

Statement by Kobe University Research Institute on MEAs (KURIM),
Basel Convention COP10, Opening day, 16 October 2011.

KURIM is an academic institution researching on various legal issues relating to Multilateral Environmental Agreements and we endeavor to provide the delegations the legal advice when requested.

The draft omnibus decision coming out of the Indonesia and Switzerland Initiative shall be an important policy decision for the future of the Basel Convention.

According to our opinion, a policy decision must be based on a sound legal basis, and this sound legal basis is needed on the first building block on the BAN amendment and the interpretation of 17(5) of the Basel Convention.

Although the Parties of a treaty have the ultimate power to agree on an interpretation of that treaty, that agreement must be expressed in accordance with the requirements of general international law. The delegation of EU referred to the “subsequent agreement” as provided in article 31 (3) (a) of the Vienna Convention on the Law of Treaties. The delegation of Canada referred to the requirement of consensus on the interpretation of 17 (5). From the legal point of view, both of these views are extremely important in order for that decision to be based on a sound legal basis. On this legal basis, it is helpful to distinguish the substance and the form. The substance needed for this legal basis is the “agreement of the Parties”; the form of the agreement can be expressed, under certain conditions, in a decision of a Convention body such as COP. According to the international jurisprudence, international practice and academic writings, such a decision of the COP, first, should clearly state that it is providing an interpretation of the Convention; and second, it should be adopted preferably unanimously by roll-call vote, if not, at least by consensus.

KURIM looks forward to observing the contact group discussing this important legal matter. Thank you.

Statement on 21 October 2011, at the closing session.

Kobe University Research Institute on MEAs would like to make a statement on the decision on the Implementation and Compliance Committee. As a former member of the Committee and as a representative of KURIM, I, Akiho SHIBATA, would like to congratulate all the members of the Committee, both outgoing and incoming, especially the former Chair, Gillian from Jamaica and the Parties, particularly those involved in the Contact Group on ICC for the adoption of this decision.

The ambitious mandate comes with accompanying responsibilities: a Committee of only 15 members, it is extremely important that each and all members of the Committee take on their new tasks with renewed commitment. The effectiveness of the Committee shall be evaluated not so much by the simple number of specific submissions the Committee receives. But the effectiveness of the Committee depends on the actual resolution of the difficulties and challenges faced by the Parties in implementing and complying with the Convention.

In this regard, the provisional widening of the Secretariat trigger should be utilized judiciously. In accordance with Paragraph 9 (c) of the Terms of Reference, the consultation by the secretariat with the possible targeted Party should be substantive and should lead to the resolution by itself, or even lead to that Party self triggering the Committee. This is because any resolution of the difficulties in implementation of the Convention must need the voluntary cooperation of that Party. Again, the effectiveness of the Committee cannot be evaluated only by the number of specific submissions, but by the actual resolution of the difficulties and challenges faced by Parties.

As a student of international law, I, Nao Nomura, would like to express my sincere appreciation to the Madame Chair and all the Parties that I could attend this meeting as an observer. It was very meaningful for me that I could observe interesting discussions on many legal issues from the academic point of view. Thank you very much.