the preparation of its report), through whistle-blowing (i.e., anonymous reporting) or through reporting by non-governmental organizations, intergovernmental organizations, independent technical experts or members of the public. The Implementation Committee does not have any tools to address third-party reporting.

E. Decision-making and consequences of non-compliance

15. The Meeting of the Parties is responsible for decisions on non-compliance. The Implementation Committee only makes recommendations to the Meeting of the Parties. Paragraph 9 of the non-compliance procedure provides for the Committee to report to the Meeting of the Parties, including any recommendations it considers appropriate. Nowhere in the non-compliance procedure is there provision for the Committee to make conclusive decisions on non-compliance issues that it reviews; it only makes recommendations, even where there may be a need for urgent action to be taken or to deal with systemic issues applicable to a large number of parties. To date, the Committee has adopted many recommendations on a wide range of issues, including recommendations in respect of: (a) decisions to be adopted by the Meeting of the Parties (for example, on non-compliance with various provisions of the Protocol, such as those on control measures, data reporting and licensing systems, agreed plans of action to return to compliance, approval of changes to baseline data and other substantive and procedural issues); (b) requests for the submission of data; (c) international assistance; (d) urging parties to comply with the requirement to establish licensing systems; (e) trade issues; (f) requests for further information from parties; and (g) requests to the Ozone Secretariat on various issues, including procedural issues.

F. Role of the Secretariat

16. Under the non-compliance procedure, the Secretariat acts as the liaison between the Implementation Committee and the relevant parties; provides information requested by the Committee or of which it becomes aware in the course of preparing its report; arranges for and services the meetings of the Committee; and, in general, assists the Committee in discharging its functions.

17. The Secretariat may trigger the non-compliance procedure in the course of preparing its report to the Implementation Committee where it becomes aware of potential non-compliance by any party with its obligations under the Protocol. However, as noted in paragraph 8 above, the Secretariat can only seek clarification from the parties on the data and information submitted by them. It does, however, assist the parties by providing guidance on data reporting requirements.

III. Comparative overview of arrangements under other legal regimes including, multilateral environmental agreements

18. In identifying and addressing challenges in implementation and compliance mechanisms, it can be helpful to consider the approaches taken by other regimes that deal with issues or processes similar to those under the Montreal Protocol. The present section sets out a brief comparative overview of 11 such regimes that have compliance mechanisms, comprising 9 multilateral

environmental agreements,¹³ the Trade Policy Review Mechanism of the World Trade Organization, and the Human Rights Council. The information herein is not intended to provide a comprehensive review of all relevant entities, but simply presents a sample of arrangements for consideration by the Implementation Committee.

19. It is important to note that each of these regimes has been set up for a distinct purpose, consistent with the objectives of its establishing body and through a multilateral process of negotiation and agreement. There are therefore different approaches to implementation and to identifying and solving problems; there is no “one-size-fits-all” approach. Multilateral environmental agreements, in particular, have come about in response to specific environmental issues and may adopt different interpretations or approaches from those adopted by other agreements. In addition, the membership of the treaty bodies may vary, given that not all treaties have been universally ratified. That said, a comparative review can bring different perspectives to inform discussions on addressing potential challenges.

20. The following paragraphs consider the five key aspects of implementation that were outlined in section II above in respect of the Montreal Protocol, across these regimes. The table annexed to information note UNEP/OzL.Pro/ImpCom/63/INF/R.3 provides more detailed information on 12 distinct characteristics of the regimes surveyed: (i) the source of the compliance mechanism’s mandate; (ii) the composition of the compliance body; (iii) the functions of the compliance body; (iv) how the non-compliance procedure is triggered; (v) the compliance body’s decision-making authority; (vi) the approach taken (whether facilitative or more focused on enforcement); (vii) participation in meetings of the compliance body; (viii) the role of the Secretariat; (ix) reporting requirements; (x) verification and review of reported data and information; (xi) consequences of non-compliance; and (xii) the types of issues considered to date by the compliance body.

A. Reporting, monitoring, verification and implementation review

21. Self-reporting by parties¹⁴ on national implementation is the predominant source of information on implementation and the basis for subsequent compliance reviews across the entities surveyed. National reports and communications are prepared by using agreed common guidelines, templates and frequencies and are submitted to the secretariat in accordance with agreed schedules. However, in order to enhance accuracy and objectivity and to minimize delays, a number of the regimes (e.g., the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; and the Human Rights Council) have provided for complementary third-party sources of information, commonly referred to as third-party monitoring, to enhance the transparency of actions by parties in relation to their international obligations and commitments.

22. Third-party verification and peer-review processes have been adopted in a number of regimes (e.g., the Human Rights Council, the Trade Policy Review Mechanism, the Aarhus Convention, CITES, the Kyoto Protocol and the Paris Agreement under the United Nations Framework Convention on Climate Change) as mechanisms to determine the accuracy and reliability of data and information submitted by parties in their national reports and communications, as well as to assess regime effectiveness. Such verifications and reviews are undertaken by the secretariat or by independent technical experts and encompass in-country verification/review missions or desk-based verification and implementation reviews.

¹³ The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention); the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity; the Kyoto Protocol to the United Nations Framework Convention on Climate Change; the Paris Agreement under the United Nations Framework Convention on Climate Change; the Minamata Convention on Mercury; and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, whose amendment creating a compliance mechanism was adopted in 2019.

¹⁴ The World Trade Organization and the Human Rights Council have member States rather than parties. However for the sake of conciseness, the term “parties” is used in the present note to refer to the members of those entities.

B. Functions and membership of non-compliance procedure bodies

23. Many multilateral legal regimes (e.g., the Basel, Minamata and Rotterdam conventions, the Cartagena and Nagoya protocols, and the Paris Agreement) have established specialized bodies such as compliance and/or implementation committees charged with facilitating implementation, promoting compliance and addressing cases of non-compliance. In addition, many of those specialized bodies have a general mandate to regularly examine systemic issues of implementation and compliance. Having such a mandate allows the specialized bodies to flag implementation and compliance issues that affect the collectivity of parties and to facilitate timely corrective intervention by the relevant treaty governing body.

24. In general, across all the entities surveyed, more emphasis is placed on cooperation, prevention and facilitation – such as through financial assistance, technology transfer and capacity-building support – to bring parties back to compliance, rather than applying adversarial and punitive measures for non-compliance. Like the Implementation Committee of the Montreal Protocol, the bodies are therefore characterized as non-adversarial, non-judicial, cooperative and facilitative in nature. It is only in extreme and repeated cases of non-compliance that a more punitive approach is provided for and could be applied.

25. Under a number of the instruments surveyed (e.g., the Aarhus and Basel conventions, the Cartagena, Kyoto and Nagoya protocols, and the Paris Agreement), members of the implementation or compliance committees, although elected by the treaty governing bodies, are technical experts serving in their personal capacities rather than as representatives of parties, thereby allowing for an independent, expert-level, technical consideration of issues.

C. Triggering the non-compliance procedure

26. In most cases, the non-compliance procedure is triggered either by the secretariat or by the party itself. Although provision is made under a number of regimes (e.g., the Basel Convention and the Kyoto and Montreal protocols) for one party to trigger the procedure in relation to the non-compliance of another party, this is rarely resorted to. In some of the more recently-established regimes, the right to trigger the non-compliance procedure has been extended to independent expert review teams (e.g., the Kyoto Protocol and the Paris Agreement), members of the public (e.g., the Aarhus Convention and the Human Rights Council), the compliance and implementation committees themselves (e.g., the Cartagena and Nagoya protocols and the Paris Agreement), or the governing body of the treaty (e.g., the Nagoya Protocol). Under a number of instruments, intergovernmental organizations and non-governmental organizations have the right to provide relevant information to the compliance and implementation committees regarding a party's implementation of and compliance with its obligations (e.g., the Aarhus Convention, CITES, the Cartagena, Kyoto and Nagoya protocols, the Trade Policy Review Mechanism and the Human Rights Council).

D. Decision-making and consequences of non-compliance

27. Under a number of instruments, competence is shared between the governing body (such as the Conference of the Parties or the Meeting of the Parties) and the compliance or implementation committee. The former is responsible for policy guidance and, under some instruments, the imposition of more constraining measures in response to non-compliance, such as the suspension of rights and privileges, while the latter addresses specific cases of non-compliance and provides advice and support to facilitate the return of the parties concerned to compliance.

28. The response to situations of non-compliance is predominantly facilitative, taking the form of advice and assistance such as financial support, technology transfer and capacity-building support. However, a number of regimes (e.g., CITES, the Kyoto and Montreal protocols and the Human Rights Council) have built in the threat of more punitive measures, such as the suspension of rights and privileges, the issuance of cautions and the publication of cases of non-compliance.

E. Role of the secretariat

29. Under a number of instruments (e.g., the Aarhus, Basel and Minamata conventions and the Cartagena Protocol), the secretariat's role is seen as purely technical and limited to compiling and synthesizing information received from parties and preparing reports for consideration by the relevant governing and subsidiary bodies. The secretariat also frequently seeks further information for clarification and flags implementation issues to the party concerned. Under other instruments (e.g., CITES, the Kyoto Protocol, the Paris Agreement and the Trade Policy Review Mechanism), the secretariat may also offer advice and technical assistance, conduct in-country verification and site

visits, arrange for expert reviews and prepare reports under its own responsibility. In particular, in those cases where there is no other independent third-party review and verification process, treaty secretariats may play an enhanced role such as reviewing the information provided by parties for accuracy, consistency and completeness and seeking clarification from the party concerned; undertaking in-country verification missions; and bringing unresolved issues to the attention of governing and/or compliance or implementation bodies.

30. A significant number of multilateral legal regimes (e.g., CITES, the Aarhus, Basel and Rotterdam conventions, and the Montreal and Nagoya protocols) have provided for the triggering of the non-compliance procedure by the secretariat, where, for example, it identifies compliance issues, such as non-compliance with data reporting obligations, or issues arising from the data reported.

IV. Observations on potential areas for improvement

31. In response to the request by the Implementation Committee to provide ideas and suggestions for improvement, and in the light of the challenges described in section II above, the Secretariat has identified four key areas where there may be room to enhance the effectiveness of the Montreal Protocol's compliance mechanism and, by extension, the effectiveness of implementation and compliance by the parties with their obligations under the Protocol. The observations made herein take into account the comparative overview of approaches under other regimes in section III above, as well as the more detailed information in document UNEP/OzL.Pro/ImpCom/63/INF/R.3 and the suggestions made by the secretariat of the Multilateral Fund in the document that it prepared for the Executive Committee at its eighty-third meeting (UNEP/OzL.Pro/ExCom/83/38). Each key area is described below, with some related actions that might be taken. Those actions may have financial implications for the functioning of the Secretariat that are not addressed in the present note. They may also change the functions of the Secretariat and, as a result, its relationship with the parties. Some of the actions that could potentially be applied to all parties have already been taken into account under the agreements of the Multilateral Fund with Article 5 parties.

A. Strengthening the management of actions that may impede the effectiveness of the Protocol

32. Certain actions that may have a negative impact on the effectiveness of the Protocol, such as illegal production, illegal consumption other than consumption beyond the established limits and illegal trade, have not typically been treated as matters of non-compliance and therefore have not been dealt with through the non-compliance procedure. The following actions could enhance the parties' collective understanding of different approaches and best practices in dealing with such issues:

(a) Requiring parties to report on incidences of illegal production or illegal consumption of controlled substances and share information on how it was identified and addressed with a view to identifying best practices; and requesting the Secretariat to compile and regularly update an analysis of the types of illegal production and consumption as well as the approaches and penalties that national authorities have applied in that regard;

(b) Requiring parties to report on incidences of illegal trade, and requesting the Secretariat to compile and regularly update an analysis (not merely a list) of the types of illegal trade, as well as the approaches and penalties that national authorities have applied;

(c) Engaging a subject matter expert to identify best practices in dealing with cases of illegal trade to assist parties in their enforcement efforts;

(d) Strengthening efforts to build capacity to identify illegal trade, including through random testing, by means of existing mechanisms such as the Compliance Assistance Programme;

(e) Requiring reporting of trade through free-trade zones;

(f) Requiring reporting of movements of raw materials to identify possible illegal production of controlled substances.¹⁵

B. Strengthening the effectiveness of the non-compliance procedure

33. The non-compliance procedure has functioned effectively since its establishment, initially on an interim basis, in 1990.¹⁶ Since that time, the Implementation Committee has adopted almost

¹⁵ For example, as proposed by the Multilateral Fund in its document UNEP/OzL.Pro.ExCom/83/38, monitoring the sale of methylene diphenyl diisocyanate could assist in identifying anomalies in polyurethane foam manufacturing.

¹⁶ Decision II/5.

1,000 recommendations spanning compliance-related and other issues such as reporting of data, non-compliance by parties with control measures, the classification of parties, implementation challenges, licensing systems, and recommendations for action on both substantive and procedural matters. Building on this track record, the non-compliance procedure could potentially be strengthened through the following means:

(a) Expanding the Implementation Committee's mandate to include confirmation of the accuracy of data reported by the parties, through the verification methods described below. The Committee could verify information related to specific cases before it, where there is evidence or suspicion of misreporting, as well as conduct random spot-checks of data across all parties.

(b) Increasing the number of non-compliance-procedure triggers to include reports by the Secretariat based on peer-reviewed scientific publications and reports from technical expert bodies, non-governmental organizations, intergovernmental organizations and whistle-blowers. The Secretariat would review those publications and reports, request any necessary clarification and present them, if appropriate, to the Implementation Committee for further consideration. However, the Implementation Committee would need to be mandated to deal with these new types of reporting.

C. Strengthening data reporting

34. As indicated in section III above, a number of more recently-established compliance regimes have moved beyond reliance on self-reported data and information to ensure the accuracy and objectivity of reported information. Under the framework of the Montreal Protocol, verification is undertaken in respect of data and information provided by parties that receive support through the Multilateral Fund. However, the verification of Article 7 data and other information reported by the parties could be undertaken through the following mechanisms:

(a) In-country missions and spot checks by the Secretariat, through an independent entity or expert, to verify data and information reported by both Article 5 and non-Article 5 parties;

(b) Peer reviews of data and information reported by other parties.

D. Strengthening licensing systems to ensure a more consistent approach globally and better communication among trade partners

35. Discussions among parties during the forty-first meeting of the Open-ended Working Group highlighted the centrality of effective licensing systems to ensuring the successful implementation of the Montreal Protocol. The Protocol requires only that a licensing system be established, and leaves the details to the individual parties, in line with the principle of national sovereignty (although a more detailed approach has been adopted for Article 5 parties receiving support through the Multilateral Fund). In response to interest expressed by a number of parties, and in the context of enhancing the data that it makes available on its website, the Secretariat is working to include links to licensing laws and regulations in the country profile pages of its website so that parties that wish to make such information available can do so.

36. The following actions may provide for a more consistent approach to licensing systems globally, while still respecting national sovereignty:

(a) Having an expert review of a sample of existing licensing systems, to identify best practices;

(b) Directing the Secretariat to provide advice on licensing systems to parties upon request;

(c) Establishing general guidelines for licensing systems;

(d) Requiring parties to report to the Secretariat the sources and destinations of imports and exports, and to reconcile any significant differences in their import and export data with those of their trade partners.

E. Guidance for parties

37. Based on the measures that the parties may decide to adopt, if any, the Secretariat could develop comprehensive guidance for parties on matters such as reporting illegal production, consumption and trade to the Implementation Committee and on actions that could be taken to deal with different circumstances.

Annex

Comparative information on implementation- and compliance-related mechanisms in selected multilateral legal regimes¹⁷

Note by the Secretariat

Introduction

1. The present note is provided as background to document UNEP/OzL.Pro/ImpCom/63/4, which was prepared in response to a request by the Implementation Committee at its sixty-second meeting, in July 2019, that the Secretariat prepare a document that would help the Committee to reflect on how to deal with illegal production and illegal trade, with a view to identifying possible gaps in the non-compliance procedure, challenges, tools and ideas and suggestions for improvement, for consideration by the Committee at its sixty-third meeting.
2. The appendix to the present note sets out a table displaying comparative information on aspects of implementation- and compliance-related mechanisms in 11 multilateral legal regimes, including 9 multilateral environmental agreements. It is not intended to provide a comprehensive review of all relevant entities, but simply presents a sample of arrangements for the consideration of the Implementation Committee.
3. The regimes reviewed are as follows: the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989); the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (1998); the Cartagena Protocol on Biosafety (2000) to the Convention on Biological Diversity; the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010) to the Convention on Biological Diversity; the Kyoto Protocol (1997) to the United Nations Framework Convention on Climate Change; the Paris Agreement (2015) under the United Nations Framework Convention on Climate Change; the Minamata Convention on Mercury (2013); the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998), whose amendment creating the compliance mechanism was adopted in 2019; the Trade Policy Review Mechanism of the World Trade Organization; and the Human Rights Council.
4. Each of these regimes has been set up for a distinct purpose, consistent with the objectives of its establishing body and through a multilateral process of negotiation and agreement. The regimes therefore adopt different approaches to implementation and may use different interpretations or approaches from those used by other similar entities. The membership of the regimes also varies, as described in the appendix. However, the information presented may highlight different perspectives that will inform the discussions of the Implementation Committee on this agenda item.

¹⁷ The present Annex was originally issued as Annex III to the report of the 63rd meeting of the Implementation Committee, document UNEP/OzL.Pro/ImpCom/63/6

Appendix¹⁸

Comparative information on implementation- and compliance-related mechanisms in selected multilateral legal regimes

Table 1
Review/compliance mechanism mandate

<p>Montreal Protocol (1987) – Parties:^a 198</p> <ul style="list-style-type: none"> Protocol Article 8: MOP decisions II/5 (1990), IV/5 (1992) and X/10 (1998) on the non-compliance procedure and the Implementation Committee <p>Basel Convention (1989) – Parties: 187</p> <ul style="list-style-type: none"> Convention Article 15: the non-compliance procedure and the Implementation and Compliance Committee were established by COP decision VI/12 (2002) <p>Cartagena Protocol (2000) – Parties: 171; Signatories: 103</p> <ul style="list-style-type: none"> Protocol Article 34: the non-compliance procedure and the Compliance Committee were established by COP-MOP decision BS-I/7 <p>Kyoto Protocol (1997) – Parties: 192</p> <ul style="list-style-type: none"> Protocol Article 18: the non-compliance procedure and the Compliance Committee were established by decision 27/CMP. 1 of the Conference of the Parties, serving as the meeting of the parties to the Kyoto Protocol <p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> General Assembly resolution 60/251 and Human Rights Council resolution 5/1 established the universal peer review process and the complaints procedure <p>Minamata Convention (2013) – Parties: 113; Signatories: 128</p> <ul style="list-style-type: none"> Convention Article 15: established the Implementation and Compliance Committee. COP decision MC-1/7 elaborated the operational modalities 	<p>CITES (1973) – Parties: 183</p> <ul style="list-style-type: none"> Resolutions 11.3 and 14.3 established the non-compliance procedure and vested the Standing Committee with an operational mandate <p>Aarhus Convention (1998) – Parties: 47</p> <ul style="list-style-type: none"> Convention Article 15: the non-compliance procedure and the Compliance Committee were established by MOP decision I/7 (2002) <p>Nagoya Protocol (2010) – Parties: 120; Signatories: 92</p> <ul style="list-style-type: none"> Protocol Article 30: the non-compliance procedure and the Compliance Committee were established by COP-MOP decision NP-1/4 <p>Paris Agreement (2015) – Parties: 185</p> <ul style="list-style-type: none"> Agreement Article 15: mechanism to facilitate implementation and promote compliance; the Implementation Committee was established by decision 20/CMA. 1 <p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> WTO Agreement Annex 3: established the Trade Policy Review Mechanism and the Trade Policy Review Body <p>Rotterdam Convention (1998) – Parties: 161; Signatories: 72</p> <ul style="list-style-type: none"> COP decision RC-9/7 (2019): adopted Annex VII to the Convention and established the non-compliance procedure and the Compliance Committee
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^a Includes all parties that had ratified the specific legal instrument as at 19 September 2019.

¹⁸ The present Appendix was originally issued as Annex III to the report of the Implementation Committee at its 63rd meeting, document UNEP/OzL.Pro/ImpCom/63/6

Table 2
Compliance/review body composition

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • Implementation Committee – Permanent subsidiary body of 10 parties elected by the MOP for two years, based on equitable geographical representation • Representatives of parties • No expertise specified 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • Standing Committee – Permanent subsidiary body overseeing work between COP meetings • Membership composed of party representatives, elected based on equitable geographical representation • No expertise specified
<p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • Implementation and Compliance Committee – Permanent subsidiary body of 15 members elected by the COP, based on equitable geographical representation • Experts serving in personal capacities 	<p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • Compliance Committee – Permanent subsidiary body of 8 members nominated by parties and NGOs and elected by the MOP • Experts serving in personal capacities
<p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • Compliance Committee – Permanent subsidiary body of 15 members elected by the COP-MOP, based on equitable geographical representation • Experts serving in personal capacities 	<p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • Compliance Committee – Permanent subsidiary body of 15 members elected by the COP-MOP; based on equitable geographical representation; nominees include representatives of indigenous and local communities • Experts serving in personal capacities
<p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • Compliance Committee – Permanent subsidiary body of 20 members elected by the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP), based on equitable geographical representation. The CMP also elects 20 alternate members • Experts serving in personal capacities 	<p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • Implementation and Compliance Committee - Permanent subsidiary body of 20 members, elected by the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), based on equitable geographical representation • Experts serving in personal capacities • Peer review of implementation through interactive dialogue with the party concerned in a working group with membership open to all parties
<p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • Universal peer review undertaken by a working group of the Council composed of 47 Member States • Complaints procedure undertaken by a working group on situations composed of representatives of Member States appointed by regional groups; working group members serve in personal capacities 	<p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Trade Policy Review Body – Composed of the full WTO membership, operating under special rules • Representatives of Member States
<p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • Implementation and Compliance Committee – Permanent subsidiary body of 15 members elected by the CMP, based on equitable geographical representation • Experts serving in personal capacities 	<p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • Compliance Committee – Permanent subsidiary body of 15 members elected by the COP, based on equitable geographical representation • Experts serving in personal capacities

Table 3
Compliance/review body functions

Montreal Protocol (1987)

- Addresses individual cases of non-compliance
- Undertakes information-gathering in the territory of the party concerned, upon invitation
- Receives and considers information/observations from the Secretariat concerning compliance with the Protocol
- Makes recommendations to the MOP on matters relating to compliance with the Protocol

Basel Convention (1989)

- Addresses individual cases of non-compliance
- Reviews general issues of implementation and compliance
- Provides advice and non-binding recommendations to the party concerned
- Facilitates assistance
- Develops voluntary compliance action plans
- Makes recommendations to the COP on follow-up measures

Cartagena Protocol (2000)

- Considers and addresses individual cases of non-compliance
- Provides advice and assistance to the party concerned
- Takes measures, as appropriate, or makes recommendations to the COP-MOP
- Requests the party concerned to develop a compliance action plan
- Reviews general issues of compliance by parties with their obligations under the Protocol

Kyoto Protocol (1997)

- Considers and addresses individual cases of non-compliance
- Provides advice and facilitation to parties in the implementation of the Protocol
- Facilitates financial and technical assistance, including technology transfer and capacity-building
- Provides early warnings of potential non-compliance
- Determines compliance with emission-reduction targets, methodological and reporting requirements and eligibility to participate in market mechanisms
- Requires parties to develop compliance action plans
- Takes measures in cases of non-compliance

CITES (1973)

- Monitors and assesses overall compliance with obligations under the Convention
- Advises and assists parties in complying with their obligations
- Verifies information
- Takes compliance measures in cases of non-compliance
- Undertakes information-gathering and verification in the territory of party concerned, upon invitation

Aarhus Convention (1998)

- Addresses individual cases of non-compliance
- Prepares reports on compliance with and implementation of the provisions of the Convention
- Monitors, assesses and facilitates implementation of and compliance with reporting obligations
- Undertakes information-gathering in the territory of the party concerned, with its consent
- Provides advice and facilitates assistance
- Requests the party concerned to submit a compliance strategy
- Makes recommendations to the MOP

Nagoya Protocol (2010)

- Addresses individual cases of non-compliance
- Provides advice and facilitates assistance to the party concerned
- Undertakes information gathering in the territory of the party concerned, upon invitation
- Requests the party concerned to develop a compliance action plan
- Makes recommendations to the COP-MOP
- Examines systemic issues of general non-compliance

Paris Agreement (2015)

- Considers and addresses individual cases of non-compliance
- Engages in a facilitative consideration of issues in cases of significant and persistent inconsistencies in the information submitted by a party
- Assists the party concerned in accessing finance, technology and capacity-building support
- Makes recommendations to the party concerned, including in respect of developing a compliance action plan
- Issue findings of fact with regard to implementation and compliance
- Identifies and addresses systemic implementation and compliance issues
- Makes recommendations to the CMA

Human Rights Council (2006)

- Assesses the human rights situation in each Member State
- Reviews the fulfilment of human rights obligations and commitments
- Provides technical assistance and capacity-building support
- Appoints independent experts to monitor human rights situations
- Makes recommendations to the Council

Minamata Convention (2013)

- Considers and addresses individual cases of non-compliance
- Examines systemic issues of implementation and compliance
- Makes recommendations to the COP

Trade Policy Review Mechanism (1994)

- Assesses adherence by members to basic WTO rules, disciplines and commitments
- Assesses the effects of member trade policies and practices on the multilateral trading system
- Publishes and forwards the outcome of reviews to the Ministerial Conference

Rotterdam Convention (1998)

- Considers and addresses individual cases of non-compliance
 - Provides advice and non-binding recommendations to the party concerned
 - Provides information to assist the party concerned in developing a compliance plan
 - Makes recommendations to the COP regarding measures to ensure compliance
 - Examines systemic issues relating to general compliance
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Table 4
Triggering the non-compliance procedure

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By a party or parties with respect to another party's compliance • By the Secretariat through its report to the Implementation Committee <p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By a party with respect to another party's compliance • Through referral by the Secretariat <p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By a party directly affected or likely to be affected by another party's non-compliance <p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By expert review teams through questions of implementation • By a party with respect to another party's compliance <p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • By special procedures mandate holders • By communications from any person or group of persons, including NGOs <p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • Through national reports • Through requests from the COP 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • By the Secretariat through its reports to the Standing Committee • As part of compliance matters otherwise brought to the attention of the Standing Committee by NGOs or IGOs <p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • By a party with respect to another party • Through referral by the Secretariat • Through communications from members of the public (individuals or organizations) <p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By a party with respect to another party's compliance • By the Compliance Committee on its own motion • Through COP-MOP referral <p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By the Implementation and Compliance Committee on its own motion <p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Not applicable <p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • By a party with respect to its own compliance • By a party directly affected or likely to be affected by another party's non-compliance • By the Compliance Committee on its own motion
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Table 5
Decision-making authority

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • The Implementation Committee considers non-compliance issues referred to it and makes recommendations to the MOP • The MOP takes final decisions on non-compliance matters based on Implementation Committee recommendations and imposes consequences in cases of non-compliance 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • Competence is shared between the Standing Committee and the COP • The Standing Committee can impose a broad range of measures to bring the party concerned back into compliance • However, only the COP can impose the suspension of trade in specimens, upon the recommendation of the Standing Committee • The COP exercises overall authority, provides policy guidance and reviews decisions of the Standing Committee, where needed
<p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • Competence shared between the Implementation and Compliance Committee and the COP • The Implementation and Compliance Committee can take measures relating to advice, recommendations, facilitation of assistance, and elaboration of voluntary action plans, in coordination with the party concerned • The COP can issue cautions and provide financial and technical assistance upon recommendation by the Implementation and Compliance Committee 	<p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • The Compliance Committee considers individual cases and makes recommendations to the MOP on response measures • The MOP takes appropriate response measures to bring parties into full compliance • The Compliance Committee may take interim measures, in cooperation with the party concerned, pending a MOP decision
<p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • Competence is shared between the Compliance Committee and the COP-MOP • The Compliance Committee can provide advice and assistance, and request the party concerned to elaborate a compliance action plan • The COP-MOP, upon recommendation by the Compliance Committee, can facilitate financial assistance, technology transfers and capacity-building support; issue cautions; and publish cases of non-compliance 	<p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • Competence is shared between the Compliance Committee and the COP-MOP • The Compliance Committee can provide advice and assistance and request the development of a compliance action plan • The COP-MOP, upon the recommendation of the Compliance Committee, can facilitate financial assistance, technology transfer and capacity-building support; issue a written caution, a statement of concern or a declaration of non-compliance
<p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • The Compliance Committee takes final decisions and imposes consequences in cases of non-compliance • Appeals are considered by the CMP only with respect to violation of due process rights 	<p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • The Implementation and Compliance Committee is mandated to take final but largely facilitative measures in cases of non-compliance
<p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • The Council takes final decisions regarding cases of gross violations of human rights and fundamental freedoms 	<p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Reports of the Trade Policy Review Body are submitted to the Ministerial Conference for its consideration
<p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • The Implementation and Compliance Committee examines individual and systemic issues of implementation and compliance and makes recommendations to the COP • The COP takes decisions on implementation and compliance issues 	<p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • The Compliance Committee may provide advice and non-binding recommendations to the party concerned • The COP takes final decisions and imposes consequences in cases of non-compliance, upon the recommendation of the Compliance Committee

Table 6

Approach (facilitation/enforcement)

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • Non-adversarial, non-judicial, cooperative and facilitative <p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • Non-confrontational, preventive, facilitative and non-binding <p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • Non-adversarial and facilitative <p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • Encompasses both facilitation and robust enforcement of compliance <p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • Cooperative, non-confrontational, transparent and non-politicized <p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • Non-adversarial, non-judicial, cooperative and facilitative 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • Supportive, non-adversarial and facilitative • Recommendations to suspend trade pending a return to compliance are enforced at the national level <p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • Non-judicial, non-confrontational, consultative and facilitative <p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • Non-adversarial, advisory, cooperative and facilitative <p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • Non-adversarial, non-punitive and facilitative <p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Cooperative and facilitative <p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • Cooperative and facilitative
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Table 7
Participation (open/closed)

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • Closed meetings; confidentiality protected; reports are publicly available • Other parties entitled to participate, upon invitation • The Executive Committee and implementing agencies attend meetings to provide information, as needed <p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • Meetings are closed to other parties and the public <p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • The Compliance Committee decides whether to meet in open or closed sessions • The party concerned and the party making a submission are entitled to participate in deliberations <p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • Meetings are held in public unless the plenary or branch of the Compliance Committee decides otherwise • Meetings are closed to the public during the elaboration and adoption of a decision <p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • Universal peer review working group sessions are open to observer States and other relevant stakeholders • The complaints procedure is confidential and closed to the public <p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • Open to observers (e.g., non-parties, United Nations entities, IGOs and NGOs) unless the Compliance Committee decides otherwise 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • Meetings of the Standing Committee are open to observers (e.g., United Nations entities, IGOs and NGOs) unless members decide otherwise <p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • Meetings are open to observers but may be closed to ensure confidentiality • Open to the party concerned, the party making a submission and members of public submitting relevant communications <p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • Meetings are open unless the Compliance Committee decides otherwise • During the consideration of individual cases, meetings are open to parties but closed to the public • Representatives of indigenous and local communities participate as observers <p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • Meetings are public unless the Implementation and Compliance Committee decides otherwise • Meetings are closed to the public during the elaboration and adoption of decisions <p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Deliberations of the Trade Policy Review Body are open to observers <p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • Meetings are open to parties and the public unless the Compliance Committee decides otherwise • During the consideration of cases, meetings are open to parties but closed to the public
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Table 8
Reporting requirements

Montreal Protocol (1987)

Mandatory reporting:

- One-off baseline data reporting
- Annual data reporting on production, imports, exports, feedstocks, amounts destroyed, amounts recycled and emissions of hydrofluorocarbons per facility; guidelines and formats provided
- Biennial summary of information on research, development, public awareness and exchange of information
- One-off reports on the establishment of licensing systems
- Reporting under MOP decisions on essential-use exemptions and process agents

Voluntary reporting:

- On substances destroyed, types, quantities and destinations of exports, feedstock uses, quantities and sources of imports, information on licensing system focal points, illegal trade and related issues

Basel Convention (1989)

- Parties prepare and submit annual reports containing information on the generation, import, export and disposal of hazardous wastes and other wastes
- Reports prepared in accordance with guidelines and formats adopted by the COP
- Mandatory reporting of confirmed cases of illegal traffic to the Secretariat in accordance with guidelines and formats adopted by the COP
- Illegal traffic is deemed a criminal offence and parties are enjoined to prevent and punish cases

Cartagena Protocol (2000)

- Parties to submit national reports to the Secretariat every four years in accordance with guidelines and formats adopted by the COP-MOP
- Parties to submit to the Biosafety Clearinghouse information on national laws and regulations, summaries of risk assessments, final decisions regarding imports, and information on illegal transboundary movement
- Mandatory reporting to the Biosafety Clearinghouse on illegal transboundary movements

CITES (1973)

- Maintain records in trade of specimens; periodic reports on implementation; annual reports on trade and illegal trade; biennial reports on enforcement measures
- Guidelines and formats provided

Aarhus Convention (1998)

- Parties prepare and submit to periodic national implementation reports on legislative and regulatory measures and their implementation
- Reports prepared in accordance with guidelines and formats adopted by the MOP
- Reports prepared in consultation with relevant government agencies and non-State actors
- International, regional and NGOs prepare and submit “shadow reports” on implementation in specific countries

Nagoya Protocol (2010)

- Parties submit periodic national reports in accordance with guidelines and formats approved by the COP-MOP
- Information also submitted to the Access and Benefit-Sharing Clearinghouse
- Indigenous and local communities also submit information on national implementation and accuracy and completeness of information contained in the party’s national report

Kyoto Protocol (1997)

- Parties annually report greenhouse gas inventories in accordance with guidelines and formats adopted by the CMP
- Parties provide periodic supplementary information in national communications submitted under the Convention to demonstrate compliance with commitments under the Protocol
- The information provided undergoes an independent third-party technical expert review process

Human Rights Council (2006)

- Each Member State submits a national report every 4 years in accordance with guidelines adopted by the Council regarding the implementation of its human rights obligations and commitments
- The Council also receives reports from the secretariat, special procedures, treaty bodies, United Nations entities, national human rights organizations and NGOs

Minamata Convention (2013)

- Parties submit full reports every 4 years and biennial reports on selected issues in accordance with the guidelines and formats adopted by the COP
- National reports on measures taken to implement the Convention, the effectiveness of the measures and the challenges encountered

Paris Agreement (2015)

- Parties submit biennial transparency reports in accordance with the modalities, procedures and guidelines adopted by the CMA
- Reports to contain information on the national inventory of GHG emissions; information necessary to track progress made in implementing and achieving the party's nationally-determined contributions; information relating to climate change impacts and adaptation
- Developed countries to submit information on financial, technology transfer and capacity-building support provided to developing countries
- Submitted information undergoes an independent, third-party technical expert review process

Trade Policy Review Mechanism (1994)

- Each Member State submits an annual report in accordance with guidelines adopted by the Trade Policy Review Body regarding its trade policies and practices
- Each Member State also provides annual updates of statistical data and information on significant developments between reviews by the Trade Policy Review Body
- A Member subject to review is required to submit a full report for consideration by the Trade Policy Review Body

Rotterdam Convention (1998)

- Parties required to provide notifications to the Secretariat regarding: designated national authorities; final regulatory actions regarding banned or severely restricted chemicals; and information on planned imports of listed chemicals

Table 9
Role of the secretariat

Montreal Protocol (1987)

- Receives information, seeks clarification within specified time frames and prepares reports to the MOP and the Implementation Committee on unresolved compliance issues

Basel Convention (1989)

- Reviews information and data provided in national reports, seeks clarification as necessary, prepares an annual report compilation for the COP
- Triggers the non-compliance procedure where there is non-compliance with reporting requirements
- Circulates to the parties concerned information received on illegal traffic and offers technical assistance

Cartagena Protocol (2000)

- Prepares compilations and analyses of national reports for consideration by the Compliance Committee and the COP-MOP
- Seeks further information and clarification from parties when requested by the Compliance Committee

Kyoto Protocol (1997)

- Upon receipt of national reports, organizes an expert review team for the party concerned
- Prepares a report compiling and synthesizing national communications submitted by all parties
- Forwards final review reports prepared by the expert review teams to the CMP, the Compliance Committee and the party concerned
- Brings the questions of implementation contained in expert review team reports to the attention of the Compliance Committee

Human Rights Council (2006)

- Prepares a compilation of the information contained in the reports of treaty bodies, special procedures and United Nations entities

Minamata Convention (2013)

- Prepares periodic reports to the COP based on information received from parties and other sources regarding Convention implementation

CITES (1973)

- Studies reports, seeks further information, flags implementation issues for party concerned
- Prepares annual report to the COP on Convention implementation
- In consultation with the Chair of the Standing Committee, works with the party concerned to address major compliance issues, offering advice and technical assistance
- Refers unresolved issues to the Standing Committee, which may pursue the matter further with the party concerned

Aarhus Convention (1998)

- On the basis of national implementation reports, prepares synthesis reports for the MOP on progress in implementation and related trends, challenges and solutions
- Reviews national implementation reports, seeks further information and clarification, and brings cases of non-compliance to the attention of the Compliance Committee

Nagoya Protocol (2010)

- Prepares reports synthesizing information provided in national reports for the COP-MOP and the Compliance Committee
- Raises with the party concerned information accuracy and completeness issues
- Refers unresolved compliance issues to the Compliance Committee

Paris Agreement (2015)

- Prepares reports synthesizing information in parties' biennial transparency reports and national inventory reports
- Organizes technical expert review teams for each party
- Prepares an annual report on the technical expert review
- Publishes parties' biennial transparency reports, national inventory reports, technical expert review reports, and records of the facilitative, multilateral consideration of progress

Trade Policy Review Mechanism (1994)

- Prepares a report under its own responsibility for each Member State under review regarding its trade policies and practices and implementation of WTO requirements
- Prepares semi-annual reports on trade policy trends

Rotterdam Convention (1998)

- Provides parties a synopsis of information received regarding final regulatory actions
- Verifies whether final regulatory actions meet specified information requirements
- Brings to the attention of the Compliance Committee systemic issues of general compliance identified during the discharge of its functions

Table 10
Verification and review of reported data and information

Montreal Protocol (1987)

- Each party is required to have a licensing system for imports and exports
- Each party is responsible for accuracy in its reporting
- No specific independent verification of reported data or information under the Protocol or decisions of the MOP
- The Secretariat clarifies internal inconsistencies in reported data
- Data reported under funding agreements is subject to verification
- Reports under funding agreements are verified against reports under the Protocol to identify discrepancies

Basel Convention (1989)

- The Secretariat and the Implementation and Compliance Committee are mandated to review national reports
- The Secretariat may seek clarification from a party regarding information in its national report
- Parties are empowered to monitor breaches of obligations by other parties and inform the Secretariat of such cases

Cartagena Protocol (2000)

- The Compliance Committee addresses general issues of compliance on the basis of national reports
- The Compliance Committee may seek clarification and further information from parties through the Secretariat
- The Compliance Committee reviews the consistency of information provided in the national report and information submitted to the Biosafety Clearinghouse
- The Compliance Committee assesses whether the information submitted to the Biosafety Clearinghouse is in accordance with the provisions of the Protocol

Kyoto Protocol (1997)

- National reports and communications submitted by Parties are subject to independent third-party review by expert review teams
- The reviews include verification of completeness and accuracy of information
- The expert review team process includes in-country visits
- Expert review teams may put questions to the party concerned, request additional information and seek clarification
- The final expert review team report identifies questions of implementation to be addressed by the Compliance Committee

CITES (1973)

- Each party is required to monitor export permits and actual exports
- Other parties, NGOs and IGOs conduct monitoring and report violations to the Secretariat
- The Secretariat conducts ad hoc in-country verification
- The mandate of the Animals and Plants Committee includes reviews, consultations, assessments and reporting
- The Standing Committee may verify information provided by a party

Aarhus Convention (1998)

- The Secretariat reviews national implementation reports and may seek clarification and further information from parties
- Following the review, the Secretariat may bring potential cases of non-compliance to the attention of the Compliance Committee
- The Compliance Committee monitors and assesses compliance with reporting requirements
- Non-State actors, in particular NGOs, monitor and report breaches to the Secretariat and the Compliance Committee

Nagoya Protocol (2010)

- The Secretariat reviews the national reports and may raise issues relating to the completeness and accuracy of information provided in the national reports or submitted to the Access and Benefit-Sharing Clearinghouse
- Indigenous and local communities may provide information on the completeness and accuracy of information provided in national reports

Paris Agreement (2015)

- The framework consists of independent third-party technical review and peer review processes
- The technical review is undertaken by technical expert review teams, which examine the consistency, accuracy and completeness of information, seek clarification and request additional information
- The technical expert review team process includes in-country visits
- The technical expert review teams produces a review report
- The peer review process allows other parties to put questions to and seek clarification from the party concerned on the basis of its biennial transparency report and the technical expert review team report

Human Rights Council (2006)

- Independent human rights experts (special procedures) mandated to monitor, review and verify human rights situations in specific countries
- May seek further information and clarification
- Individuals or groups may communicate cases of gross violations to the Council
- The universal peer review process provides an open, interactive forum to examine the human rights situation in each Member State

Minamata Convention (2013)

- No verification procedure prescribed
- However, the Secretariat provides information to the COP to assist in its review of national reports

Trade Policy Review Mechanism (1994)

- The Secretariat prepares its own report, in parallel with the Member State's report
- The Secretariat seeks information and clarification from the Member State concerned, including through in-country visits
- Other parties submit questions to and seek clarification from the Member State in a peer review process under the Trade Policy Review Body

Rotterdam Convention (1998)

- The Secretariat verifies whether final regulatory action reported by a party meets the information requirements specified in the Convention
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Table 11
Consequences of non-compliance

Montreal Protocol (1987)

The Implementation Committee may:

- Provide appropriate assistance, including in the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training
- Issue cautions
- Suspend, in accordance with the applicable rules of international law, specific rights and privileges under the Protocol, whether or not subject to time limits, with respect to industrial rationalization, production, consumption, trade, transfer of technology, financial mechanisms and institutional arrangements

Basel Convention (1989)

The Implementation and Compliance Committee may, in coordination with the party concerned:

- Provide advice and financial and technical assistance
- Propose the elaboration of a voluntary compliance action plan
- Recommend to the COP more expansive measures, depending on the severity of the case (e.g., further financial/technical assistance or the issuance of a cautionary statement).

Cartagena Protocol (2000)

- Competence regarding non-compliance measures is shared between the Compliance Committee and the COP-MOP
- The Committee may provide advice and assistance, request or assist in the development of a compliance action plan, require the submission of progress reports, and make recommendations to the COP-MOP on further measures
- The COP-MOP may provide financial and technical assistance, technology transfer and capacity-building support; issue a caution; or request the Executive Secretary to publish related information in the Biosafety Clearinghouse

Kyoto Protocol (1997)

- The Compliance Committee takes final decisions and imposes consequences in cases of non-compliance
- The Facilitative Branch of the Compliance Committee can decide on the provision of advice and assistance; the facilitation of financial and technical assistance, including technology transfer and capacity-building; and make recommendations to the party concerned
- The Enforcement Branch may issue a declaration of non-compliance; require the development of a compliance action plan; impose penalties with respect to a party's emissions budget; or suspend eligibility to participate in the market mechanism

CITES (1973)

The Standing Committee may:

- Provide advice, facilitation and capacity-building support
- Request special reporting by the party concerned
- Issue written cautions, requesting a response and offering assistance
- Provide in-country assistance, and conduct technical assessment and verification missions, upon invitation
- Send public notifications on compliance matters to all parties
- Issue a warning to the party concerned
- Request a compliance action plan from the party concerned
- Recommend suspension of trade in specimens with the party concerned

Aarhus Convention (1998)

- The Compliance Committee makes recommendations to the MOP
- It may take interim measures, in cooperation with the party, pending a decision of the MOP
- The MOP may take the following measures: provide advice and facilitate assistance; request the submission of a compliance strategy; issue a declaration of non-compliance and a caution; or suspend special rights and privileges

Nagoya Protocol (2010)

- Competence regarding non-compliance measures is shared between the Compliance Committee and the COP-MOP
- The Compliance Committee may provide advice and assistance, request or assist in the development of a compliance action plan, require the submission of progress reports, and make recommendations to the COP-MOP on further measures
- The COP-MOP may facilitate access to financial and technical assistance, technology transfer and capacity-building support; issue a written caution, a statement of concern or a declaration of non-compliance

Paris Agreement (2015)

- The Implementation and Compliance Committee may: engage in dialogue with the party concerned; assist the party in engaging with relevant bodies to obtain financial, technological and capacity-building support; recommend the development of a compliance action plan; issue findings of fact with regard to implementation and compliance

Human Rights Council (2006)

- The Council may: keep the situation under review and request further information from the State concerned; appoint an independent expert to monitor the situation; discontinue the confidential procedure and take up consideration publicly; recommend that Office of the United Nations High Commissioner for Human Rights provide technical and capacity-building assistance and advisory services

Minamata Convention (2013)

- The Implementation and Compliance Committee makes recommendations to the COP
- No consequences of non-compliance are prescribed

Trade Policy Review Mechanism (1994)

- Not applicable

Rotterdam Convention (1998)

- Competence shared between the Compliance Committee and the COP
 - The Committee may provide party concerned advice, non-binding recommendations, or further information to assist the party in developing a compliance action plan
 - The Committee may recommend that the COP: support the party, including by facilitating access to finance, technical assistance and capacity-building; issue of a statement of concern; address the non-compliance situation
 - The Committee may request the Executive Secretary to make public cases of non-compliance
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Table 12
Types of issues considered to date by the compliance/implementation body

<p>Montreal Protocol (1987)</p> <ul style="list-style-type: none"> • Non-compliance with obligations on data reporting, phase-out or phase-down of controlled substances, controls on trade, establishment of licensing systems, contributions to the financial mechanism (for non-Article 5 parties) • Requests for changes in baseline data; classification of parties <p><u>Issues not directly considered:</u></p> <ul style="list-style-type: none"> • Illegal (meaning informal) trade (excluding trade with non-parties) • Stockpile scenarios listed in decision XVIII/17 <p>Basel Convention (1989)</p> <ul style="list-style-type: none"> • General compliance and implementation issues related to national reporting, national implementing legislation, and illegal traffic • Issues addressed in specific submissions include: the designation of competent national authorities and focal points; compliance with national reporting obligations; development of adequate legal frameworks for implementation; and implementation of approved compliance action plans <p>Cartagena Protocol (2000)</p> <ul style="list-style-type: none"> • General compliance issues addressed include: the rate and timeliness of national reporting; establishment of necessary legal, administrative and other measures; measures to address illegal transboundary movement; making information available in the Biosafety Clearinghouse; consistency of information in national reports with that in the Biosafety Clearinghouse • Specific cases concern non-compliance with reporting obligations • The Compliance Committee has also addressed the issue of whether it had a mandate to consider a submission by an NGO <p>Kyoto Protocol (1997)</p> <ul style="list-style-type: none"> • Non-compliance with emission reduction targets for the first commitment period • Delays in submission of annual inventory reports and national communications • Non-compliance with reporting guidelines, greenhouse gas inventory guidelines and eligibility requirements • Calculation of assigned amounts and commitment period reserves • Reinstatement of eligibility to participate in market mechanisms • Early warnings of potential non-compliance • Reports of expert review teams and compliance action plans <p>Human Rights Council (2006)</p> <ul style="list-style-type: none"> • Cases of gross violation of human rights and fundamental freedoms <p>Minamata Convention (2013)</p> <ul style="list-style-type: none"> • No substantive consideration of issues to date. 	<p>CITES (1973)</p> <ul style="list-style-type: none"> • Some of the issues addressed by the Standing Committee include: lack of adequate national legislation; non-enforcement of legislation and non-prosecution of illegal transboundary trade; illegal trade in specimens of listed species; issuance of permits and certificates; non-compliance with reporting requirements regarding commercial trade activities; non-designation of scientific and management authorities <p>Aarhus Convention (1998)</p> <ul style="list-style-type: none"> • Some of the issues addressed by the Compliance Committee include: failure to submit national implementation reports in a timely manner; non-compliance with access to information provisions; lack of appropriate legislation/regulations on access to information; lack of adequate public participation procedures; incompatibility of legislation with provisions relating to public participation and access to justice • Legislative restrictions on NGOs <p>Nagoya Protocol (2010)</p> <ul style="list-style-type: none"> • The Compliance Committee has addressed general issues of compliance, including: the rate of submission of interim national reports; establishment of access and benefit-sharing measures; establishment of institutional arrangements; and provision of information to the Access and Benefit-Sharing Clearinghouse <p>Paris Agreement (2015)</p> <ul style="list-style-type: none"> • No relevant experience to date <p>Trade Policy Review Mechanism (1994)</p> <ul style="list-style-type: none"> • Not applicable <p>Rotterdam Convention (1998)</p> <ul style="list-style-type: none"> • No relevant experience to date
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