

7th MEETING OF THE TECHNICAL COMMITTEE
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National Reports as Indicators of Implementation and Effectiveness of AEWA
(Report by TC Working Group 11)

Introduction

AEWA has recently celebrated its tenth birthday, and after devoting most of this period to policy issues, attention should now be turned to issues concerning the Agreement's implementation and more than that – to its effectiveness as an international convention for the protection of global biodiversity.

AEWA is not a compliance-orientated MEA (multilateral environmental agreement). In contrast to other environmental MEAs (but in common with most biodiversity MEAs¹), the agreement contains no provision regarding compliance and makes no reference to it. It is clear from the Agreement's language as well as from that of the Convention on Migratory Species that the emphasis is on encouraging and supporting contracting parties in meeting their obligations under the Agreement. However, implementation of the Agreement as reflected in its provisions on this issue, was clearly of major concern to its drafters. Furthermore, and as will be discussed in this review paper, their concern was not limited to implementation but extended to the Agreement's effectiveness as well, and that their intention was to authorize the MOP to take measures on both issues.

The intention of this review paper is to discuss the use of the national reports under AEWA as tools for assessing both implementation and effectiveness.

Implementation of AEWA

1. Paragraph 1(c) in Article V of the Agreement which is entitled "Implementation and Financing" obligates each Party to "prepare for each ordinary session of the Meeting of the Parties, beginning with the second session, **a report on its implementation of the Agreement** with particular reference to the conservation measures that it has undertaken. The format of such reports shall be determined by the first session of the Meeting of the Parties and reviewed as may be necessary at any subsequent session of the Meeting of the Parties." It should be noted – again, in contrast to other MEAs – that AEWA contains no article dealing solely with reporting but rather incorporated it into the above article. In other MEAs, articles on reporting precedes articles on implementation and compliance, obviously since national reports are considered the main tool for assessing implementation and compliance. In contrast, the Agreement itself does not provide any follow-up to the report (an issue dealt with by the MOP by means of resolutions, as detailed below), and on the face of it, reporting is a "stand alone" issue rather than part of a process which views the report as a means to an end.²
2. The Meeting of the Parties, as the decision-making organ of AEWA, carries the main responsibility for the Agreement's implementation. In accordance with Article VI (8), at each of its ordinary sessions, the Meeting of

¹ It is interesting to note how the Convention on Biodiversity is attempting to solve its lack of provisions regarding compliance: see "REPORTING MECHANISMS UNDER THE CONVENTION AND OTHER CONVENTIONS", <http://www.biodiv.org/doc/meetings/wgri/wgri-01/official/wgri-01-10-en.doc>, in which it is recommended to establish a mechanism for peer-review of national reports, to be applied on a voluntary basis;

² As an example of the latter, Article 26 to the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean obligates each Contracting party to submit periodical national reports, while Article 27 states that "The meetings of the Contracting Parties shall, on the basis of periodical reports referred to in Article 26 ... assess the compliance with the Convention ...".

the Parties shall “**review the progress made and any difficulty encountered in the implementation of this Agreement.**” Thus the MOP is clearly obligated to evaluate, at each of its regular meetings, the implementation of the Agreement.

3. It should be noted that paragraph 9(e) of Article VI also authorizes the Meeting of the Parties to “**establish such subsidiary bodies as it deems necessary to assist in the implementation of this Agreement...**”, while subparagraph (f) authorizes the MOP to “decide on any other matter relating to the implementation of this Agreement.”
4. As to the authorities of the Technical Committee on these matters, Article VII.3 (b) authorizes the Technical Committee to “make recommendations to the Meeting of the Parties concerning the Action Plan, **implementation of the Agreement**, and further research to be carried out,” and “(d) carry out any other tasks referred to it by the Meeting of the Parties.”
5. And as to the Secretariat, one of its functions as defined in Article VIII is “to gather and evaluate information which will further the objectives and **implementation** of the Agreement...” (e), and “to prepare, on an annual basis and for each ordinary session of the Meetings of the Parties, reports on the work of the secretariat **on the implementation of the Agreement;**” and “to perform such other functions as may be entrusted to it under the Agreement or by the Meeting of the Parties.”
6. Paragraph 7 to the Action Plan is entitled “**Implementation**”. Subparagraph 7.3 obligates the Secretariat to coordinate the development of conservation guidelines “to assist the Parties in the implementation of this Action Plan”. Subparagraph 7.4 obligates the Secretariat to prepare “International reviews necessary for the implementation of this Action Plan”.

Resolution 3.4

At its third Meeting, the Parties adopted Resolution 3.4, “Submission of National Reports to MOP3 and MOP4 and Reports on the Phase out of Lead Shot in Wetlands”, that states in the preamble:

“*Further* noting that national reports are essential sources of information for the preparation of international reviews by the Secretariat pursuant to paragraph 7.4 of the Action Plan, and that the non-submission of national reports has impeded the Secretariat from fulfilling this obligation,

Emphasizing the role of national reports as vital indicators in implementation of the Agreement,...

The Meeting of the Parties:

1. *Urges* all Contracting Parties that have not yet done so to submit at the earliest date, but no later than 31 December 2005, national reports for the triennium 2003-2005;
2. *Instructs* the Secretariat to perform analysis of the reports received by 31 December 2005 and make the results available to the Parties and the Technical Committee by the end of February 2006, so that the findings can help inform their activities and decision-making;
3. *Further instructs* the Secretariat to analyze the difficulties encountered by certain Contracting Parties in delivering their national reports and make the results of this analysis available to the Standing Committee before MOP4;
4. *Urges* all Contracting Parties, in accordance with the provisions of Article V of the Agreement to submit national reports for the triennium 2006-2008 to the Secretariat one hundred and twenty days before MOP4
5. *Asks* the Secretariat to advise Contracting Parties of the date of submission of their national reports for MOP4 and to issue reminders if reports for MOP4 are not received by the said date”.

The above resolution expresses the Parties' concern regarding national reports and the importance that they attribute to the reports as indicators of implementation. Accordingly, the resolution also requests the Secretariat to analyze the reports in regard to their usefulness as a basis for decision-making.³

Effectiveness of AEWA

1. The Agreement does not stop at implementation: Paragraph 9 to Article VI authorizes the MOP, “**at any of its sessions, to adopt specific actions to improve the effectiveness of this Agreement...** From the above language we see that the drafters of the Agreement intended to differentiate between **implementation** of the Agreement and its **effectiveness**. These two terms are not synonymous: while the Agreement might be strictly implemented, i.e., each Party implements its obligations under it, this does not mean that the Agreement is **effective**, i.e., that it is successful in achieving the Agreement’s objectives as set out in Article II of the Convention on Migratory Species and Article II of the Agreement. Furthermore, the reverse situation is also possible: the Agreement is not being implemented but is still effective in achieving AEWA's goals.
2. Clearly, for AEWA to be considered a relevant MEA, it has to be implemented. This review paper is proposing to go beyond that by suggesting that achieving **implementation** is not enough and that the Technical Committee should be considering ways to evaluate AEWA’s **effectiveness**. Because recognition of the Agreement's role as an influential global biodiversity MEA is dependent on its effectiveness in promoting the protection of migratory waterbirds, the MOP should be dealing with this issue and the TC, pursuant to its obligations and responsibilities under the Agreement, should recommend that the MOP deal with it.
3. Effectiveness is a relatively new issue in MEAs. Specific provisions on effectiveness appear in more recently negotiated chemical MEAs such as Pops and Pic. In POPS, for example, Article 15 is entitled “Reporting”, Article 16 is entitled “Effectiveness Evaluation”, and Article 17 is entitled “Non-Compliance”. As pointed out above, while AEWA contains no specific provision on effectiveness evaluation, Article VI.9 does authorize the MOP to evaluate effectiveness of the Agreement. What can we learn from other MEAs regarding effectiveness evaluation? Art 16 to POPS:
 - 3.1 Commencing four years after the date of entry into force of this Convention, and periodically thereafter at intervals to be decided by the Conference of the Parties, the Conference shall evaluate the effectiveness of this Convention.
 - 3.2 In comparable order to facilitate such evaluation, the Conference of the Parties shall, at its first meeting, initiate the establishment of arrangements to provide **itself with comparable monitoring data...**”.
4. The real challenge facing the MOP is not only assessing the Agreement’s implementation, but evaluating its effectiveness as well. Effectiveness can be measured by indicators based on data derived from a variety of sources, and in particular the national reports of contracting parties. As described below, the present reporting format for AEWA could incorporate an indicator approach, by drafting questions with the goal of obtaining answers that will serve as appropriate indicators of effectiveness.

The Reporting Format

1. The issues under discussion in this paper are also relevant for the working group charged with developing an online national report format that will harmonize reporting with other MEAs.⁴ Any revision of the reporting formats should take two issues into consideration: (1) “reporting fatigue” due to multiple reporting obligations under multiple MEAs, and as mentioned above, (2) introduction of an indicator-based approach in order to evaluate effectiveness of contracting parties’ policies in implementing the agreement, as opposed to simply assessing implementation of the Agreement’s provisions.

³ Consequently, no final recommendations regarding national reports can be made until the Secretariat completes its task.

⁴ Furthermore, the TC might consider combining these two groups.

2. An initial cursory review of the national reports raises doubts concerning their use as indicators because of the lengthy, descriptive answers required by the reporting format. It is questionable whether descriptive answers are conducive in evaluating effectiveness of the Agreement, as demonstrated by the following examples: Section 1.2 to the report requires Contracting Parties to report on “Outline of planned actions for national implementation over the next three years”; however, can the Contracting party's future plans be considered as an indicator of the Agreement’s effectiveness? Only what has actually been done can serve as an indicator. The same goes for paragraph 1.3, “Outline of priorities for international cooperation over the next 3 years”. Again, only what has actually been performed can be useful in evaluating effectiveness of the agreement.
3. Another example is "Legal Measures": after responding to paragraph 2.1 as to whether national policy or legislation has been developed to protect and conserve species covered by the Agreement, the next question, “What are the main features of the policy/legislation” has to be answered descriptively. Descriptive answers make it hard to judge the effectiveness of the policy/legislation, while receiving data on the main features is not really of interest to AEWA: what is of interest are those specific details of the policy/legislation which are relevant to AEWA, such as, does the legislation address the Action Plan, i.e., is taking prohibited, how are violations of the law addressed, i.e., fines, imprisonment? How is the legislation implemented, monitored, and most important of all, enforcement statistics.
4. In addition, it should be pointed out that policy and legislation are not synonymous terms. First, a country must determine policy regarding protection of the species covered under AEWA. Only then can legislation be drafted that gives a legal basis to this policy and legal protection to these species covered by government policy. Thus it would be more helpful to divide this question, and ask if the Contracting party has determined national policy regarding protection of the species covered under AEWA. If policy has been determined, the next question would be, has legislation carrying out this policy been approved. If the answer is yes, the next question should also be phrased for a “yes or no” or quantitative response: does the legislation prohibit takings of the species covered by AEWA? How much are the fines? How many cases have been enforced? This is all covered in paragraph 2.2, but it could all be part of the same paragraph.
5. Replacing questions that require descriptive answers with questions that can be answered either by yes or no, or quantitatively, would probably go a long way in relieving "report fatigue" by lightening the reporting burden on many contracting parties. Furthermore, the answers to these specific questions would also serve as indicators: how many contracting parties have laws prohibiting the takings of protected species? How many contracting parties are also enforcing these laws? The data in these first reports would serve as baselines, against which future reports could be measured.
6. Another example: Paragraph 2.4, “Describe any bilateral or multilateral co-operative action....”. Again, we should not be asking for descriptions but for names and numbers, which again could serve as a “response” indicator for implementation of the Agreement. Or, paragraph 2.5, regarding “re-establishments: instead of asking the contracting party to describe its policy on re-establishments, the question should be phrased as to how many have been done and as to which species, and quantitative data as to the success of the re-establishments. This is not to say that it is of no interest to AEWA to know why restorations have not been carried out, it is simply that the answer will not serve as an indicator and thus is more suitable as a study to be carried out on this specific issue.
7. The above is also applicable to the section in the report on introductions of non-native species; the question should be rephrased in order to allow the contracting party to respond in a manner that will allow the Secretariat to use the answer as an indicator. Or, paragraph 3, “habitat inventories”. Instead of asking the Contracting party to describe published inventories, it should simply be requested to attach a copy of the published inventory to the report.

Incorporating an indicator approach

1. Article IV.1 to the Agreement lists six "priority issues" regarding which contracting parties are obligated to undertake actions as specified by the Action Plan. These "priority issues" constitute AEWA's major concerns and objectives as stated in Article II.⁵

Subparagraph (a), "species conservation", constitutes the Agreement's major objective and its attainment is indicative of AEWA's effectiveness. It can be measured by the use of "outcome indicators". Subparagraphs (b) (c), (d), (e) and (f) (habitat conservation, management of human activities, research and monitoring, education and information, implementation) constitute the processes necessary for achieving this objective, and can be measured by "process indicators".

2. Thus in section 2 of the Reporting Format, "Species Conservation", a question could be added as to the status of populations of waterbird species protected by the Agreement, based on national monitoring data of the contracting party. Alternatively, this question could be inserted in Section 5.2 of the Reporting Format on monitoring activities by the Contracting parties on population sizes of protected species. In any case, the answer to this question would serve as an indicator in evaluating AEWA's effectiveness. And assuming that increase in size of protected habitats for waterbirds can also serve as an effectiveness indicator, a quantitative question on this issue could be inserted in Section 3 of the Reporting Format.
3. As pointed out by other members of our working groups, the use of such indicators could contribute both to harmonization of reporting formats in biodiversity MEAs⁶ and to the CBD's initiative in identifying indicators to evaluate the 2010 biodiversity target. However, a caveat must be issued regarding harmonization of indicators in reporting formats. For if these indicators demonstrate improvements in species conservation or in habitat conservation, is this because of AEWA or because of other biodiversity MEAs? Which mea has been proven effective? Thus with all due respect to harmonization, in order to evaluate AEWA's effectiveness, it will be necessary to use indicators that are unique to AEWA and that could demonstrate AEWA's effectiveness in promoting the conservation of waterbirds, as opposed, for example, to Ramsar or CBD.
4. AEWA issues are already covered by the Reporting Format, for example, Section 4, "Management of human activities". Indicators on hunting in particular would be uniquely "AEWA" indicators, and thus it is proposed to add to section 4.2 questions regarding harvest data and estimates of the total annual take for each population, based on par.4.1.3 to the Action Plan. Another indicator could be the use of lead shot, based on par.4.1.4 to the Action Plan that calls for its disuse by the year 2000. Further examples of indicators might be found in international single species action plans, for example, threats from agricultural practices such as pesticide use. These plans also include "measurable objectives" which could serve as relevant "response indicators". In addition, national action plans could also be a source for relevant and appropriate effectiveness indicators.
5. The importance of these process indicators is that they measure changes in human behaviour, the major threat to biodiversity in general, and to the waterbird species protected under the Agreement in particular. Thus, if it can be demonstrated that hunting or farming - human activities specifically regulated by AEWA - have become more sustainable, this data could also be used as indicators of AEWA's effectiveness as a biodiversity MEA.

⁵ "Parties shall take co-ordinated measures to maintain migratory waterbird species in a favourable conservation status or to restore them to such a status. To this end, they shall apply within the limits of their national jurisdiction the measures prescribed in Article III, together with the specific actions determined in the Action Plan provided for in Article IV, of this Agreement."

⁶ See indicators A(i) F(i) and G(i) in the annex to a resolution from the last Ramsar COP entitled "Ecological 'outcome-orientated' indicators for assessing the implementation effectiveness of the Ramsar Convention" (http://www.ramsar.org/res/key_res_ix_01_annexd_e.pdf).

6. In addition to the above, and beyond data received from contracting parties in their national reports, the major tool for measuring effectiveness for species conservation is the Report on Conservation Status of Migratory Waterbirds.

Summary and Proposal

The questions in the present reporting format are phrased for descriptive “response” answers – how does each Contracting party respond to its implementation obligations under AEWA. However, it is questionable whether descriptive answers are useful as indicators of AEWA's implementation. Furthermore, the questions are not phrased in a manner that will supply information regarding the *effectiveness* of the Agreement.

It is proposed to submit a draft resolution to the next MOP, under which the Parties, in order to improve the means for reviewing the Agreement's implementation – as well as judging its effectiveness - would take action by changing the format of the national report to allow for an "indicator" approach. Such a resolution could of course be based on Resolution 3.4.

Conclusion

With the coming of age of environmental – and in particular biodiversity measures - effectiveness is a cutting edge issue and will be one of the determining factors as to the relevance and influence of AEWA as a member of the club of biodiversity conventions. The question that all of our work boils down to is, what is AEWA's *effect* on the global environmental problems that we are trying to solve. It is proposed here that the TC take the lead in this issue, raising the issue of effectiveness before the MOP, and using the national reports as tools in evaluating effectiveness, i.e., the protection of migratory waterbirds.

As stated above in the introduction, since the proposal presented here refers also to the reporting format, it is imperative to get the response of the working group dealing with that issue. Furthermore, the Secretariat's work together with the secretariats of other MEAs on reporting harmonization, must also be taken account since it could affect the proposal put forth in this review. And finally, there is a great deal of work going on regarding the development of biodiversity indicators for use in national reporting obligations, which should also be considered.⁷

⁷ For example, see "An Inventory of Biodiversity Indicators, 2002", EEA; "EEA core set of indicators, Guide, 2005"; "Environmental Indicators for National State of the Environment Reporting, Australia, 1998"; relevant documents and reports on the site of the Convention on Biodiversity (for example, the report mentioned in footnote 2).