

report to the Meeting of Parties, including with any appropriate recommendations.<sup>45</sup> The Parties "may ... decide upon and call for steps to bring about full compliance ...."<sup>46</sup> None of these procedures have any time limits established. Despite the formal voting requirements, the tradition in the Meeting of Parties is to decide everything by consensus. This de facto rule does not facilitate the search for discipline on the Parties.

But what if a Meeting of the Parties does decide to act? What measures might be taken? In Copenhagen, Parties agreed to a carrot and stick approach. Appropriate technical or other assistance could be offered on the one hand. On the other, Parties could issue "cautions", or suspend specific rights and privileges under the Protocol including financial, technical, and institutional benefits, as well as the right to partial exemptions from production and consumption targets and trade-related privileges - the latter left undefined but presumably covering such items as the non-inclusion of recycled imports and exports when calculating domestic "consumption" for purposes of reaching reduction targets.<sup>47</sup> One aspect seems clear. Parties whose rights and privileges might be suspended (and the prospect in practice is very remote), nonetheless remain Parties, and not subject to the trade restrictions imposed on non-Parties pursuant to Article 4. In contrast, non-Parties are presumed guilty and have their trade with Parties unilaterally determined by the terms of the Protocol.

### 3.2 The Basel Convention

As discussed in Part 2, many of Basel's obligations are unclearly drafted. For a non-Party, of course, Basel represents a kind of automatic dispute settlement system whereby, ambiguities in drafting aside, a non-Party is, in a sense, presumed guilty by the mere fact of being a non-Party. Such a country is thus condemned to a trade ban in hazardous and certain other wastes regardless of how responsible a non-Party might be in practice with respect to the handling of such wastes and of its economic interests in the matter.

Parties are not subject to an equally definitive dispute settlement process. Pursuant to Article 16(1), the Basel Secretariat can prepare reports, including on the implementation of obligations. Presumably, a report could include commentary critical

---

<sup>45</sup> Approval requires a simple majority vote of those present and voting - see Rule 26.6(b) of the Rules of Procedure, in Handbook, p. 165.

<sup>46</sup> This requires a two-thirds majority of those present and voting - see Rule 40.1 of the Rules of Procedures, in Handbook, p. 167.

<sup>47</sup> Various Decisions, Handbook, pp. 46-9, Annexes VII and VIII of Handbook, pp.81-3.