
SUMMARY OF WORKSHOP: COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL AGREEMENTS

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GOALS

Discussions were designed to address the following issues:

- The goals of Chlorofluorohydrocarbon (CFC) reduction along with other ozone depleting substances and particular challenges control and reduction of CFCs in the marketplace pose to enforcement programs given the nature of the market and regulated community.
- Types of programs countries have adopted to enforce CFCs in the marketplace, successes and failures, design of requirements to ensure enforceability, promotion of compliance, compliance monitoring and inspection activities, enforcement response, and levels of government involvement including licensing of facilities and control and tracking of production, reuse, sale and disposal.
- Review of other existing international environmental agreements and their implications for domestic and international enforcement
- Experiences in enforcement of international environmental agreements, successes and failures
- Ways violators are circumventing provisions of the Ocean Dumping, CITES conventions and or other such agreements and how violators are being detected.
- The experience of enforcement personnel in the information that is needed to identify such violators and what level of cooperation and information sharing is needed between and among national enforcement organizations to satisfy current needs for effective enforcement
- The need for formal and informal lines of communication about what to whom among law enforcement personnel, customs officials, environmental managers and environmental enforcers domestically and internationally.
- Informal recommendations for initiatives to fill gaps, identifying the institutions and actions needed.

1 INTRODUCTION

Participants represented nations with a range of experiences in enforcement of international agreements. Some countries had signed a few such agreements; some had signed virtually all. There is substantial commitment to the need for such agreements, but

a recognition of the need for strong political support within a country both for compliance by the country and for enforcement against others. NGOs want to be a part of the enforcement picture, but citizen participation is not always directly recognized in international agreements.

Participants centered their discussions on five themes that were determined priority issues in the implementation, and enforcement of international agreements, both at the national and international level. These are:

- How to achieve communication for effective compliance and enforcement at the national level.
- What different legislative and practical approaches to enforcement for range of violations have been effectively used, and types of enforcement responses.
- What financial resources are required for consistent enforcement and capacity building, and available sources of financial assistance.
- What are the obstacles to international cooperation presented by disparities among sanctions for same violations.
- How to raise broad awareness of the importance of issues addressed in Conventions and overcome the differences in perception at international and local level.

2 PAPERS

Papers related to this workshop include:

- Enforcement of International Environmental Agreements, e.g., Hazardous Waste and Ozone Depleting Substances, *K. Boekel*

3 DISCUSSION SUMMARY :WORKSHOP 5B

3.1 How to better implement international agreements; what assistance is needed.

Participants identified a number of obstacles to effective implementation and enforcement of international agreements, including:

3.1.1 In-country Issues

- There is a need for enactment of clear, enforceable domestic laws to implement international agreements which countries have signed, e.g. the Basel Convention and the Bamako Supplement. Lack of clarity in language of international agreements may also be a problem. It may be beneficial to write compliance and enforcement mechanisms directly into international agreements.
- Agreements are signed at a national level, but must be implemented at provincial levels, resulting in a major disconnect. There is a need to strengthen interaction between national, regional, and local organizations.

- Developing countries focus on enacting, rather than enforcing, new legislation to implement international agreements. Also, the capacity of developing countries to comply with and enforce international agreements is frequently in conflict with other developing country priorities.
- There is a need for assistance in characterization of hazardous waste.
- Some countries feel that their governments commit to international agreements and come home and do the opposite. There is a need for support for international agreements at the political level, rather than just signing agreements and then ignoring them.
- People with compliance information in environmental agencies do not communicate with international enforcers.
- Government agencies need training on implementation and enforcement aspects of international agreements at staff level.

3.1.2 Multinational Issues

- There is a need for consistent interpretations of texts of international agreements and to develop guidelines for implementation.
- There is a need for cooperation between and among countries; some countries will try to interpret conventions to serve their national interests or will try to use agreements to serve their own economic interests.
- Failure of some countries to ratify international conventions presents a problem for those countries which are signatories, particularly where smaller countries are signatories and larger, more powerful nations are not.

3.1.3 NGO Status Issues

- There is a need for a network of citizens within countries to build political support for international agreements. Citizen support for adoption of legislation to implement international agreements by legislatures can be a powerful incentive.
- Direct citizen enforcement provisions should be written into international agreements. Where citizen enforcement provisions are not written into conventions, try to be creative and develop ad hoc mechanisms (e.g., file a petition).
- National interests may be in conflict with international agreements; early public involvement is needed to help reconcile these conflicts.

3.2 Market conditions influencing imports of hazardous wastes

Since endorsement of the Basel Convention, some countries (e.g., Sri Lanka) have experienced more efforts to import hazardous wastes into the country. It is not clear to what extent this experience is shared by other countries. Could this experience be a consequence of increased monitoring? Some countries prefer to deal with problems of hazardous waste disposal within their own boundaries, although they may be signatories to agreements which permit exports. Stronger enforcement efforts in some countries puts

pressure on countries with weaker enforcement to accept hazardous wastes. Conversely, countries with poor enforcement records tend to shift the burden to more conscientious countries.

3.3 CFC Enforcement – Successes and Failures

The convention on regulation of CFCs is regarded as one of the most successful international agreements. Implementation of this agreement has been helped by financial assistance and the availability of technology transfer (e.g., substitute technologies). Another reason for the success of this convention is that big countries do not want to be perceived as environmental criminals.

A problem with implementation is dealing with CFCs that are already in the system. Many small operators face this challenge and are also confronted with complex procedures for compliance. Substitute technologies are not always available to small operators.

The fact that different countries are on different schedules for CFC phase-out can produce black market conditions. In order to avoid this result, it is necessary to promote cooperation among government agencies and at various levels of government. Options to achieve this result include task forces, international networks, and collaborative enforcement.

3.4 Other Successes and Failures

3.4.1 Prior Informed Consent (PIC) Convention

Gambia described successful use of this convention to interdict imports of DDT-impregnated mosquito coils. Success occurred on a voluntary level, even before the convention was signed.

3.4.2 Convention on International Traffic in Endangered Species (CITES)

Venezuela reported a positive experience using the CITES convention to remedy illegal import of birds for development of a bird sanctuary. However, several participants reported experiences with inability to care for animals seized pursuant to CITES. Another issue is inconsistent experience with elephants, which cannot be captured for the ivory in their tusks. Since the effectiveness of this prohibition on capturing elephants for their ivory tusks, elephant populations have increased in some countries and decreased in others. There could, of course, be other issues associated with this phenomenon. The CITES convention does have strong citizen participation provisions.

3.4.3 Bamako Supplement

African nations were pleased with the ability to prevent imports of nuclear and other wastes, using this instrument.

3.4.4 Other Issues

- International agreements, like other regulatory mechanisms, must be reasonable in order to be enforceable.
- There is a sense that some countries join international agreements as a means of obtaining resources, but are not committed to implementation. However, it is also recognized that countries may join such agreements to start solving a problem, even if they are unable to meet all the requirements of the agreement. They do need resources to participate.

3.5 Circumvention of International Agreements

Some methods that have been used to circumvent international agreements include:

- mislabeling (e.g., CFCs);
- sham recycling;
- transshipments;
- falsely claiming waste is raw material;
- ivory and turtle eggs in diplomatic pouches;
- mixing waste with fuels;
- using claims of confidential business information to hide information; and
- load waste drums in a truck and then fill in with legitimate product.

3.6 Conclusion

Implementation and enforcement of international agreements is a matter of concern to many countries. However, there are numerous implementation problems, not the least of which is the failure of countries which sign international agreements to enact implementing domestic legislation. Countries should consider direct enforcement of treaties, as a part of their national law. Also, when countries plan and publicize environmental enforcement strategies, they should consider inclusion of their commitments under international agreements. There is a distinct issue for developing countries, which desire to implement international agreements, but which are faced with competing priorities within their countries. NGO's also face particular challenges in enforcing agreements, where there is no specific provision for citizen suits; they are developing creative approaches to facilitate their participation.

4 DISCUSSION SUMMARY: WORKSHOP 5BB

The group discussed and highlighted the following issues, please note some are general comments and recommendations and others are specific country cases:

4.1 How to Achieve Communication for Effective Compliance and Enforcement at the National Level

- In country communication is vital and the Conventions should be implemented as soon as possible as well as issuing national implementing legislation and regulations.
- Country should assess its needs, priorities within the Convention and reduce the scope for actions to those implementable. The Environment agency should lead this needs analysis.
- Combine the different obligations and responsibilities under the Convention to simplify and work around the articles of other conventions (work on overlap, conflicts, etc.).

- While negotiating the text of the Convention, inform other agencies to build “buy-in.”
- Before Convention signature, identify the person that will implement and enforce and send that person to sign so he/she can be responsible throughout the entire process.
- Timeframes for meeting obligations national level.
- Complexities of “international or diplomatic” language used in Conventions and need to identify national “equivalents” not just conduct a translation.
- Keep and disseminate the negotiating history and the positions to give insight of intent to comply
- Define additional terms within the Convention and through the translation
- United Nations only translates into 6 official languages and there is a need for additional and correct translation.

4.2 What Different Legislative and Practical Approaches to Enforcement for Range of Violations Have Been Effectively Used and Types of Enforcement Responses

- **Dominican Republic:** NGOs can offer pro bono assistance to legislators and drafters to understand international conventions.
- **Nepal:** Informed GOs, NGOs, IGOs and others assist the Congressional Committee on Natural Resources.
- **Uganda:** Promotes in site visits for legislators and create awareness of issues the law would address, it also promotes partnerships.
- **Ghana:** It is government policy to take the judges in the field to visit sites and build awareness.

4.3 How to Raise Broad Awareness of the Importance of Issues Addressed in Conventions and Overcome the Differences in Perception at the International and Local Levels

- Who should be trained:
 - Legislators
 - Customs officials
 - Judiciary
 - Law enforcement
 - Inspectors
 - Civil society in general (NGOs, industry, etc.)
- How should they be trained:
 - **Nepal:** The judiciary (High Court) was trained with financing from IUCN Bonn.

- **SACEP:** Judges have to be sensitized rather than trained a program was developed through UNEP and Norway.
- **India:** Courses for judges should be short, focused and closed to the general public.

4.4 How to Raise Broad Awareness of the Importance of Issues Addressed in Conventions and Overcome the Differences in Perception at the International and Local Levels

- **Nepal:** Street theater is used to bring awareness of pressing environmental issues using drama with financial assistance from IUCN.
- **British Columbia, Canada:** Black bears cause much damage but are protected under CITES in Canada and the agency teaches people how they can benefit from protecting them. They use pamphlets, information on “how to protect yourself and your property,” use media and the municipal government assists in developing materials.
- **Ghana:** The national government conducts education programs on the benefit of including public participation at the local level.
- **India:** The government uses movie clips in theaters to promote awareness and also promote the rights of flora and fauna to appeal to tree huggers.
- **Cambodia:** Finds it difficult to sell the idea to the poor of protecting the environment because of the practice of hunting wildlife, even if threatened or endangered to sell for food.
- **British Columbia, Canada:** Canadian experience suggests that the way to deal with poverty vs. conservation is to remove the economic value of the wildlife by addressing the “market” with high penalties and covert operations.
- **Sri Lanka:** The government gets to a basic level by teaching school children value of protecting the environment.

4.5 What are the Obstacles to International Cooperation Presented by Disparities Among Sanctions for the Same Violations

- **British Columbia, Canada:** For small items (bear bladders) covert operations are used by employing inspectors and placing them in industry.
- **Kenya:** The economic benefits are taken away by placing fees into a special program or fund to preserve the environment. The government promotes this mechanism in other countries.

4.6 What Financial Resources are Required for Consistent Enforcement and Capacity Building and Available Sources of Financial Assistance

- **Nigeria:** International Conventions ratified are self-financing (for e.g. Basel and CITES) and importers pay through fees for the inspection, analysis, CITES permit and a percentage of the cargo's cost. There is also a “self-reporting”

element. The fines support the costs of the implementing and enforcement agency. For example there is a special fund for marine pollution and it does not go into the general national budget.

- **USA, New Jersey:** The agency earmarks money collected by fines for a special NGO fund that supports environmental work. It is managed by NGOs.
- **Israel:** NGOs do not accept money from industry or government for fear it will be pressured and will not allow them to maintain independence.
- **Guatemala:** International financial institutions such as the World Bank have used their own policies to assist in creating and leaving behind a fund or other mechanism to protect the environment during and after investment projects have been completed.

4.7 Conclusion

The groups gave examples of in-country obstacles, and mechanisms to achieve resolution – mentioning specific legislative and enforcement tools. The session served as a valuable comparative review, and provided participants and facilitator a rich spectrum of compliance and enforcement tools, including training of trainers, building institutional memory, and simplifying the “language” of the Conventions.