



An Evaluation of the Waigani Convention

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Table Of Contents

TABLE OF ABBREVIATIONS	4
EXECUTIVE SUMMARY	5
SECTION 1 - INTRODUCTION	8
SECTION 2 - THIS EVALUATION	9
SECTION 3 - ORIGINAL CONTEXT OF THE WAIGANI CONVENTION	10
SECTION 4 - CONTEMPORARY CONTEXT OF THE WAIGANI CONVENTION	13
SECTION 5 - OVERVIEWING THE WAIGANI CONVENTION TEXT	15
SECTION 6 - COMPARING THE WAIGANI AND BASEL CONVENTIONS	17
SECTION 7 - WAIGANI CONVENTION COMPLIANCE AND IMPLEMENTATION TABULATED – VERY TENTATIVE	20
SECTION 8 - EVALUATING WAIGANI CONVENTION IMPLEMENTATION BY PARTIES	24
SECTION 9 - INSTITUTIONAL ARRANGEMENTS OF THE WAIGANI CONVENTION	28
SECTION 10 - CURRENT ISSUES ARISING IN THE WAIGANI CONVENTION COP	34
SECTION 11 - STRATEGIC DIRECTIONS	36
SECTION 12 – KEY FINDINGS AND RECOMMENDATIONS	39
APPENDIX 1 - SUMMARY OF KNOWN TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE IN THE CONVENTION AREA 2011-2021	42
APPENDIX 2 - STRATEGIC ACTIONS FOR CLEANER PACIFIC 2025 MATCHED AGAINST WAIGANI CONVENTION OBLIGATIONS	43

Table of Abbreviations

AOSIS	Alliance of Small Island States
Basel Convention	Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal
CNCo	China Navigation Company
COP	Conference of the Parties
FSM	Federated States of Micronesia
G77	Group of 77 Developing Countries
GEF	Global Environment Facility
IMO	International Maritime Organisation
MEAs	Multilateral Environment Agreements
OECD	Organisation for Economic Cooperation and Development
PICT	Pacific Island Country or Territory
PIDP	Pacific Island Developing Party to the Waigani Convention
PIF	Pacific Island Forum
PNG	Papua New Guinea
POPS	Persistent Organic Pollutants
PRC	Pacific Regional Centre for Training and Technology Transfer for the Joint Implementation of the Basel and Waigani Conventions
PSIDS	Pacific Small Island Developing States
SCPRC	Steering Committee of the Pacific Regional Centre for Training and Technology Transfer for the Joint Implementation of the Basel and Waigani Conventions
SPREP	Secretariat of the Pacific Regional Environment Program
STAC	Scientific and Technical Advisory Committee of the Waigani Convention
TWM	Total Waste Management (Company)
UNEP	United Nations Environment Programme
Waigani Convention	Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region

Executive Summary

THE TREATY

The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (the Waigani Convention) entered into force in 2001. The Waigani Convention has thirteen state Parties and its Secretariat is the Secretariat of the Pacific Regional Environment Program (SPREP).

The Waigani Convention aims to protect the health and environment of Pacific island people from harms caused by imported hazardous and radioactive wastes, transboundary movement of hazardous wastes between Pacific island countries, and from harms caused by locally produced and managed hazardous wastes. It is also an agreement intended to comply with Article 11 of the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (the Basel Convention).

THIS EVALUATION

The Conference of the Parties to the Waigani Convention (COP) decided at its tenth meeting in 2019 to undertake a comprehensive evaluation of how the Waigani Convention is being implemented at all levels, whether its objectives are being met by the actions of the Parties, the effectiveness of the Secretariat, and to provide recommendations on how these can be improved.

Parties also requested that the review consider issues of duplication between the Waigani and Basel Conventions: 'Does the Waigani Convention provide protections, benefits or choices for Parties that the Basel Convention does not?' A necessary corollary to asking that question is to also confront the prospect of suspending the Waigani Convention.

THE CONTEXT

During the late 1980s and early 1990s, the prospect of substantial waste imports into the Pacific island region was very real. In 1989 the LA Times reported: "In the last year, Papua New Guinea, Western Samoa, the Solomon Islands and Tonga have turned down a variety of waste disposal and incineration schemes proposed by American firms." The welcome fact that this "toxic tide" never eventuated is attributable to multiple causes, among which

is the Waigani Convention.

In 2021 the hazardous waste threat to the region is no longer a "toxic tide" of imported waste. Instead, it is locally generated hazardous waste that is of concern. Hazardous waste streams in PSIDS remain linked to transboundary processes; while waste itself is not imported, most of what is imported soon becomes waste. Increasing GDP and disposable incomes are key development indicators, but also bring an exponential rise in volumes and varieties of hazardous waste.

OVERVIEW OF FINDINGS

The Waigani Convention suffers from many deficits in implementation and enforcement because SPREP and most PIDPs have limited resources. As regards PIDPs, there is widespread noncompliance with core obligations requiring national legislation (except Tonga and FSM), little reporting to the Secretariat, and little or no engagement with Convention bodies in between biannual meetings. Parties and the Secretariat report that SPREP does not allocate sufficient resources for the Secretariat to adequately fulfil its functions.

More positively, no hazardous waste was found to have entered the region in contravention of the import ban. Also, while some illegal traffic has occurred, the great majority of transboundary movements of hazardous waste in the Convention Area have been in compliance with notification and prior informed consent procedures, including for jurisdictions that are yet to enact implementing legislation.

Underlying reasons for noncompliance with the Waigani Convention are widely acknowledged to relate primarily to capacity deficits at the national level in most PIDPs. Regarding the absence of implementing legislation, the evaluation identified both the importance of having this in place, as well as factors that may have delayed the enactment of it in some PIDPs. Several PIDPs have identified the Waigani and Basel Conventions as policy priorities and are planning to address areas of noncompliance including new legislation.

Notwithstanding capacity deficits, in 2021 ongoing noncompliance with international law on transboundary movements of hazardous wastes is becoming increasingly untenable. This, combined with substantial increases in movements within the Pacific

island region, presents governments and other stakeholders with various kinds of risks: legal, financial, reputational, environmental and health-related. In the event of a serious accident or emergency involving hazardous waste transported from or to a Pacific island country, harm arising from some or all of these risks will materialise acutely, potentially causing immediate and long-lasting detrimental impact.

SPREP and its members regard the Waigani Convention as a discrete component of regional programs in the area of hazardous wastes and chemicals management. Expressed differently, despite apparent available synergies, little attempt has to date been made to integrate the full suite of Waigani Convention obligations – nor its key institutional innovation, the Pacific Regional Centre for Training and Technology Transfer for the Joint Implementation of the Basel and Waigani Conventions (PRC) - into relevant regional strategies or workplans.

The 28 findings and 14 recommendations are listed in Section 12.

FUTURE STRATEGIC DIRECTIONS

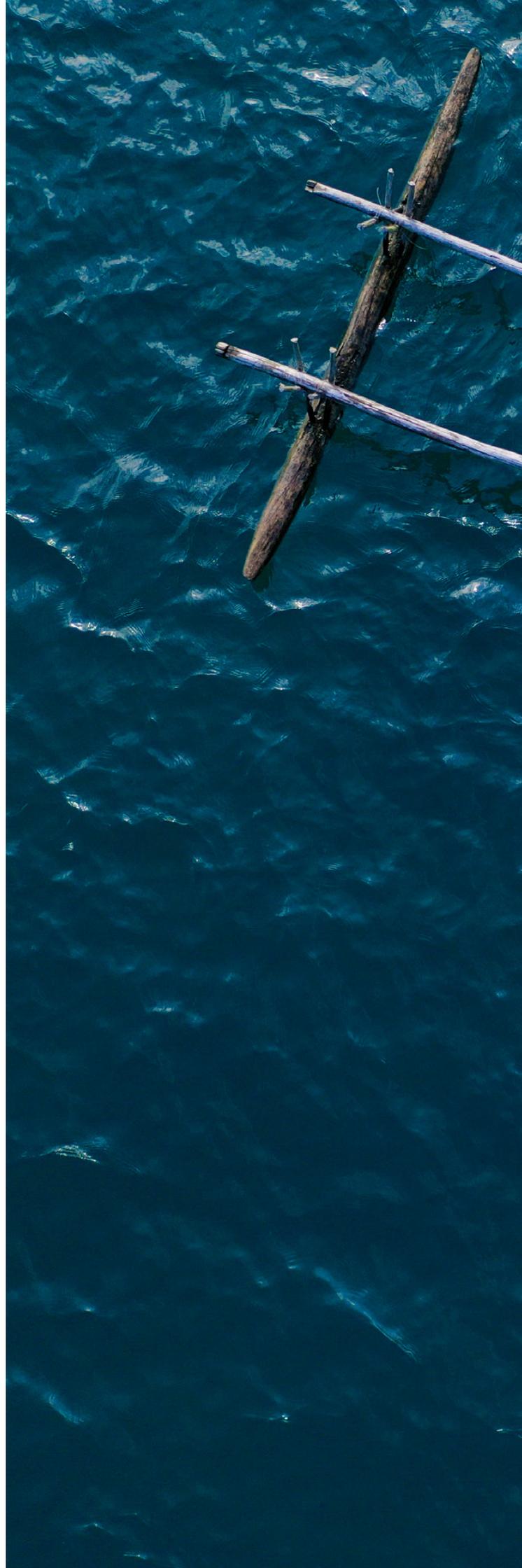
As noted, a corollary to focusing upon eliminating duplication between the Waigani and Basel Conventions was considering and discussing the prospect of suspending the Waigani Convention. This was identified as one of three future strategic directions available to the Waigani Convention COP:

- ➔ Business as usual with minor revision;
- ➔ Achieving efficiencies and eliminating duplication by suspending the Waigani Convention;
- ➔ Achieving efficiencies and eliminating duplication by synergizing Waigani Convention obligations and institutions within regional frameworks, strategies and workplans.

The reviewer makes no recommendations regarding the above, beyond suggesting that the second or the third option are preferred to the first.

It is noted that choices made regarding the above will in turn impact the relevance of some of the 14 recommendations.

It is also noted that while these matters might alter the manner in which regional programs are arranged, at national level, challenges relating to implementing international law for transboundary movements of hazardous waste remain substantially the same under all three scenarios.





SECTION 1

INTRODUCTION

The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (the Waigani Convention) was adopted in Waigani, Papua New Guinea in September 1995, entering into force in 2001. The Waigani Convention has thirteen state Parties and its Secretariat is the Secretariat of the Pacific Regional Environment Program (SPREP).

The Waigani Convention does not set out objectives in its operational provisions. For the purposes of this review the following three objectives are distilled from the title, the preamble and a holistic reading of the text.

1. Protecting human health and the Pacific environment from the impacts of imported hazardous and radioactive wastes.
2. Protecting human health and the Pacific environment within the Convention Area from harms caused by transboundary movement of hazardous wastes generated in Pacific island countries.
3. Protecting human health and the Pacific environment from harms caused by hazardous wastes not subject to transboundary movement.

The Waigani Convention is an agreement under Article 11 of the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (the Basel Convention).

As such, the Waigani Convention may not derogate from the environmentally sound management of hazardous wastes and other wastes as required by the Basel Convention. For this reason, while the current review is focused squarely upon the Waigani Convention, matters relating to the Basel Convention and its operation in the region are inevitably relevant at times.

Table 1. Parties to the Waigani Convention and their ratification status of the Basel Convention and its amendments

	Waigani Convention	Basel Convention	Basel Ban Amendment	Basel Plastics Amendment
Australia	Party	Party	No	Yes
Cook Islands	Party	Party	Yes	Yes
FSM	Party	Party	No	Yes
Fiji	Party			
Kiribati	Party	Party	No	Yes
New Zealand	Party	Party	No	Yes
Niue	Party			
PNG	Party	Party	No	Yes
Samoa	Party	Party	No	Yes
Solomon Islands	Party			
Tonga	Party	Party	No	Yes
Tuvalu	Party	Party	No	Yes
Vanuatu	Party	Party	No	Yes
Palau	Signed	Party	No	Yes
Nauru	Signed	Party	No	Yes
Marshall Islands		Party	No	Yes

SECTION 2

THIS EVALUATION

The Conference of the Parties to the Waigani Convention (COP) decided at its ninth meeting in September 2017 to approve the Secretariat's request to undertake a comprehensive evaluation of how the Waigani Convention is being implemented at all levels, whether its objectives are being met by the actions of the Parties, the effectiveness of the Secretariat, and to provide recommendations on how these can be improved.

An evaluation of the Waigani Convention was tabled at the tenth meeting of the COP in 2019. At that time Parties requested SPREP through Decision WC/10-7 to undertake the evaluation again.

Parties also requested that this review consider issues of duplication between the Waigani and Basel Conventions. Key questions framing this aspect include: 'Does the Waigani Convention provide protections, benefits or choices for Parties that the Basel Convention does not? Are options available to reduce or eliminate duplication and inefficiency in this area of governance?'

Consistent with the Terms of Reference and agreed in the project workplan, the method for the evaluation was:

1. Finalize and distribute the questionnaire developed by the Secretariat in consultation with interested Parties. The questionnaire was edited for brevity and clarity while maintaining the content indicated.
2. Undertake a literature review covering relevant regional and national planning documents (such as integrated waste management plans and state of the environment reports), COP, STAC and PRC Steering Committee meeting documents, academic publications, and other related material.
3. Speak to representatives of each of the Parties who were willing to schedule call covering the issues indicated in the questionnaire.
4. Receive written responses from Parties to the

questionnaire.

5. Integrating the information accumulated in steps 2-4, to prepare this report.

A draft report of the review was then tabled at the Eighth Meeting of the Scientific Technical Advisory Committee (STAC-8) of the Waigani Convention for further deliberation. The STAC requested for members to provide written feedback and an online discussion with the author to finalize the report.

The timeframe of the evaluation and deliberation and feedback from the STAC was approximately 10 weeks.

At the time of finalizing the report (26 July 2021), written responses had been received from seven Parties (five Pacific Island Developing Parties (PIDP) and two Other Parties). The reviewer sought to arrange to speak to all PIDPs. Five PIDPs spoke to the reviewer. In addition, conversations were held with the current SPREP Hazardous Waste Management Adviser, the SPREP Legal Counsel, two former SPREP waste officers, and representatives of Total Waste Management Co (PNG). The reviewer availed himself to an online discussion with Parties on the 16 July 2021 to address any final questions and comments. Seven Parties attended the online discussion hosted by the Secretariat.

Literature reviewed included meeting reports and working papers from the COP, Scientific and Technical Advisory Committee (STAC), the Steering Committee of the Pacific Regional Centre for Training and Technology Transfer for the Joint Implementation of the Basel and Waigani Conventions (SCPRC), other SPREP waste project reports (such as the PacWaste Plus legislation reviews), national waste management strategies, national state of the environment reports, national implementation plans for the Stockholm Convention, and relevant academic literature.

In the absence of responses from all Parties this review is unavoidably based on incomplete information. The reviewer apologizes for any resulting errors or omissions.

SECTION 3

ORIGINAL CONTEXT OF THE WAIGANI CONVENTION

Recalling the circumstances of the original development of the Waigani Convention provides a necessary foundation for assessments made in following sections of its subsequent implementation.

The Waigani Convention was negotiated at a moment in time when international concern surrounding the export of hazardous wastes to developing countries was at its most heightened. These concerns, and the harms already suffered by people in places such as Nigeria and Haiti as a direct result of international hazardous waste trading, had a few years previously led to the Basel Convention being negotiated.

During the late 1980s and early 1990s, the prospect of substantial waste imports into the Pacific region was very real. In May 1989 the LA Times reported: "In the last year, Papua New Guinea, Western Samoa, the Solomon Islands and Tonga have turned down a variety of waste disposal and incineration schemes proposed by American firms."¹

During the same period Pacific "anti-nuclear concerns were wide ranging. Many of the island countries not only opposed testing but wanted to control the disposal and movement of nuclear waste through the region, to limit missile testing, and restrict visits by nuclear ships".²

Against this regional backdrop, debates were being held within the framework of the global Basel Convention (the text of which was finalized in 1989, it entered into force in 1992) regarding proposals for a ban on exports of hazardous waste from OECD to non-OECD countries.

These discussions led to Decision II/12 of the second Basel Convention COP³, followed by an amendment adopted as Decision III/1 at the third Basel Convention COP in 1995.⁴ This

amendment would take 24 years to enter into force and it remains a contentious matter among Basel Convention Parties.

As described above, development of the Waigani Convention was influenced by global and regional concerns, events and priorities. When the treaty's preparatory meetings commenced, Pacific island country representatives had already decided that while the rest of the world may proceed to debate the wisdom of whether hazardous waste should under some circumstances move from OECD to non-OECD countries, the Pacific region should not receive it, nor radioactive waste, from outside the region. Their primary objective was to enshrine that aim in an international treaty.

The non-island states negotiating or observing (New Zealand, Australia, USA and France) were unopposed to the objective of banning hazardous waste imports into the developing countries of the region, but had additional priorities if there was to be a regional treaty on transboundary movements of hazardous waste.

Among these additional priorities was a principle that any such treaty must be fully consistent with the Basel Convention.⁵ This was uncontroversial, and the joint PIF Leaders Communique of 1993 included both of these objectives (the import ban and duplicating Basel) while approving PNG's proposal for the negotiation of what would become the Waigani Convention.⁶

While the 1993 PIF Leaders Communique also noted the importance of environmentally sound management of wastes generated and disposed of within the region, one can safely conclude that the import ban was the preeminent concern of Pacific island developing countries. Put another way, but for widespread

high-level support for a ban upon imports of hazardous and radioactive waste into the Pacific island region, it is not conceivable that a Pacific regional treaty designed to regulate trade in hazardous waste would now exist.

When law students at the University of the South Pacific learn about the Waigani Convention many are horrified to discover that there was a time in recent history when their leaders may have chosen to generate some income by accepting large volumes of garbage from the developed world. The welcome fact that this "toxic tide" never eventuated is attributable to multiple causes, among which is the Waigani Convention.⁷

The Waigani Convention is an international treaty that, as detailed at length in later sections herein, has many deficits in terms of compliance, implementation and enforcement. Nonetheless, it can be seen to have been effective in achieving the primary aim that originally brought its Parties to the negotiating table. No imports of hazardous waste into the region were reported by Parties responding to direct questions put by this reviewer, the Secretariat is aware of none, nor were any documented in the literature reviewed.

It is helpful at this juncture to draw some distinctions between words that are too often used synonymously: effectiveness, compliance, implementation and enforcement.

A brief discussion of this terminology is presented in Box 1 below, drawing upon the work of esteemed international law scholar Edith Brown Weiss.

It is reasonable to speculate that the rapid effectiveness in achieving the Waigani Convention's primary objective contributed to its shortcomings of compliance, implementation, and enforcement.

1. Johnson G, Los Angeles Times 'Marshall Islands Hope to Profit on Imported Garbage: U.S. Trash May Be Their Treasure' 7/5/1989. <https://www.latimes.com/archives/la-xpm-1989-05-07-mn-3590-story.html>

2. Fisher D France in the South Pacific: Power and Politics, ANU e-press, 2013, 84.

3. <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP2/tabid/6153/Default.aspx>

4. <http://www.basel.int/TheConvention/ConferenceoftheParties/Meetings/COP3/tabid/6152/Default.aspx>

5. Lawrence P & D van Hoogstraten 'Protecting the South Pacific from Hazardous and Nuclear Waste Dumping: The Waigani Convention' 7 Review of European, Comparative & International Environmental Law 1998, 268-273, 270.

6. <https://www.forumsec.org/wp-content/uploads/2017/11/1993-Communiqué-Nauru-10-11-Aug.pdf>

7. Lawrence P & van Hoogstraten D n5, 272. "[E]ven prior to entry into force, there would be strong moral-political pressure against proposed exports or imports into the region in contravention of the provisions of the Waigani Convention."

To explain – if, following the signing of the Waigani Convention, significant volumes of hazardous wastes had been imported into the region, more Pacific island countries would have prioritized both ratification and implementing and enforcing the necessary national legal and regulatory regimes.⁹ As events unfolded, the threat subsided and consequently it seems so did enthusiasm for expending scarce resources on constructing national regulatory frameworks.

This introduces the theme of efficiency. Administrative efficiency – being efficient in administering the responsibilities and delivering the services of government – is a universal priority, but especially so for those governments confronting severe deficits in financial, human and technical resources. This latter category, while acknowledging differing capacity levels within the region, would include most if not all of the Waigani Convention's PIDPs. At the time of its development, did the Waigani Convention negotiators consider issues of efficiency? An answer is provided by authors Lawrence and van Hoogstraten, who personally participated in the Waigani Convention negotiations. They are quoted below at length:

The Waigani Convention represents an interesting example of a regional instrument which may facilitate micro-states acting in a coordinated fashion on a regional basis to gain the benefits of the global Basel Convention in a context where it remains impracticable for many island states with tiny bureaucracies to actively participate globally.¹⁰

At first, when considering the need for the Waigani Convention, one might have argued – as indeed some

governments did – that there was no need for it. Why, for example, could island countries not ratify the Basel Convention and impose import bans, which under the Basel Convention must be respected by any potential exporters into the island countries? This perspective, however, overlooks the serious obstacles facing small island developing countries in participating in global environment conventions. Participation by island countries in any global environment agreements, given the tiny bureaucratic infrastructure of these countries, imposes large costs. Thus, for example, attendance at far flung meetings of the Basel Convention meetings will mean interruption of important domestic environment activities by agencies with scarce resources. Through participation in the Waigani Convention, it becomes possible for the Waigani Secretariat (located in SPREP, Western Samoa) to act as the interface with the global Basel regime.¹¹

With the benefit of hindsight, we can see that Lawrence and van Hoogstraten were partly correct, but mistaken in a number of respects. Most significantly, Pacific island states have placed a high priority upon participating individually in global environmental treaty regimes. State sovereignty is highly valued in the region, not least because no matter how small one's country may be, at the United Nations each has a voice and a vote.¹²

Moreover, the world benefits significantly from the individual participation of PSIDs in multilateral environment agreements (MEAs). To take a single example, the Kigali Amendment to the Montreal Protocol is an outstanding recent achievement in international law that had its genesis

Box 1 – Defining Implementation, Compliance, Enforcement and Effectiveness

“The terms implementation, compliance, enforcement, and effectiveness are frequently used interchangeably in discourse. It is assumed that they refer to similar behavior or produce similar effects. For example, one may speak of complying with an international agreement and mean both that the agreement is enforced and that the agreement is effective. In reality the terms incorporate different concepts and have different meanings.”

“Implementation” of an international agreement refers to the actions taken to give effect to the domestic obligations of the agreement: the adoption of legislation or regulations, judicial decrees, or other actions.

“Compliance” includes implementation but is generally broader. Compliance focuses not only on whether implementing measures are in effect, but also . . . the degree to which the actors whose behavior is targeted by the agreement . . . conform to the implementing measures and obligations.

“Enforcement” refers to the actions taken once violations occur. It is customarily associated with the availability of formal dispute settlement procedures and with penalties, sanctions, or other coercive measures to induce compliance with obligations. Enforcement is part of the compliance process.

“Effectiveness” refers to whether the agreement is effective in addressing the problem for which it was negotiated. Effectiveness is not necessarily correlated with compliance.

To illustrate:

- ➔ The Vienna Convention on Protection of the Ozone Layer and the Montreal Protocol are an international treaty regime with high levels of implementation, compliance, enforcement and effectiveness.
- ➔ The United Nations Framework Convention on Climate Change and its subsidiary accords are an international treaty regime with high levels of implementation and compliance and low levels of effectiveness.
- ➔ The Waigani Convention (as regards the import ban) is a treaty with varying, but generally low, levels of implementation, compliance and enforcement and high levels of effectiveness.

8. Weiss E B, 'Understanding Compliance with International Environmental Agreements: The Baker's Dozen Myths', 32 University of Richmond Law Review 1555 (1999), 1562-1564.

9. It is well established that major legal reform in the area of pollution and waste is most likely to happen following actual harm. Well known examples are Minamata in Japan and Love Canal in the US. Less well known is the Nigerian experience following the Koko Incident, one of the waste trade cases that led to the Basel Convention: Ogbodo S G (2009) 'Environmental Protection in Nigeria: Two Decades After the Koko Incident' Annual Survey of International & Comparative Law 15.

10. Lawrence P & van Hoogstraten D n5, 268.

11. Lawrence P & van Hoogstraten D n5, 272.

12. Tuiloma Slade, 'The Making of International Law: The Role of Small Island States' (2003) 17 Temple International and Comparative Law Journal 531, 532.

in a proposal of the Federated States of Micronesia.¹³ In the words of former Marshall Island Foreign Minister John Silk:

*The world owes a great debt to the Federated States of Micronesia in particular for their tireless leadership in securing this Amendment, beginning with their first submission in 2009. This Amendment is one of the best examples of island leadership that we have seen.*¹⁴

Another example is the current proposal of the Marshall Islands and Solomon Islands to the International Maritime Organization.¹⁵

The relevance of this to the Waigani

Convention is clear. During the past quarter century Pacific island regional environmental law has not developed in the manner some anticipated when the Waigani Convention was negotiated – with island engagement focused upon regional conventions and SPREP as an environmental law ‘interface’ with the rest of the world. Instead, Pacific states clearly intend to engage directly in global treaty regimes both as individual states, and through various collective voices (whether these be PSIDS, PIF, G77, AOSIS, etc).

The preceding observations are not intended to diminish the important roles SPREP plays, but simply to note that among them is not – as was

anticipated by some – obviating PSIDS need to participate directly in global MEAs.

Where Lawrence and van Hoogstraten were undoubtedly correct is that participation by Pacific island countries in international environment treaties imposes substantial administrative burdens. This was true when the authors wrote in 1998 and it remains the case. It also remains true whether the treaties are regional or global in geographic scope. Both the Basel and the Waigani Conventions have eleven PSIDS parties, eight belong to both, there are none who have joined neither.



13. <https://ozone.unep.org/kigali-amendment-implementation-begins> UNFCCC Secretariat: The Kigali Amendment paves the way for the production and consumption of toxic Hydrofluorocarbons (HFCs) to be cut by more than 80 percent over the next 30 years. The science suggests this will help avoid up to 80 billion metric tons of carbon dioxide equivalent emissions by 2050 and will be a big boost to the Paris Agreement's goal of working towards keeping global temperature increases within 1.5°C.
14. <https://unfccc.int/news/marshall-islands-first-country-to-ratify-kigali-amendment-on-hfcs>
15. [https://loydslist.maritimeintelligence.informa.com/LL1136097/Marshall-Islands-demands-\\$100-tax-on-shipping-emissions](https://loydslist.maritimeintelligence.informa.com/LL1136097/Marshall-Islands-demands-$100-tax-on-shipping-emissions)

SECTION 4

CONTEMPORARY CONTEXT OF THE WAIGANI CONVENTION

The 2021 context of the Waigani Convention is substantially different from that of 1993 or 2001. Firstly, owing in large part to the work of the Basel Convention Parties and Secretariat, international hazardous waste trading is today less appealing to scoundrels and robber barons.

Compared to the 1989 figures in the LA Times quoted in the previous section (at least five in a single year) the SPREP officers interviewed for this review could recall reports of only three Pacific waste import proposals in the 20 years since the Waigani Convention entered into force, none of which eventuated.

The primary hazardous waste threat to the region is no longer a “toxic tide” of imported waste. Instead, it is locally generated hazardous waste that is of concern. Hazardous waste streams in PSIDS remain linked to global processes; while waste itself is not imported, most of what is imported soon becomes waste. Increasing GDP and disposable incomes are key development indicators, but upon the other side of that coin is an exponential rise in volumes and varieties of postconsumer and industrial

hazardous waste.

Obsolescence also plays a substantial role as the lifespan of products – the distance between goods and waste – progressively decreases. This is particularly true in the case of electronic equipment.

*In connection with e-waste alone, recent reports warn of a grave pollution caused by persistent, mobile, and bio-accumulative toxins changing into carcinogens, mutagens, and teratogens. E-waste contains a wide range of sophisticated materials including scarce and valuable metals requiring high-tech recycling currently unavailable in the Pacific Islands.*¹⁶

Other hazardous waste streams of concern include used lead acid batteries, used oil, tyres, stockpiles of old pesticides and other chemicals, medical waste, asbestos and contaminated soil.

There are of course many intraregional differences and country-specific challenges. The smallest Waigani Convention Parties are forced to locate landfills in fragile ecosystems,

in proximity to reefs and lagoons or on porous coral-based islands, despite awareness of the role of coastal margins in stabilizing coastlines and the harmful impacts of leachate on marine and freshwater ecosystems.¹⁷ In larger countries the challenge of operating waste management services among scattered populations with inadequate transport infrastructure means that much hazardous waste never arrives at any managed disposal, storage or transfer facility.¹⁸

The Draft Business Plan of the Pacific Regional Centre on Joint implementation of the Waigani and Basel Conventions 2022-2023 identifies the following barriers to environmentally sound management of chemicals and hazardous wastes:

- ➔ Lack of appropriate disposal facilities
- ➔ Prohibitively expensive export costs for disposal
- ➔ Prohibitively expensive export costs for recycling
- ➔ Lack of knowledge of chemicals and hazardous wastes issues

Box 2 - Hazardous waste recycling and disposal in Papua New Guinea – a planned regional hub

Total Waste Management (TWM) is a PNG owned and registered business, operating since 2011, headquartered in Port Moresby. <https://twm.com.pg>

With a background in managing intractable and hazardous waste from extractive industries, TWM is expanding the waste management services it offers to clients, with a view to also providing those services for hazardous wastes generated in other Pacific island countries.

TWM's services include:

- ➔ Facilitators of exports/imports of hazardous waste in compliance with Waigani/Basel and related national legislation
- ➔ Hazardous waste storage designed, built and operated to international standards.
- ➔ Hazardous waste treatment, with new treatment systems being added
- ➔ Hazardous waste recycling
- ➔ Hazardous waste disposal (high temperature incineration)
- ➔ Hazardous waste disposal (doubled-lined engineered landfill with leachate management, designed and constructed in accordance with international standards)
- ➔ Contaminated site clean-ups

The TWM engineered landfill is expected to be in operation from January 2022.

16. Farrelly T et al 'Trading in waste: Integrating sustainable development goals and environmental policies in trade negotiations toward enhanced solid waste management in Pacific Islands countries and territories' 57 Asia Pacific Viewpoint 2016, 27–43, 30.

17. Farrelly et al n17, 29.

18. Farrelly et al n17, 31.

- ➔ Lack of targeted and user-friendly information on chemicals and hazardous wastes issues
- ➔ Lack of adequately trained personnel and the need for institutional strengthening
- ➔ Lack of in-country trainers
- ➔ Lack of coverage of new emerging issues in existing educational curricula
- ➔ Poor systems in countries for chemical handling, storage and use, and information management
- ➔ Lack of guidelines and manuals to deal with specific

waste streams generated in the Pacific region

- ➔ Lack of data on fate and transportation of chemicals and hazardous wastes in the region
- ➔ Lack of appropriate legislation in some countries
- ➔ Lack of knowledge on alternatives to certain toxic chemicals
- ➔ Lack of established control systems for managing chemicals and hazardous wastes including import information.¹⁹

As regards transboundary movements specifically, all

Box 3 - Moana Taka Partnership

Swire Shipping, the liner business division of the China Navigation Company (CNCo), has empty containers in Pacific island countries which need to be repositioned to other locations, generally at the Pacific rim. This presents a golden opportunity to move the currently ever-increasing quantity of recyclable waste out of the Pacific to the countries with competent and sustainable recycling plants.

In 2018 CNCo and SPREP formed the Moana Taka Partnership to achieve a win-win-win situation where CNCo agreed to provide containers and ocean freight carriage on a free of charge basis.

Examples of recyclable waste to be exported for recycling under the Moana Taka Partnership:

- ➔ Asbestos Containing Material
- ➔ Discarded “single use plastics”
- ➔ E-waste, typically end-of-life electrical and electronic products
- ➔ Medical waste
- ➔ Polychlorinated Bi-Phenols (PCBs)
- ➔ Residual Ozone Depleting Substances
- ➔ Persistent Organic Pollutants
- ➔ Waste Oils

Waigani Convention parties anticipate that hazardous waste exports will in the future be a necessary component of their hazardous waste management regime.

Appendix 1 tabulates a summary of the transboundary movements of hazardous waste in the Waigani Convention Area reported as part of this review.

Two PSIDS parties, PNG and Fiji, either currently import hazardous wastes from other PSIDS in the Convention Area or intend to do so in the future.

A recent development in the form of a region-wide public-private partnership has significantly reduced the costs of exporting certain hazardous wastes for recycling from many locations in the region. This is the Moana Taka Partnership, outlined in **Box 3**.

Regarding issues of compliance with international law, while the formal requirements to implement the Waigani Convention remain precisely the same as when the Convention entered into force, expectations of the international community have incrementally risen during the past 20 years that all governments will in fact comply with, implement and enforce agreed rules governing transboundary movements of hazardous waste.

When the text of the Waigani Convention was signed in 1995, many large countries had not yet enacted laws to

fully implement the Basel Convention, which at that time had fewer than 100 parties.²⁰ It was not unusual for small countries with few transboundary movements of hazardous waste, even if they were Basel Convention parties, to not yet have implementing legislation in place.

The lag in PSIDS Waigani Convention compliance is comparable to implementation of the Montreal Protocol over time. The effectiveness of the Montreal Protocol relied initially upon the compliance of the largest producers and users of ozone depleting substances. Eventually however, any Montreal Protocol Party began to attract scrutiny from the Implementation Committee if they did not have the requisite implementing laws in place, or otherwise were not in full compliance. Most Pacific ozone laws were enacted between 2005 and 2015, 15-25 years after the Protocol came into effect. The Multilateral Fund was of much assistance in this endeavor.

188 of 193 UN members are now Parties to the Basel Convention, and three of the remaining five are Waigani Convention Parties. In 2021, ensuring environmentally sound management and prior informed consent for all transboundary movements of hazardous waste has become necessary for countries who aim to support and maintain core international environmental standards.

19. <http://www.basel.int/Partners/RegionalCentres/BusinessPlans/tabid/2336/Default.aspx> 17. Farrelly et al n17, 29.

20. For example, Australia's Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996 was enacted the following year.

SECTION 5

OVERVIEWING THE WAIGANI CONVENTION TEXT

The Waigani Convention provisions are arranged in a fashion familiar to those accustomed to international environmental treaty texts. The first two articles define key terms and establish the scope of the treaty.

The geographic scope is provided in the definition of "Convention Area" whereas the range of materials subject to the treaty's provisions are derived from Article 2.1.

The italicised names in the above list are those defined by the Waigani Convention as **Pacific Island Developing Parties (PIDPs)**. A second category defined as "**Other Parties**" are those underlined in the list above.

A pivotal term upon which many of the Waigani Convention obligations rely is Environmentally sound management of hazardous wastes. This means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.

Hazardous wastes are those that belong to a category listed in Annex I and possess any of the characteristics listed in Annex III. Also included are wastes that are defined as hazardous wastes in the national legislation of a concerned Party.

Contrary to a common belief in the region, radioactive wastes are expressly excluded from the Convention by Article 2.2. The only exception to this is their inclusion in the import ban (Articles 4.1 and 4.2). They are mentioned in Articles 4.3 and 4.5 but these provisions do not in any way alter the obligations of states.

To be clear, the prior informed consent and notification procedures of the Waigani Convention do not apply to transboundary movements of radioactive wastes through the region.

Article 4.1 sets out the ban upon imports of hazardous and radioactive waste into PIDPs. 4.1(a) obliges PIDPs to ban imports into areas under their jurisdiction, 4.1(b) obliges New Zealand and Australia to ban the export of all hazardous and radioactive wastes to the Convention Area (except to each

The **CONVENTION AREA** is "the land territory, internal waters, territorial sea, continental shelf, archipelagic waters and exclusive economic zones" of:

- American Samoa
- Australia
- Cook Islands
- *Federated States of Micronesia*
- Fiji
- French Polynesia
- Guam
- Kiribati
- Marshall Islands
- Nauru
- New Caledonia
- New Zealand
- Niue
- Northern Mariana Islands
- Palau
- Papua New Guinea
- Pitcairn
- Samoa
- Solomon Islands
- Tokelau
- Tonga
- Tuvalu
- Vanuatu
- Wallis and Futuna

other). The obligatory prior informed consent and notification procedures for transboundary movements of hazardous waste are provided in Articles 4.4(b) and 6.

Transboundary movements of hazardous waste involving non-Parties within the Convention Area are prohibited by Article 4.4(g). The Waigani Convention is silent regarding the export of hazardous waste from PIDPs to non-Parties outside of the Convention Area.

Article 4.4 deals with wastes located in the Convention Area, placing a series of obligations upon Parties, as outlined below:

- Develop a national hazardous wastes management strategy which is compatible with the regional plan (4.4(e));
- Reduce the generation of hazardous wastes to a minimum (4.4(a));
- Ensure the availability of adequate treatment and disposal facilities for the management of hazardous wastes that are ideally located in the country where the wastes are generated (4.4(c));
- Where the above is not feasible, cooperate to ensure the availability of adequate treatment and disposal facilities for the management of

hazardous wastes that are ideally located in the Convention Area ((4.4(c) and Article 10.1)

- May develop programs to simplify the transboundary movement of hazardous waste within the Convention Area. These may be registered under Article 11 (4.4(d)); and
- Each Party must prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention of the Convention (4.4(h)).

Article 5 requires each Party to designate Competent Authorities and Focal Points.

Article 8 sets out specific obligations establishing a duty to re-import hazardous wastes where the transboundary movement cannot be completed in accordance with the terms of the applicable contract, or of the Convention.

Article 9 details the circumstances in which transboundary movement of hazardous wastes shall be deemed to be illegal traffic, and sets out the specific obligations of Parties in the event of illegal traffic.

Article 10 requires Parties to cooperate with one another, the Secretariat and international organizations.

Article 11 provides for the development of bilateral, regional or multilateral agreements or arrangements that may be put in place to simplify transboundary movements, or to facilitate transboundary movements of hazardous waste between Parties and non-Parties.

Article 13 establishes the Conference of the Parties (COP) and tasks it with the continuous review and evaluation and the effective implementation of the Convention. Article 14 establishes the Secretariat which is SPREP.

Articles 12 and 15 deal with liability and compensation and a possible revolving fund. These Articles do not create specific obligations beyond requiring Parties to consider these

matters. There is no revolving fund.

Article 16 provides for amendments to the Convention while Article 17 allows for the adoption of protocols to the Convention and Article 18 sets out the requirements for the adoption and amendment of annexes to the Convention.

The remainder of the Articles contain provisions that are common to many international treaties.

Section 7 on page 20 presents a table listing 57 specific obligations of the Waigani Convention upon Parties, the Conference of the Parties and the Secretariat, including references to specific articles.



SECTION 6

COMPARING THE WAIGANI AND BASEL CONVENTIONS

As a general statement the Waigani Convention duplicates, within a restricted geographic area, the geographically unrestricted Basel Convention. The primary exception is the ban upon imports of hazardous and radioactive waste into PIDPs. While some other matters not present in the Basel Convention are mentioned in the Waigani Convention, this is done in a manner that avoids placing substantive obligations on Parties. Lawrence and van Hoogstraten recall it thus:

[T]he negotiators decided to stick to their knitting and focused on the immediate objectives at hand. They rejected the temptation to load up the Convention with substantive obligations in other areas which they agreed are more properly the province of other, existing multilateral regimes or which could, if need be, be the subject of future Forum initiatives. . . Substantive provisions on ocean dumping and domestically prohibited goods were, in the end, not included.²¹

OBJECTIVES: REGIONAL V GLOBAL RESPONSIBILITIES

Neither treaty includes a provision expressing objectives. Section 1 of this report identified three objectives from the Waigani Convention. The Basel Convention Secretariat states “the overarching objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes”. Adding that “provisions of the Convention centre around the following aims:

1. The reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes, wherever the place of disposal;
2. The restriction of transboundary movements of hazardous wastes except where it is perceived to be in accordance with the principles of environmentally sound management; and

3. A regulatory system applying to cases where transboundary movements are permissible.”²²

Naturally, the objectives of a regional instrument will typically be limited to the region concerned. The single issue of note in this respect is that nothing in the Waigani Convention suggests that its Parties have taken upon themselves any obligation to protect human health and the environment from harms caused by hazardous wastes generated within the Convention Area that are transported outside of it. The Basel Convention, being universal in geographic scope, avoids this shortcoming.

GEOGRAPHIC SCOPE

The Waigani Convention operates with respect to the Convention Area, and its list of Parties and potential Parties is limited to those countries within, or having an interest in, the Pacific island region. The Basel Convention is unrestricted in geographic scope. The Basel Convention prohibits transboundary movements with non-Parties, and the Waigani Convention prohibits transboundary movements with non-Parties within the Convention Area. The Waigani Convention is silent regarding the export of hazardous waste to non-Parties outside of the Convention Area.

The above means that when Waigani Parties want to export hazardous waste outside of the Convention Area they must do so under Basel Convention provisions and can only do so if they are also Basel Convention Parties (the exception would be in a situation governed by an applicable agreement under Waigani Convention Article 11, but there are none of these and there is little prospect of any involving countries outside the region).

As a result of the limited geographic scope of the Waigani Convention, any PIDP that may at any time in the future need to export hazardous waste outside of the Convention Area must first be Party to the Basel Convention.

DEFINITION OF HAZARDOUS WASTES

The definitions of hazardous waste in the Basel and Waigani Conventions differ from one another in two potentially significant respects.

Firstly, Waigani Convention Article 2.1 precisely duplicates Basel Convention Article 1.1 except that it excludes the phrase “that are subject to transboundary movement”.

Secondly, the Basel Convention Article 1.2 defines a category of wastes termed “other wastes”. These are household waste, incinerator ash and some plastics. The term ‘hazardous waste and other wastes’ are applied throughout the Basel Convention. The Waigani Convention does not create a category of “other wastes” and instead considers household waste and incinerator ash to be hazardous waste.

Two issues arise from these differences. Firstly, a plain reading of both Conventions suggest that the scope of the Basel Convention includes only those hazardous wastes “that are subject to transboundary movement” whereas the Waigani Convention is not similarly constrained in scope.

Secondly, a plain reading of the Waigani Convention indicates that household wastes generated in Pacific island countries are considered hazardous wastes.

IMPORT BAN PROVISIONS

Waigani Convention Article 4.1 provides the ban on imports of hazardous waste into PIDPs.

The Basel Convention includes various provisions relating to banning certain movements of hazardous waste to certain countries.

The sixth paragraph of the Preamble to the Basel Convention is “Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory”.

21. Lawrence P & D van Hoogstraten n5, 271.

22. <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

Article 4.1(a) and (b) of the Basel Convention states:

(a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

Article 4.2 provides that each Party shall take the appropriate measures to:

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports.

Following the entry into force of the amendments adopted as Decision III/1, Article 4A of the Basel Convention states:

1. Each Party listed in Annex VII shall prohibit all transboundary movements of hazardous wastes which are destined for operations according to Annex IV A, to States not listed in Annex VII.
2. Each Party listed in Annex VII shall phase out by 31 December 1997, and prohibit as of that date, all transboundary movements of hazardous wastes under Article 1(1)(a) of the Convention which are destined for operations according to Annex IV B to States not listed in Annex VII. Such transboundary movement shall not be prohibited unless the wastes in question are characterized as hazardous under the Convention.

Annex VII lists OECD (developed) countries; Annex IV A lists disposal operations, Annex IV B lists recycling and recovery operations. In accordance with Basel Convention Article 17 (Amendment of the Convention), Article 4A only creates obligations for Parties that have accepted that amendment.

Both the Waigani Convention and the Basel Convention endorse the sovereign right of states to ban imports of hazardous waste under national legislation. The Waigani

Convention is stronger in the sense that it requires PIDPs to do so (even though most have not legislated the ban). The Basel Convention provides stronger protection in the sense that it places reciprocal obligations on all Basel Convention Parties (not only Australia and New Zealand) to respect and help to enforce any legislated national ban on imports of hazardous waste.

GENERAL OBLIGATIONS (THOSE UNRELATED TO IMPORT/EXPORT BANS)

A close comparison of the Waigani Convention and Basel Convention Article 4 indicates several areas of difference between the treaties, the most significant of which are detailed below. The Basel Convention specifies the following obligations not mentioned in the Waigani Convention:

- Article 4.2(c) - Take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such occurs.
- Article 4.2(c) - Minimize the consequences of any pollution arising from hazardous waste management for human health and the environment.
- Article 4.2(d) - Ensure that transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes.
- Article 4.7(a) - Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations.
- Article 4.7(b) - Require hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport.
- Article 4.13 - Review periodically the possibilities for the



reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

The one obligation included in the Waigani Convention that is not mentioned in the Basel Convention is significant: Article 4.4(e) - Develop a national hazardous wastes management strategy which is compatible with the SPREP South Pacific Regional Pollution Prevention, Waste Minimization and Management Programme.

RADIOACTIVE WASTES

Article 1.3 of the Basel Convention excludes radioactive wastes from the scope of the Convention.

Article 2.2 of the Waigani Convention provides "radioactive wastes are excluded from the scope of this Convention except as specifically provided for in Articles 4.1, 4.2, 4.3, and 4.5 of this Convention."

Articles 4.1 and 4.2 relate to the import ban, Article 4.3 reaffirms commitments made elsewhere and Article 4.5 encourages Parties to implement other agreed standards.

Article 27 of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (adopted on 5 September 1997) contains provisions relevant to the transboundary movement of radioactive wastes.

To be clear, the Waigani Convention does not require notification for radioactive wastes transiting the region, and does not alter international law on the ocean dumping of radioactive wastes.

OCEAN DUMPING

The Basel Convention is silent with regard to the dumping of hazardous wastes in the ocean. The Waigani Convention includes Article 4.3, which is reproduced below:

3. Ban on Dumping of Hazardous Wastes and Radioactive Wastes at Sea

(a) Each Party which is a Party to the London Convention, the South Pacific Nuclear Free Zone Treaty, 1985, the 1982 United Nations Convention on the Law of the Sea or the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, 1986, reaffirms the commitments under those instruments which require it to prohibit dumping of hazardous wastes and radioactive wastes at sea; and

(b) Each Party which is not a Party either to the London Convention or the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, 1986, should consider becoming a Party to both of those instruments.

The Waigani Convention does not alter international law regarding the dumping of hazardous and radioactive wastes at sea.

DOMESTICALLY PROHIBITED PRODUCTS

The Basel Convention is silent with regard to obligations relating to domestically prohibited goods. The Waigani Convention includes Article 4.6, which is reproduced below:

6. Domestically Prohibited Goods:

(a) Subject to available resources, Parties shall endeavor to participate in relevant international fora to find an appropriate global solution to the problems associated with the international trade of domestically prohibited goods; and

(b) Nothing in this Convention shall be interpreted as limiting the sovereign right of Parties to act individually or collectively, consistent with their international obligations, to ban the importation of domestically prohibited goods into areas under their jurisdiction.

The Waigani Convention does not alter international law with regard to domestically prohibited goods.



SECTION 7

Waigani Convention Compliance and Implementation Tabulated – very tentative

 Full compliance, or close to it	 Some activity, less than full compliance
 Probable non-compliance	 No information
 Obligation not relevant for this entity	 Obligation has not arisen in practice*

*but where national legislation expressly accounts for that obligation, Party considered to be in compliance

Specific Waigani Convention Obligation	WC Art	Cook Islands	Fiji	FSM	Kiribati	Niue	PNG	Tonga	Tuvalu	Samoa	Solomon Islands	Vanuatu	Australia	NZ	COP	SEC
1. PIDPs ban imports of HW from outside CA^	4.1(a)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Grey	Grey	Grey	Grey
2. OPs ban exports of HW to CA^	4.1(b)	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Green	Green	Grey	Grey
3. Forward information re illegal HW imports into CA	4.2(a)	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Yellow
4. Cooperate to avoid re illegal HW imports into CA	4.2(b)	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Grey
5. Minimise domestic HW production	4.4(a)	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Grey	Grey	Grey	Grey
6. Take legal and admin measures to ensure TBMHW comply with WC^	4.4(b)	Blue	Blue	Green	Blue	Orange	Blue	Green	Blue	Blue	Blue	Blue	Green	Green	Grey	Grey
7. Ensure adequate HW treatment facilities	4.4(c)	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Green	Green	Grey	Grey
8. Establish programs to simplify TBMHW that cannot be disposed of in country of origin.	4.4(d)	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Grey	Grey
9. Develop a national HW strategy	4(4)(e)	Green (2026)	Orange (2014)	Green (2020)	Green (2030)	Orange (2015)	Grey	Grey	Green (2026)	Green (2023)	Green (2026)	Orange (2020)	Green	Green	Grey	Grey
10. Submit reports on domestic HW generation	4(4)(f)	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue	Green	Green	Grey	Grey
11. Prohibit HW imports from non-Parties within CA	4(4)(g)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
12. Take legal and admin measures to ensure flagged vessels and registered aircraft do not contravene WC^	4(4)(h)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
13. Designate competent authority	5	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Grey	Grey
14. Designate focal point	5	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Grey	Grey
15. Administrative govt-to-govt compliance with PIC procedures for TBMHW	6	Grey	Grey	Green	Orange	Orange	Green	Green	Orange	Green	Green	Grey	Green	Green	Grey	Grey
16. Requirement that all TBMHW be insured	6(10)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
17. Inform Parties and Secretariat immediately of accidents	7(1)	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Grey
18. Inform Secretariat of changes to competent authorities and focal points	7(2)(b)	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Grey	Grey
19. Inform Secretariat of changes to HW definitions	7(2)(c)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
20. Establish national HW information mechanisms	7(3)	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
21. Take measures to ensure that when TBMHW cannot be completed, the HW are returned by the exporter ^	8(1)	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Grey
22. Where HW cannot be returned, make alternative arrangements to dispose of it in an environmentally sound way	8(2)	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Grey
23. National legislation prohibiting illegal traffic^	9(2)	Orange	Orange	Green	Orange	Orange	Orange	Green	Orange	Orange	Orange	Orange	Green	Green	Grey	Grey
24. Ensure illegally trafficked HW is disposed of in an ESM^	9(3)-(5)	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green	Green	Grey	Grey
25. Secretariat to coordinate with the Basel Convention on illegal traffic and capacity building	9(6)	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Grey	Green

Specific Waigani Convention Obligation	WC Art	Cook Islands	Fiji	FSM	Kiribati	Niue	PNG	Tonga	Tuvalu	Samoa	Solomon Islands	Vanuatu	Australia	NZ	COP	SEC
26. Cooperate for information sharing on ESM of HW	10(2) (a)															
27. Cooperate for monitoring the effects of HW on health and environment	10(2) (b)															
28. Cooperate for cleaner technology to eliminate generation of HW	10(2) (c)															
29. Cooperate to transfer technology for ESM of HW	10(2) (d)															
30. Cooperate to develop technical guidelines and codes of practice	10(2) (e)															
31. OPs to cooperate with Secretariat to build capacity of PIDPs to implement WC	10(3)															
32. COP to prepare liability and compensation arrangements	12															
33. COP to hold regular meetings	13(1)															
34. COP to adopt rules of procedure, financial rules	13(2)															
35. COP to review and evaluate the WC	13(4)															
36. COP to promote laws and minimise harm from HW	13(4)(a)															
37. COP to consider amendments to WC	13(4)(b)															
38. COP to consider and approve budget	13(4)(c)															
39. COP to learn from elsewhere	13(4)(d)															
40. COP to consider and adopt protocols	13(4)(e)															
41. COP to establish or designate subsidiary bodies	13(4)(f)															
42. COP to adopt rules for accepting new Parties	13(4)(g)															
43. COP to allow non-eligible non-Parties to observe meetings	13(5)															
44. SEC to arrange and service meetings	14(1)(a)															
45. SEC to prepare budget of COP	14(1)(b)															
46. SEC to prepare and transmit reports based on info received	14(1)(c)															
47. SEC to prepare and transmit reports from meetings of subsidiary bodies or NGOs	14(1)(d)															
48. SEC to ensure coordination with BCS	14(1)(e)															
49. SEC to communicate with competent authorities and focal points	14(1)(f)															
50. SEC to communicate with NGOs	14(1)(f)															
51. SEC to compile information on approved disposal sites and facilities	14(1)(g)															
52. SEC to compile information on means of transport to approved disposal sites and facilities	14(1)(g)															
53. SEC to convey information to Parties on available expertise and consultants for ESM of HW	14(1)(h) and (i)															
54. SEC to assist Parties to identify illegal traffic	14(1)(j)															
55. SEC to cooperate to facilitate rapid assist in the case of a HW emergency	14(1)(k)															
56. SEC to provide annual HW report to Parties	14(1)(l) and 14(2)															
57. SEC to do other functions COP directs	14(1)(m)															

SECTION 8

EVALUATING WAIGANI CONVENTION IMPLEMENTATION BY PARTIES

IMPLEMENTING LEGISLATION

In order to be implemented and enforced, the Waigani Convention requires Parties to put in place national-level regulatory systems that are consistent with the treaty's prescriptions.

It is possible for some Waigani Convention obligations to be fulfilled without implementing legislation in place. Parties are free to, for example, cooperate and communicate with one another and the Secretariat, submit reports, collect information, and appoint Competent Authorities and Focal Points, without laws requiring them to do so. It should be noted however that implementing laws in this field typically do include provisions relating to most of the above.

In contrast, where the text contains the phrase “take appropriate legal, administrative and other measures” (Art 1.1(a)&(b), 4.4(b)&(h), 8), where it calls upon Parties to “prohibit” specific acts (Art 4.4(g)), or where it directs Parties to put in place “appropriate national legislation” (Art 9), full compliance with these core obligations can only be achieved by enacting appropriate national legislation.

The single greatest step a Party can take to move from partial or noncompliance to compliance with the Waigani Convention is to enact national legislation implementing the obligatory requirements of the Convention in national law. Four of thirteen Parties have enacted national implementing legislation for the Waigani Convention. Of the remainder, at least one (Cook Islands) has a draft under consideration, and all the other Parties who responded to this review identified putting in place legislation of this kind as a current policy objective.²³ The table summarises the situation.

It should also be noted that there are degrees of compliance. Even where Parties do not have in place appropriate legislation, some levels

Waigani Convention Party	Status of Waigani Convention Implementing Legislation
Australia	In place
Cook Islands	In draft
Fiji	<i>unknown</i>
Kiribati	Policy objective
Federated States of Micronesia	In place
New Zealand	In place
Niue	Policy objective
Papua New Guinea	Policy objective
Tonga	In place
Tuvalu	Policy objective
Samoa	Policy objective (has a noncompliant law)
Solomon Islands	<i>unknown</i>
Vanuatu	<i>unknown</i>

of substantive compliance can be achieved through administrative measures, and this is in fact the case for many Waigani Convention Parties, at least in respect of the notification procedures provided in Article 6. Four of the five Parties without implementing legislation that provided information to this reviewer nonetheless sought through administrative measures to comply with Article 6 in respect of all exports of hazardous waste. There is a likelihood that others do as well.

Two PIDPs emphasised to the reviewer the importance of having the necessary legislation in place. One of these was based in experience of having a legislative framework supporting their facilitation of Basel/Waigani compliance with local operators and foreign Competent Authorities. The other was based in the experience of having received notification from a transit country of an illegal shipment,

but without a law in place, was unable to enforce a re-import as required under the Waigani Convention.

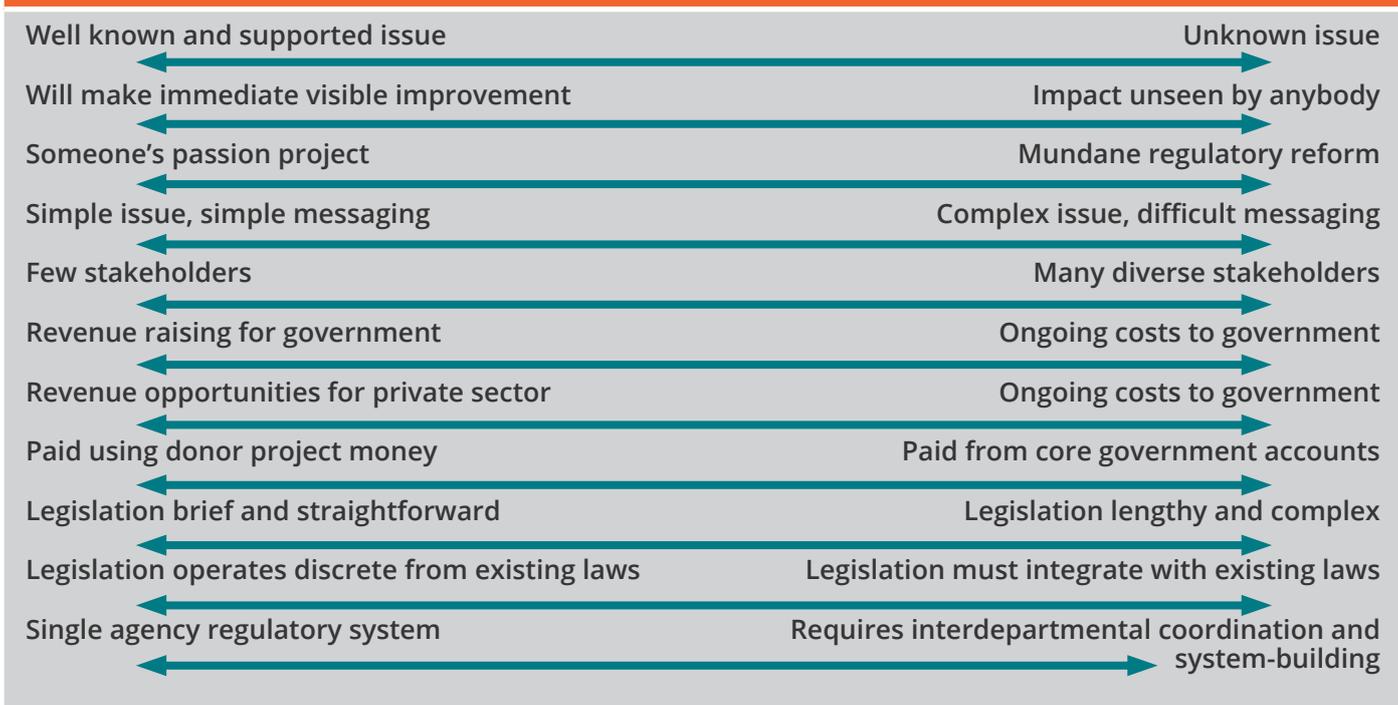
The most important, but perhaps least remarkable, recommendation of this review is that all Parties that have yet to do so should enact laws implementing the obligatory requirements of the Convention in national law.

The recommendation is unremarkable because the need for each Party to have in place implementing legislation has been recognised as a priority from the outset. Accordingly, an important question for this review becomes: “What are the barriers that have prevented most PIDPs from enacting Waigani implementing legislation?”

In contemplating this, two things are immediately apparent. Firstly, if it were a simple and unproblematic exercise many more PIDPs would have already enacted implementing laws. Secondly, as demonstrated by Tonga and FSM,

23. Samoa has a law in place that deals with waste imports, but it is not compliant with the Waigani Convention: Waste Management (Importation of Waste for Electricity Generation and Recovery) Regulations 2015.

Box 4 - Continua of factors making a legislative development objective easier or harder to achieve



when allocated sufficient time, resources and political support (i.e. when it is made a priority of government, supported by partners) it is achieved.

The Secretariat has developed and made available resources for Parties the aim of which is to make enacting implementing laws easier. This includes elements of model legislation for the Waigani Convention, a Guidance Manual for the Control of Transboundary Movements of Hazardous Waste under the Waigani Convention, and a Guidance Document for Detection, Prevention and Control of Illegal Traffic in Hazardous Wastes.

In 2005-2006 the Secretariat worked with the Government of Tonga in facilitating technical assistance to develop what would ultimately be the Hazardous Wastes and Chemicals Act 2010. This law implements the full suite of waste and chemical MEAs in Tonga.²⁴ Documents produced during that project are available on the SPREP website.²⁵

Meeting reports of the STAC and COP indicate that Parties have on several occasions requested at those meetings assistance from the Secretariat to put in place implementing legislation for the Waigani Convention. The same reports suggest that the Secretariat indicates to Parties that these requests for assistance must be made officially in writing. In interviews the Secretariat reports that official written requests have not been submitted.

The reviewer sought to raise in conversation with some Parties the issue of not having implementing laws. Party representatives contacted were unable to shed light upon the matter. The following comments from the Cleaner Pacific 2025 Implementation Plan 2021-2025 are perceptive:

Another challenge for countries and territories was related to the political nature of some activities, e.g. establishment of new legislation and/or mechanisms

for CDP and EPR systems. Activities such as this cannot always be implemented quickly, even where clear technical guidance has been provided, as they tend to require high-level government deliberation and sometimes extensive consultation with the private sector, before implementation support can be secured.²⁶

Enacting complex legislation is not simply a matter of drafting a law and presenting it to legislators to be endorsed. An insight of this reviewer in assisting the FSM Government to develop Waigani and Basel Convention implementing legislation is that the most significant single factor is that it be identified and regarded as a priority within government. Thereafter must follow sufficiently consistent and high-level support for staff time to be allocated to iterative consultative processes both within government, with relevant private sector operators, and with others such as sub-national governments and civil society.

Significant policy decisions must be made prior to, and quite likely during, the development of any drafting instructions or draft legislation. Further consultations, and often revisions, are required once a Bill is completed.

Explanatory documents, meeting reports, briefings, correspondence and presentations are examples of the associated outputs that need to be produced along the way. Some of this work can be done by short-term technical experts, but it is preferable that the staff who will be responsible for it on an ongoing basis are also engaged at the outset and throughout the process. Ideally, the interest and support of elected leaders will have been garnered at an early stage, but even where is the case, legislative branches ultimately decide their own agendas and timetables.

Box 4 lists, as a series of continua, factors that make any given legislative development objective easier (left side) or harder (right side) to progress. The colours divide the factors

24. Samoa has a law in place that deals with waste imports, but it is not compliant with the Waigani Convention: Waste Management (Importation of Waste for Electricity Generation and Recovery) Regulations 2015.

25. <https://www.sprep.org/convention-secretariat/waigani-convention>

26. EB2/WP 11.3.2/Att.1, p18.

into political, financial and legal issues in descending order.

Regrettably, when considering the task of developing implementing legislation for the Waigani (and Basel) Conventions, upon most of the above factors a dial would likely indicate a point in the middle or to the right of centre. An exception is the number of stakeholders. Another exception is the private sector revenue opportunities for the two PIDPs seeking to develop hazardous waste recycling and/or disposal hubs – Fiji and PNG.

These countries have a strong additional incentive to legislate a regulatory framework for transboundary movements because uncertainty created by a regulatory vacuum would inhibit plans to host legitimate and well-managed waste management industries.

The above analysis does not suggest the task is impossible, but rather emphasises that it is a substantial undertaking unlikely to be achieved in the absence of high-level interest and endorsement, an investment of already scarce human and financial resources, and a workplan engaging those most directly involved.

There may be opportunities in some jurisdictions to include Waigani/Basel Convention implementation in broader programs of current or upcoming waste governance reform. One PIDP confirmed that this is planned, and the literature suggests that it is also the case in other places.

COMPLIANCE WITH NOTIFICATION PROCEDURES FOR TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES BETWEEN PARTIES

Article 6 of the Waigani Convention provides the notification procedures for transboundary movements of hazardous waste.

Given the absence of much implementing legislation the reviewer had an expectation that there would be an equally low rate of compliance with the notification procedures. This was not the case; while the imperfect and incomplete data available to this reviewer makes firm conclusions difficult to reach, Party responses to this review indicated that notification procedures are being followed in a significant majority of cases.

Some instances of non-compliance were reported also. These were born

of ignorance of the requirement, rather than intentional evasion of regulatory authority.

Some Parties reported difficulties with this and requested capacity building support in respect of it. These Parties acknowledged the training provided by the Secretariat previously, but pointed to frequent changes of personnel in the relevant positions. This is a factor that impacts other related areas of capacity building.

Parties that had facilitated many exports did not report finding the process difficult or time consuming, but reported other issues: long periods sometimes spent waiting for responses from Competent Authorities – in excess of 60 days, problems communicating with Competent Authorities due to language issues, difficulty in locating the correct up-to-date details of Competent Authorities, and problems arranging the necessary insurance.

Of the above, the issue of insurance was raised by several PIDPs as highly problematic, making compliance with the Waigani and Basel Conventions substantially more difficult, and something they believe the Secretariat's resources could be brought to bear in facilitating better outcomes.

It can be expected that compliance in this aspect will be further institutionalized upon the passage of implementing legislation in more PIDPs.

REPORTING

The most relevant provisions of the Waigani Convention are Article 4.4 (f) which requires Parties to:

“Submit to the Secretariat such reports as the Conference of the Parties may require regarding the hazardous wastes generated in the area under its jurisdiction in order to enable the Secretariat to produce a regular hazardous wastes report;” and

Article 7.3: “The Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes to enable the Secretariat to fulfil the functions listed in Article 14”.

Article 14.2 indicates the expected content of reports.

Additionally, obligations to report specific events are contained in Articles 3 and 11.

Widespread non-reporting is a key

issue of non-compliance for the Waigani Convention. Based on the limited available evidence, having implementing legislation in place does not necessarily improve reporting rates of PIDPs.

A lack of PICs reporting for regional waste management is not unique to the Waigani Convention, recent reviews indicate that annual country reports for both the Pacific Regional Solid Waste Management Strategy 2010–2015 and Cleaner Pacific 2025 were not submitted either.²⁷

Conversations with Parties suggest at least two factors may be contributing, both of which relate to capacity deficits within national level agencies. The first is simple enough - information can only be reported if it is collected. The information required of Parties is (indirectly) indicated in Article 14.2. At present there are not systems in place at national level to collect and aggregate much of the information required in the Waigani Convention reports.

As indicated in various other publications such as National Implementation Plans for the Stockholm Convention, however, more relevant information is collected than is reported to the Secretariat. This gap at least could be filled. In particular, all Parties fulfilling the notification procedures must have available the information required by the Waigani Convention on hazardous waste exports. All PIDPs should commit, at an absolute minimum, to regularly reporting the information indicated in Article 14.2(a), even if they report ‘no data’ for the relevant period.

The second issue is one of priorities and workload. The administrative burden of reporting in many areas of Pacific island government, but particularly environmental governance, is very significant. In large countries a national environment agency with 1000 staff may be reporting to a dozen Convention Secretariats. By comparison, a Pacific agency with 10 staff may be expected to report to 8 or 9. These reports are additional to departmental annual reporting, progress reports on regional strategies, as well as progress and final reports for any external project money received.

There is in many instances more reporting to do than there is time to complete it. As a matter of efficiency, reports with direct budgetary implications tend to be prioritised.

27. EB2/WP 11.3.2/Att.1, p9 and Cleaner Pacific 2025: Pacific Regional Waste and Pollution Management Strategy 2016–2025, Apia, Samoa: SPREP, 2016, p61.

The mid-term review of Cleaner Pacific 2025 indicated that the resources and expertise made available through SPREP's Inform project will be brought to bear to improve national reporting for waste management: "The Inform project is establishing a Pacific island network of national and regional data repositories and reporting tools to support the monitoring, evaluation and analysis of environmental information, which supports national environmental planning, forecasting, and reporting requirements."²⁸

Links to the Inform Project would seem to be an equally appropriate response to the deficit in Waigani Convention reporting by Parties.

Overlapping and duplicated national waste reporting requirements identified above point to an opportunity for the Secretariat to undertake something akin at a regional level to the kind of "clustering" and "synergies" that has already occurred at a global level for waste and chemical programs.²⁹ The example of waste management planning below illustrates equally well this opportunity to limit duplication and find efficiencies through clustering.

COMPLIANCE WITH THE PLANNING OBLIGATION

Article 4.4(e) of the Waigani Convention requires Parties to "develop a national hazardous wastes management strategy which is compatible with the SPREP South Pacific Regional

Pollution Prevention, Waste Minimization and Management Programme". The reviewer has interpreted this to mean, in a contemporary setting, a strategy that is compatible with relevant sections of the Cleaner Pacific 2025.

A national strategy for hazardous waste management – which for Waigani Convention Parties includes household wastes and may soon encompass many plastics – is a foundational component of environmentally sound waste management. Cleaner Pacific 2025 commits each PICT to developing such a strategy; PIDPs are additionally bound by international law to have one in place.

Literature reviewed for this evaluation indicates that the status of hazardous waste management planning in the region is highly variable. Some PIDPs have no current plans in place, others have outdated plans yet to be replaced, others have recent plans that integrate considerations of MEA compliance (e.g. Kiribati). Developing a national hazardous waste strategy, or the inclusion of hazardous waste issues in an integrated national waste management strategy covering all types of waste, should be prioritized in those places where this has yet to be done.

The Secretariat has indicated that an upcoming GEF-funded project will assist and facilitate all SPREP member countries to develop national hazardous waste management strategies.



28. EB2/WP 11.3.2/Att.1, p9

29. <http://www.brsmas.org> See also Liu, N., Middleton, C. 'Regional clustering of chemicals and waste multilateral environmental agreements to improve enforcement' International Environ Agreements 17, 899–919 (2017).

SECTION 9

INSTITUTIONAL ARRANGEMENTS OF THE WAIGANI CONVENTION

CONFERENCE OF THE PARTIES

Article 13 of the Waigani Convention establishes the Conference of the Parties (COP). The COP has held ten meetings since the first in 2002, on a biannual basis. The COP adopted Rules of Procedure and financial rules at its first meeting. Article 13.4 of the Waigani Convention tasks the COP as follows:

The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and in particular, shall:

- (a) Promote the harmonization, at high levels of protection, of appropriate legislation, policies, strategies and measures for minimising harm to human health and the environment;
- (b) Consider and adopt, where necessary, amendments to this Convention, and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;
- (c) Examine and approve the regular budget prepared by the Secretariat in accordance with Article 14;
- (d) Consider and undertake any additional action that may be necessary for the achievement of the purposes of this Convention in the light of experience gained in the operation of the Convention and developments elsewhere;
- (e) Consider and adopt protocols as necessary;
- (f) Establish and/or designate such subsidiary bodies or agencies as are deemed necessary for the implementation of this Convention; and
- (g) Determine and adopt appropriate rules and procedures for the acceptance of new Parties to this Convention in accordance with Article 23 and Annexes III and IV.

CONFERENCE OF THE PARTIES – EVALUATION

The survey of Parties for this review asked for comments or suggestions for improvement of the Conference of the Parties. Four Parties responded, as follows:

- “The Waigani COP serves well as a means to adopt financial and procedural rules, and examine and approve the budget.
- There has been limited engagement by Parties to promote the adoption of appropriate legislation, policies and strategies, and review and evaluate the Waigani Convention. We feel this aspect could be greatly enhanced if Parties prepare and present papers at COP meetings in relation to new measures.
- Intersessional discussion by Waigani Parties of work and decisions taken at Basel COPs would help to keep Waigani Parties engaged on the key issues that could affect the management of hazardous wastes. To this end,

the Secretariat, in partnership with interested Parties, could synthesise the key issues following Basel OEWGs and COPs and circulate the synthesis to Parties.

- Another important way to improve the operation of COPs is to circulate meeting papers to Parties well before the COP.
- We have not observed much enthusiasm for the intersessional work to develop COP papers etc. This is likely due to the heavy business as usual workloads of the relevant officers.”

“The COP is not discharging some its functions effectively. We would like the COP to work on a financial mechanism, more follow-up to implement any agreed actions, and to generally raise the priority of the Waigani Convention, especially in light of the predicted increase in transboundary movements of waste.”

“We note that the meeting rules require that materials must be shared six weeks prior to a COP. We note that relevant materials were not circulated before the 2019 COP in time to prepare country positions on some issues. This also meant that it was difficult to have meaningful discussion with Parties.

Substantive proposals to change the operation of the Waigani Convention require Ministerial or sometimes Cabinet approval. In order to engage on significant issues in the COP fora, Parties need time to consider proposals and reports.

We also ask that notices about relevant meetings or issues are emailed in a timely manner to the national focal points, and are put on the SPREP website. Our experience has been that this has not happened in a regular manner, and the SPREP Circular does not always reach the right people. This includes notifications about the COP, intersessional meetings of the subsidiary meetings, and notifications, e.g. relating to the current Waigani Survey.

We consider that it may be of some value for Parties to share case studies relating to hazardous waste management issues and how they were resolved. This may be a way to show examples of what is being done and where applicable ways the Secretariat has provided support.

The COP could also provide information sessions on different issues (such as national legislation) where Parties could discuss or workshop ideas for domestic improvement.”

SECRETARIAT - DESCRIPTION

Article 14 of the Waigani Convention establishes the Secretariat. Article 14.3 identifies SPREP as the Secretariat. Article 14.1 sets out the functions of the Secretariat:

- (a) Arrange and service meetings of the Parties to this Convention;
- (b) Prepare the regular budget of the Conference of the Parties, as required by this Convention;

(c) Prepare and transmit reports based upon information received in accordance with Articles 3, 4, 7, and 11 of this Convention;

(d) Prepare and transmit information derived from meetings of subsidiary bodies and agencies established under Article 13 of this Convention or provided by relevant intergovernmental and Non-Governmental entities;

(e) Ensure coordination with the Secretariat of the Basel Convention and other relevant international and regional bodies, and in particular to enter into such administrative arrangements as may be required for the effective discharge of its functions;

(f) Communicate with the competent authorities and focal points established by the Parties in accordance with Article 5 of this Convention as well as appropriate intergovernmental and Non-Governmental Organisations which may provide financial and/or technical assistance in the implementation of this Convention;

(g) Compile information concerning approved sites and facilities available for the disposal of hazardous wastes and means of transport to these sites and facilities and to circulate this information;

(h) Receive and convey on request to Parties information on available sources of technical and scientific expertise;

(i) Receive and convey on request to Parties information on consultants or consulting firms having the necessary technical competence in the field which can assist them with examining a notification for a transboundary movement of hazardous wastes, the concurrence of a shipment of hazardous wastes with the relevant notification, and/or whether the proposed disposal facilities for hazardous wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(j) Assist Parties to this Convention in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic, and to undertake the necessary coordination with the Secretariat of the Basel Convention as provided for in Article 9.6;

(k) To cooperate with countries

concerned and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance in the event of an emergency situation in the Convention Area;

(l) To report the information prescribed in paragraph 2 of this Article, to the Parties to this Convention, before the end of each calendar year; and

(m) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

SECRETARIAT - EVALUATION

A summary evaluation of compliance with each item in Article 4.1 is provided below:

- Multiple meetings of the COP, STAC and SCPRC have been successfully arranged and serviced by the Secretariat.
- The Secretariat has prepared a budget for the COP to consider at each of its ten meetings.
- The Secretariat does not prepare and transmit reports based upon information received in accordance with Articles 3, 4, 7, and 11 of this Convention. The reason provided is that these reports need to be based on information provided by Parties, which is not provided.
- The Secretariat does prepare and transmit information to the COP from meetings of subsidiary bodies (STAC and SCPRC).
- The Secretariat does coordinate on some matters with the Secretariat of the Basel Convention. The agreement that established the PRC is the best example of an administrative arrangement of this kind.
- The Secretariat does communicate with the competent authorities and focal points, but this is typically in the lead up to meetings of the COP or subsidiary bodies. Both Parties and the Secretariat agree that this communication is less than ideal. The Secretariat reports that this is a result of insufficient staff allocated to perform Secretariat functions.
- The Secretariat does not compile information concerning approved sites and facilities available for the disposal of hazardous wastes and means of transport to these sites and facilities.
- The Secretariat does receive and convey on request to Parties

information on available sources of technical and scientific expertise.

- The Secretariat does receive and convey on request to Parties information on consultants or consulting firms having the necessary technical competence in the field which can assist in ensuring that hazardous wastes are managed in an environmentally sound manner.
- The Secretariat does receive and assist Parties in cases of illegal traffic, and coordinates with the Secretariat of the Basel Convention in these circumstances. The current Secretariat staff have dealt with one such instance. Parties were not immediately informed of this matter.
- The Secretariat reports there have been no emergency situations requiring their action.
- The Secretariat does not prepare and transmit annual reports as required by Article 4.1(l) and 4.2. The reasons provided are firstly, a deficit in human resources to perform Secretariat functions, and secondly, a lack of information provided by the Parties.

Parties that responded to questions regarding the performance of the Secretariat held differing views. Some reported that they were well served by the Secretariat whenever requesting assistance for matters related to the transboundary movement of hazardous wastes. Others reported the following concerns:

"Everything depends on funding. SPREP needs to understand and accept that capacity building in PICs depends on SPREP funding the immediate requirements of PICs as well as assisting PICs to better manage and ultimately minimize their waste streams. The approval process for unlocking SPREP funding is way too long."

"SPREP could be a bit more proactive as well [as Parties not reporting]. The Convention talks about hazardous waste information systems for each country. We're working towards that, but why not begin with SPREP compiling the information that they do have?"

"SPREP should be encouraged to establish a broad insurance policy for PICs, with each PIC declaring shipment by shipment the level and details of the shipment being covered. The broadform policy will necessarily have to comply with the NZ EPA requirements."

"The website needs to be updated and to make it easier to find the Waigani Convention information and forms."

"Materials were not circulated before the 2019 COP in time to prepare country positions on some issues. This also meant that it was difficult to have meaningful discussion with Parties."

... substantive proposals to change the operation of the Waigani Convention require Ministerial or sometimes Cabinet approval. In order to engage on significant issues in the COP fora, Parties need time to consider proposals and reports."

"Shipping is a continuing issue, however the Moana Taka programme is an excellent initiative and SPREP should be encouraged to negotiate with other shipping lines to expand the programme."

"We are concerned with the limited resources (fund and personnel) provisioned for the administration of the Convention at SPREP. SPREP needs to step up its support to member countries to ensure member countries get value from the Waigani Convention."

"We also ask that notices are emailed in a timely manner to the national focal points, and are put on the SPREP website. Our experience has been that this has not happened in a regular manner, and the SPREP Circular does not always reach the right people. This includes notifications about the COP, intersessional meetings of the subsidiary bodies, and notifications, e.g. relating to the current Waigani Survey. Engagement by the Parties could be improved by timely circulation of materials so that Parties have sufficient time to consider them before meetings."

"The list of contacts SPREP has used for circulars has at times been incomplete. This has meant that we received delayed information, or responded late to requests for information."

"We would also welcome further information sharing, for example by sending information to Parties, or hosting online workshops/discussions on particular issues."

"We have requested support from the Secretariat for both a hazardous waste emergency and to assist with notifications. No assistance was provided."

"SPREP have provided some training which has been helpful. But then

people move on from their jobs and the knowledge is lost. The training has to be repeated."

The Secretariat reports that a deficit in staff time available to perform Secretariat duties, combined with a lack of information provided by the Parties, prevents it from performing some key functions.

At the margins, improved information and time management could aid in the performance of Secretariat duties without additional cost, even assuming no change in terms of Party engagement. The website needs renovating and updating. This would make Waigani Convention-related information such as forms, reports, news and contacts more accessible.

To facilitate more reporting, it is noted that at each COP Parties that have not submitted written reports are invited to do so verbally. Arriving unprepared, few do. A more proactive Secretariat might call Focal Points in the lead-up period, both as a reminder of the reporting form (and any other agenda items), and also to receive a verbal report on core matters such as transboundary movements. More proactive methods in receiving Parties requests for assistance would also be possible.

Notwithstanding the above, the core challenge for the Secretariat (apart from Party non-engagement) is that insufficient resources are being allocated by SPREP to its Waigani Convention Secretariat role. The Secretariat is staffed by a single officer who is the SPREP Hazardous Waste Management Adviser (HWMA). None of the 24 duties and responsibilities listed on the HWMA Position Description mention performing the functions required of the Waigani Convention Secretariat. Some Secretariat functions would be included in other duties (e.g. provide advice to SPREP members on hazardous waste management issues) but it is evident that the Secretariat function is allocated as an additional set of tasks to a single officer who already has a full workload.

SCIENTIFIC AND TECHNICAL ADVISORY COMMITTEE - DESCRIPTION

The Scientific and Technical Advisory Committee (STAC) is a subsidiary body of the Waigani Convention, established at the first meeting of the COP under authority of Article 13.4(f).

The first meeting of the STAC was held in Samoa in June 2004. STAC typically meets on a biannual basis some months before the COP so that

the output of the STAC meeting can be shared by the Secretariat with the Parties. The COP Rules of Procedures apply mutatis mutandis to STAC meetings, except that the STAC elects its own Chairman. The COP has given STAC the following terms of reference:

1. Each Party shall designate a suitable representative and alternate to the STAC who may be accompanied by other experts and advisers appointed by that Party.
2. The COP shall determine the matters to be considered by the STAC which will fulfil such tasks and report to the next COP. This will include inter alia:
 - a) In collaboration with the Secretariat, examine information provided by Parties on measures taken to implement the Convention and the formulation of recommendations on the necessary actions to be undertaken for consideration by the COP.
 - b) The provision through the Secretariat of guidance on the development of plans, programmes and measures related to the technical and scientific aspects (awareness, training, legal, scientific) of the implementation of the Convention.
 - c) The provision of advice on the development/adaptation of guidelines and standards for the environmentally sound management of hazardous wastes.
 - d) The review of guidelines, standards and other relevant documents prior to adoption by the COP.
 - e) The provision of advice on priority measures and activities in the legal and technical fields for the implementation of the Convention.
 - f) The assistance with co-ordination of work at the global, regional and national levels including the necessary linkages with relevant global Conventions.
 - g) The provision of advice to the Secretariat and the Parties on the technical and scientific needs of the Convention.
 - h) Assessment and prioritization of the work-programme and budget for the implementation of the Convention and submission to the COP.

3. The Committee will perform such other functions relating to the implementation of the Convention as may be instructed by the COP.
4. Notwithstanding paragraphs 2 and 3 of this TOR, a Party may add any specific issue in direct relation to the implementation of the Convention on the mandate of the STAC, with the approval of all Parties.

SCIENTIFIC AND TECHNICAL ADVISORY COMMITTEE – EVALUATION

The STAC does not function in the manner intended. The intention was that the STAC perform a similar role to the Open-Ended Working Groups established under the Basel Convention - a forum to raise and address issues relating to implementation aspects of the Convention. STAC and COP agenda and working papers from 2012-2019 suggest that Parties and the Secretariat have for some time acknowledged that STAC since its establishment has not played this role effectively.

As early as 2012, following an inability to obtain a quorum since 2008, Parties at the 6th COP were presented with three options for STAC: 1) reaffirm full support and discharge all duties, 2) re-organise STAC solely via electronic information exchanges, 3) suspend STAC and rely on the SPREP WMPC Division to perform the work.

Parties selected the first option. Thereafter “The Effectiveness of STAC” remained an item on the COP agendas until COP 10, when it was subsumed into broader discussions relating to this review.

The following points summarise problems or shortcomings of STAC:

- Suitability of members. The intention was the STAC members should be experts in hazardous waste management and so able to advise on technical matters. Members are instead bureaucrats with responsibility for waste management administrative issues. They have varying levels of experience and expertise;
- Continuity of membership. High staff turnover rates within Party governments means that there is little continuity of discussion and institutional history is lost;
- Lack of data. STAC’s role should include considering the information provided by Parties on hazardous waste generation and management. No reporting means nothing to consider.
- Substantive input into work plans and budgets. Notionally, STAC discussions guide the development of work plans. The meeting record is somewhat contradictory on this: “There has been little addition from the Parties in terms of substantive programs on issues relating to the implementation of the Convention at the regional and national levels, where it affects them.”³⁰ “Although the Parties have rarely brought new substantive matters to be added to the work plan that is provided by the Secretariat, the STAC has provided guidance on the process of how the activities contained in the work plan and budget are to be implemented.”³¹
- Lack of communication between meetings. The intention was that the work of STAC continue in between meetings via discussions led by the Chair. In practice this has not occurred, with very little inter-sessional communication

reported.

A COP 9 paper summarises the situation: “the Meeting agreed that the STAC has not performed as it should and cited lack of progress in the implementation of the Convention, weak institutional and legal arrangements at the national level, human capacity and varying levels of commitment to the Convention as key challenges. The Meeting also noted that insufficient resources have been a contributing factor.”³²

Previous proposals to reform the STAC have included re-emphasizing the role of the Chair is to lead inter-sessional discussion, and encouraging Parties to appoint technical experts to represent them at the STAC. As regards to the latter issue, discussion with Parties and the Secretariat suggest that it is simply an unrealistic expectation that each PIDP would have available such experts. These solutions have been approved at meetings but not put into practice.

This brings into focus a related issue. If the STAC is not serving as a technical advisory committee, is the absence of such a committee a gap that requires filling?

More positively with regard to institution and relationship building:

The STAC has attended to a small but critical number of other functions relating to the implementation of the Convention that it has been instructed to do by the Conference of Parties. These have included the work on establishment of the Pacific Regional Centre with the Secretariat of the Basel Convention, the on-going working relationships with the Secretariats of the Stockholm, Rotterdam and now the Minamata Conventions and more recently the Basel Convention Regional Centre in China. Although not directly related to the implementation of the Waigani Convention, these cooperative relationships have complemented and assisted in the implementation of the Convention.³³

In summary, STAC has served as a consultative forum among Parties, enabling Parties to communicate at least some of their needs and priorities in the area of hazardous waste management to each other and the Secretariat. STAC was intended to serve as a source of technical and scientific advice on matters relating to hazardous waste management in the region. It has not, and probably cannot, fulfil that purpose. There may remain an unfulfilled need for a standing advisory committee of experts that can provide technical and scientific advice on matters relating to hazardous waste management in Pacific island contexts.

PACIFIC REGIONAL CENTRE FOR TRAINING AND TECHNOLOGY TRANSFER FOR THE JOINT IMPLEMENTATION OF THE BASEL AND WAIGANI CONVENTIONS (PRC) AND ITS STEERING COMMITTEE (SCPRC) - DESCRIPTION

Following preparatory discussions at the first Waigani Convention COP, the Environment Ministers’ Forum, held in July 2002 in the Marshall Islands, advanced a proposal for a joint Regional Training Centre for endorsement by the Sixth Basel Convention COP in December 2002. The Agreement establishing the PRC was signed by the Director of SPREP and the Executive Secretary of the Secretariat of the Basel Convention on the 18 December 2003.

The PRC was established with the aim of strengthening the

30. WC COP-7/WP.5.1 p3.

31. WC COP-7/WP.5.1 p4.

32. 9WC/WP.4.1. Att.1 p6

33. WC COP-7/WP.5.1 p4.

capacity of the Pacific island Parties to the Waigani and Basel Conventions in complying with the technical requirements of the environmentally sound management of hazardous waste including the minimisation of their generation as well as with the legal and institutional aspects of the implementation of both Conventions.

The 2022-2023 draft Business Plan of the PRC reports that SPREP regarded the PRC's establishment as an opportunity to foster cooperation with the Secretariat of the Basel Convention (SBC) and possibly other MEA secretariats such as those of the Stockholm, Rotterdam, Minamata and IMO Conventions.

The 2022-2023 draft Business Plan says the ultimate goal of the PRC is "a Pacific region in which human health and the environment are no longer threatened by toxic chemicals". The vision of the PRC is to be "the Pacific's leading institution for strengthening and building capacity in integrated hazardous waste and substances management". It adds:

"The Regional Centre sees itself as a strategic actor, facilitating the processes of regional and national capacity building and strengthening through training of the key national and regional actors in environmentally sound hazardous waste and substances management, as well as the preparation and dissemination of specialized information."

The 2022-2023 draft PRC Business Plan identifies the following activities planned for the implementation of the Strategic Framework of the Basel Convention.³⁴

- Provide negotiation training to enable members to achieve better outcomes at COPs and other subsidiary meetings of the conventions.
- Host pre-COP meetings to prepare members for active and effective participation at COPs.
- Share information and provide advice to reduce instances of illegal movements and dumping in the region.
- Provide training for relevant Customs Officers and Port Officials.
- Support the development of hazardous waste management strategies for members to help them deal with their unique challenges.
- Funding on-ground improvements.

The final item is detailed in a table listing the following projects:

- Pacific National Implementation Plans for Stockholm Convention on POPs
- Pacific Minamata Initial Assessments
- Africa Caribbean Pacific Multilateral Environment Agreements III
- PacWaste Plus Programme
- GEF ISLANDS Pacific Child Project

The Centre's estimated budget for the year 2022-2023 is USD\$3,520,000.

Staffing the PRC takes around 30 percent of the time of one officer. The SPREP Hazardous Waste Management Advisor is currently the PRC Director – its only staff.

The PRC is governed by the Conference of the Parties

(COP) and a Steering Committee (SCPRC) appointed by the COP. The SCPRC is composed of five members nominated by the countries to be served by the Centre through a process of consultation, for a period of four years. The SCPRC's terms of reference require that the members be experts of recognized standing and with experience in the environmentally sound management of hazardous wastes.

The third Waigani Convention COP in 2006 adopted a decision requiring the membership of the SCPRC to be: one nominated by Australia; one nominated by New Zealand; and one each nominated by the three sub-regions, Melanesia, Micronesia, and Polynesia. The representative of SBC, SPREP and the Director of the Centre participate in the meetings of the Committee ex officio.

The SCPRC Terms of Reference provide that it "shall develop the Business Plan of the Centre and oversee its implementation." In practice, a draft biennial PRC Business Plan is prepared by the PRC Director, which is submitted to the SCPRC for endorsement. The overall monitoring of the PRC's activities against the Business Plan is also the responsibility of the SCPRC.

The SCPRC Terms of Reference require the Chairperson, in consultation with SBC, SPREP and the Director of the Centre, to convene ordinary meetings of the Committee at least every two years. More frequent meetings are allowed but the practice is for biennial meetings.

Subject to the agreement of the SCPRC, any non-Party State to the Basel and Waigani Conventions outside the Pacific region, non-governmental organization, entity, private sector organization, academic institution, or other organization may participate in the activities of the Centre.

It is noted that all Pacific island countries are Parties to either or both the Waigani and Basel Conventions. This means that they are all served by the PRC without requiring any further decision of the SCPRC. All other SPREP members may by agreement be served by the PRC.

PACIFIC REGIONAL CENTRE FOR TRAINING AND TECHNOLOGY TRANSFER FOR THE JOINT IMPLEMENTATION OF THE BASEL AND WAIGANI CONVENTIONS (PRC) AND ITS STEERING COMMITTEE (SCPRC) - EVALUATION

The assessment of the STAC above in many respects applies equally to the SCPRC. In fact, working papers seeking to address shortcomings of Waigani Convention institutional arrangements combine consideration of both STAC and SCPRC. It is also noted that SCPRC meetings are held back-to-back with STAC meetings, so the same people attend both. Although SCPRC has only 5 members, other STAC members may attend SCPRC meetings as observers.

The following excerpt from WC COP-7/WP.5.1 summarises the situation:

"The function of this committee is to provide guidance and direction to the Pacific Regional Centre on what issues it should be concentrating on in terms of hazardous waste management. This means they have to work closely with the PRC in developing the Business Plan but this has not happened over the last decade."³⁵ Since its establishment, the Steering Committee has not developed the Business Plan of the Centre. A Business Plan is developed by the Secretariat without any guidance, direction or input from Steering Committee members and presented to the Steering

34. <http://www.basel.int/Implementation/StrategicFramework/Strategicgoalsandobjectives/tabid/3811/Default.aspx>

Committee meeting where it is discussed and revised where necessary, and then endorsed. Following the endorsement of the Business Plan, the Steering Committee play very little role in the overseeing of the implementation of the activities contained in the Business Plan.”

The plans and documents produced by SPREP provide contradictory messages regarding the significance of the PRC as an institution with the potential to play a significant role in hazardous waste management in the Pacific island region.

On one hand, it is worth recalling the vision of the PRC: “the Pacific’s leading institution for strengthening and building capacity in integrated hazardous waste and substances management”. The PRC Business Plan for the period 2020-2021 is linked to “a budget that has been secured by the Secretariat for the activities that have been included in the Work Plan. Funding of around \$40M has been secured with a further \$20M to be negotiated through the GEF ISLANDS Project.”³⁶

Yet incongruously, the next page of the same document states: “The lack of funding for the PRC was acknowledged as a barrier to assisting countries in the region. It also highlighted the importance of countries in supporting the Secretariat in securing donor funding for regional projects to support national actions.”³⁷

Also incongruous is that Cleaner Pacific 2025, the key strategic planning document to help improve the management of waste and pollution in the region over the current ten-year period, nowhere mentions the existence of the PRC. The only connection between the PRC and the projects listed in the Business Plan are that the projects appear in the work plan and budget of the PRC and are notionally approved by the SCPRC (yet as noted above this is reportedly a formality).

There are also ongoing references to proposed trust funds: “A mechanism needs to be developed to sustainably co-finance the activities of the Centre including, but not limited to, a Waigani Trust fund, a Basel Trust Fund and Basel Technical Trust Fund. This will need to be formalized in project documents signed by Secretariat of the Basel Convention (UNEP) and the Secretariat of the Waigani Convention (SPREP).”³⁸ These have not been established, there is no ongoing work seeking to establish them, and there is no apparent source of capital available for this purpose.

In summary, the PRC is a permanent institution, governed by Parties to the Waigani and Basel Convention, with a jurisdictional capacity to serve all of SPREP’s members, established with the purpose of being the Pacific region’s leading institution for strengthening and building capacity in integrated hazardous waste and substances management. The five-member SCPRC has not been performing the functions that it was established to undertake for the same reasons as outlined for STAC. Key regional strategic documents, such as Cleaner Pacific 2025, indicate that the PRC is not considered by SPREP or its members to be an important aspect of integrated hazardous waste and substances management. Other documents, such as the Business Plans for the PRC, seem to suggest that the SCPRC is central in guiding, approving and overseeing much of the activity and funding in the region in the area of integrated hazardous waste and substances management.

35. WC COP-7/WP.5.1 p9
36. 10WC/WP4.1/Att.2 p4
37. 10WC/WP4.1/Att.2 p5
38. 8WC/WP.4.1 p12-13

SECTION 10

CURRENT ISSUES ARISING THE WAIGANI CONVENTION COP

This section discusses five issues, the first three of which have been presented to the COP, the fourth is a matter that the COP will need to address soon and the final one has been identified by the Secretariat as a matter requiring consideration. Questions regarding these issues were excluded from the questionnaire in order to simplify the document with the aim of eliciting more responses. Parties were nonetheless free to contribute their views on these matters if they considered them to be priorities. None did.

1. PROPOSED NAME CHANGE – REMOVE 'SOUTH'

At the 9th COP in 2017 the representative of FSM queried the use of the term "South" in the Waigani Convention title.

This was followed-up at the 10th COP under Agenda Item 7.2: Future proofing the Convention – tacit acceptance and updating the name. The COP paper deals with two separate issues. These issues should, in the opinion of this reviewer, remain separate.

As regards the name change specifically, the paper states only:

"2. At the ninth Meeting of the Conference of the Parties, the Secretariat was directed to provide advice on the process for changing the name of the Convention to remove the word "South" from its title, to read: "Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and the Management of Wastes within the South Pacific Region".

This is as simple and uncontroversial as a treaty amendment proposal can be. There are no budgetary implications, no Party obligations are impacted in any conceivable way, and there are numerous recent precedents for it in comparable regional contexts.

The COP paper correctly states that the process to amend the Waigani Convention "may take a number of years". Nevertheless, if the Secretariat had worked with the interested Party to prepare the necessary paperwork to have the amendment proposal circulated prior to the 10th COP the amendment process would now be well underway, if not completed.

As events transpired, the 10th COP was invited to agree to changing the name. This request was combined with the larger proposal discussed below and the COP instead directed this review to consider and discuss both of the issues.

It is noted that the Convention requires amendments to be proposed by a Party and to be circulated more than six months prior to being considered for adoption at a COP.

If Parties remain interested in this objective, the process as described above should be commenced.

In the event that Parties do seek to progress this amendment, it would seem appropriate to also consider

removing the word "South" throughout the Convention text. While a more substantial undertaking than simply removing the word from the treaty's title, doing this would not impact Parties' substantive obligations, and would bring the Convention into line with the terminology now applied in referring to the region. It would also enable the current and correct titles to be used for the Secretariat of the Pacific Regional Environment Program and the Pacific Island Forum.

2. PROPOSED AMENDMENTS TO ARTICLE 16

There is a proposal to amend the Convention Article setting out the process by which the Convention is amended. The aim of the proposal is to make the Convention simpler to amend. This proposal is made in the same 10th COP Agenda paper as discussed above: Future proofing the Convention – tacit acceptance and updating the name.³⁹

In essence, the proposal is to amend Article 16 "Amendments to this Convention" so that the manner in which the Convention would thereafter be amended would mirror the process set out in Article 18 "Adoption and Amendment of Annexes".

The description and justification are as follows:

"6. States become bound by new obligations through acquiescence, that is, by taking no positive action within a specified period of time. Under some treaties, Parties may object to the new obligation, however all parties that have not objected are considered to have tacitly accepted the new obligation.

7. This is a much faster way of making changes. If article 16 was substituted with a tacit acceptance procedure this would allow for changes to be made in a timely manner as well as reducing the administrative burden on Parties."

There are two significant problems with this proposal. The first is that the justification "it is faster" is insufficient. International treaties are, by design, typically not fast or easy to amend. This is among the reasons why Parties choose to place material that might be expected to be subject to amendment in annexes that may have less arduous amendment procedures.

Secondly, related to the above, it is likely that Parties, if they took this forward, would ultimately discover that legal counsel concerned with international law precedent and convention will advise against it simply upon that basis.

It is noted that the only amendment that has been proposed, apart from Article 16, is to remove "South" from the title.

National governments are unlikely to deviate from standard procedure on matters such as the typical manner in which treaties are amended in the absence of a compelling justification. By way of illustration, see the many reservations to the Stockholm Convention by Parties that will only accept amendments to the annexes following ratification, acceptance or approval.⁴⁰

The proposal to amend Article 16 is not strongly justified.

39. 10WC/WP7.

3. PROPOSED COMPLIANCE COMMITTEE

The 9th COP included agenda item 5.3(i) Committee administering the mechanism for promoting implementation and compliance. At that time the Secretariat was requested to provide further work on this matter and present at the next COP for consideration.

The 10th COP included agenda item 7.3: Proposal for a mechanism to promote compliance with and implementation of the Convention. The paper stated in part:

“It has been proposed that a separate formal mechanism for promoting compliance with and facilitating implementation of the Convention would be appropriate. Such a mechanism would allow for consistent and focused oversight of the implementation of the Convention. Additionally, the existence of a mechanism would incentivise Parties to fully implement and comply with the Convention, while providing a forum for knowledge sharing between Parties.

It is proposed that the mechanism be implemented through the establishment of a Compliance Committee in accordance with Article 13, paragraph 3(f) of the Convention and Rule 23 of the Rules of Procedure.

The Committee would meet immediately prior to the meeting of the Conference of the Parties of the Waigani Convention. It would be composed of one representative from each Party with a Chair elected by the Conference of the Parties.”

A draft terms of reference for the proposed compliance committee was also presented at COP 10. COP 10 decided that this review consider the matter.

As outlined above the Waigani Convention already has associated with it two committees (SCPRC and STAC) that are widely acknowledged as not functioning as intended.

It is highly likely that, in the event that a Compliance Committee were established, the people who attend on behalf of their governments would be the same personnel who are nominated to attend STAC, COP and for those Parties involved, the SCPRC. This group of people – primarily waste management bureaucrats – are probably better suited to discussing

compliance issues than technical matters of waste management.

It is noted that the STAC terms of reference includes the following: “The provision of advice on priority measures and activities in the legal and technical fields for the implementation of the Convention.”

The work of the proposed Compliance Committee could be undertaken equally effectively, and more efficiently, by STAC.

4. BASEL CONVENTION PLASTICS AMENDMENT

At COP 14 in 2019 the Basel Convention adopted amendments to Annexes II, VIII and IX with the objectives of enhancing the control of the transboundary movements of plastic waste and clarifying the scope of the Convention as it applies to such waste. The new entries became effective on 1 January 2021 for all Parties that did not object to them. They are as follows:

1. The amendment to Annex VIII inserts a new entry A3210 that clarifies the scope of plastic wastes presumed to be hazardous and therefore subject to the PIC procedure.
2. The amendment to Annex IX adds the new entry B3011 replacing previous entry B3010. This clarifies the types of plastic wastes that are presumed to not be hazardous and, as such, not subject to the PIC procedure.
3. The third amendment is the insertion of a new entry Y48 in Annex II which covers plastic waste, including mixtures of such wastes unless these are hazardous (as they would fall under A3210) or presumed to not be hazardous (as they would fall under B3011).

The above amendments do impact the Waigani Convention. There is no automatic mechanism by which amendments to Basel Convention annexes are transferred to those of the Waigani Convention. As of 1 January 2021, there is disjuncture between the materials covered by the two Conventions.

This raises both an issue of law, as well as one of regulatory policy. The Waigani Convention is an agreement compliant with Article 11 of the Basel Convention. Article 11 of the Basel Convention provides that “such agreements or arrangements do not derogate from the environmentally

sound management of hazardous wastes and other wastes as required by this Convention.” The legal issue is that, in order to continue to comply with the principle of non-derogation, the scope of materials covered by the Waigani Convention should match that of the Basel Convention.

Perhaps more significantly, PIDPs need to guard against a situation where the Waigani ban upon imports of hazardous wastes does not include certain plastic waste streams that, following the Basel Convention plastic amendments, may now be seeking alternate destinations that are beyond the purview of Basel Convention rules. The identified risk is theoretical; the reviewer has insufficient information to be able to judge the likelihood of it actually arising.

Waigani Convention Parties and Secretariat may need to consider as a matter of priority commencing the process of amending the Waigani Convention annexes, possibly in combination with amending the definition in Article 1 of the Waigani Convention to make reference to Annex 1(a) of the Basel Convention so that the same materials as the Basel Convention are covered.

5. 'SOUTH PACIFIC FORUM' (PACIFIC ISLAND FORUM) IN THE WAIGANI CONVENTION

The review was asked to consider possible impacts upon the Waigani Convention in the event that Parties withdraw their membership of the Pacific Island Forum (PIF). This issue arises because the Waigani Convention references PIF, using its previous name, the South Pacific Forum.

Articles 21, 22 and 23 of the Waigani Convention each includes the term “Members of the South Pacific Forum”. These articles deal respectively with signature, ratification and accession.

At the time they signed and subsequently became Parties to the Convention, all Waigani Convention Parties met the criteria set out in Articles 21-23. Neither these, nor any other of the treaty's provisions, indicate that ongoing membership of PIF is a necessary condition for retaining Waigani Convention Party status.

It is concluded that there would be no impact upon the status or obligations of Parties under the Waigani Convention should they withdraw PIF membership.

40. <http://chm.pops.int/Countries/StatusofRatifications/PartiesandSignatoires/tabid/4500/Default.aspx>

SECTION 11

STRATEGIC DIRECTIONS

PRIORITISING EFFICIENCY AND ELIMINATING DUPLICATION

This review has been asked to address a core issue, that of duplication (and therefore inefficiency) arising from the coexistence of the Waigani and Basel Conventions. In the words of one Party:

“[We] would like to clearly understand the differences between benefits to Parties under the Basel Convention, compared to those under the Waigani Convention. For example, under the Basel Convention alone can Pacific Island Countries receive the necessary support for the management, planning, minimisation and trade of hazardous waste?”

Meeting reports indicate that this is an issue that has at least been touched upon during STAC discussions, and as observed in those discussions, a necessary implication in asking that question is to also confront the prospect of suspending the Waigani Convention.⁴¹

In reporting the views of the Parties on this issue, Australia and New Zealand are asking for the question to be addressed and have expressed concerns regarding duplication. There was one written response received by the reviewer on this issue from PIDPs. When discussed in conversation with those contacted directly, no PIDP representatives indicated a strong opinion on the issue. To the extent that any views were offered, these preferred a pragmatic approach – what works best. Two supported the continuation of the Waigani Convention justified by a misguided belief that it obliges exporting countries to notify transboundary movements of radioactive waste through the region.

In light of the limited Party responses received on this issue, this review is constrained in its ability to report and consider the full range of positions that may be held by Parties. To progress the matter, available information is used to present an analysis that may aid Parties future deliberations. The analysis commences by identifying and responding to some key questions.

In legal terms, does the Waigani Convention offer PIDPs protections that the Basel Convention does not?

- ➔ The single additional legal protection for PIDPs contained in the Waigani Convention that is not in the Basel Convention is the ban upon imports of radioactive waste for disposal.

In legal terms, does the Waigani Convention provide PIDPs options or opportunities that the Basel Convention does not?

- ➔ There is one. The ability to agree upon protocols under Article 17. It is noted that no protocol has been proposed to date.

Is it possible to retain only those aspects of the Waigani Convention not duplicated in the Basel Convention?

- ➔ Treaties may not be suspended in part in the circumstances contemplated.

Does the Basel Convention place additional obligations upon Parties that the Waigani Convention does not?

- ➔ In formal terms, yes. Section 6 above identifies the additional obligations of the Basel Convention. In practice, the two Conventions are very close in terms of the obligations upon Parties that are not also OECD members. To illustrate, a national law to implement one will implement the other, with minor additions or adjustments.

What of the fact that not all PIDPs are Party to the Basel Convention?

- ➔ Representatives of each of the three countries in the region that are not Parties to the Basel Convention have communicated to either the Secretariat or the reviewer that processes are underway to join the Basel Convention. The status of those processes is unknown.

Are there existing sources of donor funding that are reliant upon the Waigani Convention?

- ➔ Neither the literature reviewed, nor queries put to the Secretariat, revealed sources or potential sources of funding or assistance that would not also be available in the absence of the Waigani Convention. SPREP through its programs support members with their participation and implementation of all MEAs, including the Basel Convention.

What savings are possible should the Waigani Convention be suspended?

- ➔ For Parties, especially if fully implemented, the Waigani Convention places administrative burdens upon thirteen governments, eleven of which are severely resource-constrained. Note however that the Basel Convention places very similar administrative burdens on its Parties. Complying with the two treaties in unison is marginally more onerous than the Basel Convention alone.
- ➔ Fulfilling the Secretariat role reportedly takes around 33% of the time of the SPREP Hazardous Waste Management Adviser during a year in which COP and STAC and SCPRC are held. The Secretariat's administrative burden is likely to increase, rather than decrease, in response to developments such as the need to account for changes to plastic waste in the annexes.

Questions relating to the value, or lack of value, that Parties might attach to institutions or bodies associated with the Waigani Convention (the COP, STAC, PRC and SCPRC) are more complex. Preceding sections reported that the STAC and SCPRC do not operate in the manner intended and that various proposals to improve this have not produced the desired outcomes.

Nonetheless, suspending an international treaty is not a step to take without considering alternative courses of action. In the opinion of this reviewer, if there are sound reasons for Parties to retain the Waigani Convention these are most likely to relate to the potential of the treaty's institutional arrangements to play a more consequential role

41. 10WC/WP4.1/Att.1 p6-7.

in hazardous waste management in the region than has been the case to date. This is discussed below.

REGIONAL SYNERGIES - MORE EFFECTIVE INTEGRATION OF REGIONAL WASTE STRATEGIES, TREATIES AND PROJECTS

In the course of reviewing literature relevant to this review one issue became clear:

Implementing the Waigani Convention is something that is regarded as a minor and discrete component of, rather than a legal or institutional framework for, regional programs in the area of hazardous wastes and chemicals management.

Two recent documents that overview current plans for waste management in the region illustrate this. Both were presented to the SPREP Executive Board Meeting in September 2020:

- ➔ Cleaner Pacific 2025 Pacific Regional Waste and Pollution Management Strategy Implementation Plan 2021–2025⁴²
- ➔ Waste Management and Pollution Control Programme 2020-21 Update⁴³

These documents set out an impressive program of work that when undertaken will represent a significant improvement in all aspects of waste management in the region, including for hazardous wastes and chemicals. This includes pollution

and waste impact monitoring, waste data collection and reporting, law and governance reform, as well as strategic integrated planning for waste reduction and management.

In section 8 it was noted that there may be opportunities to undertake clustering and synergising of regional waste management programs similarly to that which has been done at a global level. A regional version of waste and chemical synergising would be different as it would involve not only regional implementation of waste and chemical MEAs, but also Cleaner Pacific 2025, and several regional projects. There is already much integration between the latter two, although the following from the Cleaner Pacific Implementation Plan 2021-2025 indicates it could be further enhanced:

Limited dedicated WCP resources at a national level is an ongoing issue for most countries and territories, and this had implications for Cleaner Pacific 2025 implementation between 2016 and 2019. With limited national level capacity, it is suspected that the focus was sometimes more on short-term donor-funded projects (e.g. PacWaste, GEFPAS, Ridge to Reef, INTEGRÉ), rather than on Cleaner Pacific 2025 more broadly.⁴⁴

Box 5 contains a quote summarising core concepts and ideas that underpinned the clustering and synergising of waste and chemical MEAs at a global level.

The following observations are made

from a perspective focused upon the role of the Waigani Convention.

Firstly, once the activities described in regional waste management workplans are successfully undertaken, many aspects of Waigani Convention non-compliance by Parties revealed herein may have been addressed and rectified. Examples are the programs leading to improvements in data collection, information management and waste reporting, projects aimed towards addressing and improving the management of priority hazardous waste streams, and the development of national strategies that integrate consideration of hazardous wastes, as well as improved waste governance capacity and outcomes. This is more likely to be the case if the Waigani/Basel Convention obligations are expressly considered and integrated within relevant project activities.

Secondly, the implementation of some projects involves the creation of advisory committees comprising a representative from each participating PICT, and at least one involves the formation of an advisory group with technical expertise in hazardous wastes. It seems incongruous for SPREP with its partners and members through one process to consider eliminating regionally-representative consultative bodies on hazardous waste, while at the same time establishing other ones. It seems doubly incongruous to eliminate permanent bodies while creating project-based ones.

Box 5 – Clustering and synergies

The United Nations University (1999) and Moltke (2001) proposed that “clustering” of MEAs may resolve problems of fragmentation within the system of international environmental governance. Moltke defined clustering as “grouping a number of international environmental regimes together so as to make them more efficient and effective”.

Oberthür (2002) assessed and evaluated the merits and drawbacks of the various options and proposals for clustering. He proposed that: for organizational elements, organizing combined meetings could reduce administrative effort, travel costs, and related burdens and enhance learning and cross-fertilization, and for functional elements, three common functions could be clustered, namely decision-making processes, review of implementation, and supporting activities like capacity building and resource transfer.

Potential approaches to clustering across MEAs include by issue, by function, and by region. Building linkages of various forms can create conditions for international cooperation, including strengthening the interactions between experts and advocacy networks, as has been shown in water governance literature.

The clustering of MEAs has been proposed as a means towards building organizational and functional synergies. Here, synergy can be understood as when organization or functional linkages, cooperation, or coordination produce joint effects that result in improved outcomes, for example in terms of compliance effectiveness or cost efficiency.⁴⁵

42. EB2/WP 11.3.2/Att.1

43. EB02/WP 11.3.1

44. EB2/WP 11.3.2/Att.1, p18.

45. Lui and Middleton n30, 902.

Thirdly, considering the issue of permanent institutions as compared to time-limited project-based ones, brings to mind the Pacific Regional Centre. The PRC's vision is recalled: being the Pacific region's leading institution for strengthening and building capacity in integrated hazardous waste and substances management. Yet neither of the two documents noted above, nor Cleaner Pacific 2025 mentions the PRC.

It is noted that, especially if the composition and role of the SCPRC were revisited and broadened, the PRC has the potential to fulfill its original vision of being a permanent regional centre of excellence in hazardous waste and chemicals management.

The current suggestion is not a withdrawal from project-based delivery of capacity-building, but rather the activation of an existing institution to serve as an ongoing, unifying hub for the data, knowledge, networks and best practices that are developed within those projects.

PRC's organizational linkages to the Secretariats of multiple waste and chemical MEAs adds further synergies. A comparison with the messaging around the Pacific Climate Change Centre is invited.

The final issue to note is the close correlation between objectives identified in the two documents, as well as Cleaner Pacific 2025, with the obligations contained in the Waigani Convention. Of the 15 "Strategic Actions" of Cleaner Pacific 2025, eleven either re-state, or directly relate to, specific binding obligations contained in the Waigani Convention. Appendix 2 sets this out in a table.

Nonetheless, in the documentation of regional waste strategy and project-development one significant factor is rarely mentioned and never emphasized: there exists an international treaty, initiated and championed within the region, that covers many of the same matters as regional strategies and projects.

As noted, many of the outstanding areas of Waigani Convention noncompliance by Parties mark the same capacity gaps as current projects aim to fill:

- ➔ Data collection and reporting;
- ➔ National hazardous waste management strategies;
- ➔ National strategies to reduce hazardous imports;
- ➔ Regional code of practice on hazardous waste management; and
- ➔ Various types of law and governance reform in waste management.

There is no coincidence involved in the above. The Waigani Convention, in addition to regulating transboundary movements, was intended by its drafters to create a set of requirements that when followed would ensure hazardous wastes (including household wastes, and soon some plastics) are reduced to a minimum and managed in an environmentally sound manner. It was intended as a framework for hazardous waste governance, not an afterthought.

The following from Cleaner Pacific 2025 is considered relevant:

To improve uptake of Cleaner Pacific 2025 at the national level, Pacific island countries and territories shall be urged to table the regional strategy through appropriate national processes in order to obtain

national endorsement at the highest level. This is expected to improve the mainstreaming of activities from Cleaner Pacific 2025 into national and corporate work programmes and budgets, thereby improving implementation.⁴⁶

If the uptake of the strategy was an anticipated risk, would this not have been further assisted by more directly linking Cleaner Pacific 2025 to the preexisting international legal obligations for which its implementation would assist PICs to move from noncompliance to compliance?

In the experience of this reviewer, Pacific leaders in both legislative and executive branches attach considerable value to complying with international law. Noncompliance may be widespread, but this does not mean it is accepted as unproblematic or something to be ignored, particularly if supported opportunities arise to address it.

The "strategic direction" described in this subsection is not within the purview of the Waigani Convention COP to decide. SPREP, and the non-Waigani Party members of SPREP, would also need to be willing to participate in the process. Nonetheless assuming this option is given further consideration, Waigani-specific institutional changes that could be considered as part of a regional synergies and clustering process include:

- ➔ Reviewing the STAC terms of reference;
- ➔ Linking the regional Hazardous Waste Technical Advisory Panel and the regional Research Advisory Group⁴⁷ to both PRC and STAC, thus helping to fill the Waigani Convention's technical expertise deficit;
- ➔ Putting in place the necessary agreements for PRC to serve all SPREP members;
- ➔ Broadening the SCPRC membership to include all PICTs.

46. Cleaner Pacific 2025: Pacific Regional Waste and Pollution Management Strategy 2016–2025, Apia, Samoa: SPREP, 2016, p47.

47. <https://www.sprep.org/sites/default/files/users/nitishn/PWP.png>

SECTION 12

KEY FINDINGS AND RECOMMENDATIONS

OVERVIEW

SPREP and most PIDPs do not at present regard the Waigani Convention and its institutions as a high priority and consequently it suffers from many deficits in implementation and enforcement. As regards PIDPs, there is widespread noncompliance with core obligations requiring national legislation (except Tonga and FSM), little reporting to the Secretariat, and little or no engagement with Convention bodies in between biannual meetings. Parties and the Secretariat report that the SPREP does not allocate sufficient resources for the Secretariat to adequately fulfil its functions.

More positively, no hazardous waste was found to have entered the region in contravention of the import ban. Also, while some illegal traffic has occurred, the great majority of transboundary movements of hazardous waste in the Convention Area are subject to notification and prior informed consent procedures, including for jurisdictions that are yet to enact implementing legislation.

Underlying reasons for noncompliance with the Waigani Convention are widely acknowledged to relate primarily to capacity deficits at the national level in most PIDPs. Regarding the absence of implementing legislation, the evaluation identified both the importance of having this in place, as well as factors that may have delayed the enactment of it in some PIDPs. Several PIDPs have identified compliance with the Waigani and Basel Conventions as policy priorities and are planning to address areas of noncompliance including new legislation.

Notwithstanding capacity deficits, in 2021 ongoing noncompliance with international law on transboundary movements of hazardous wastes is becoming increasingly untenable. This, combined with substantial predicted increases in movements within the Pacific island region, presents governments and other stakeholders with various kinds of risks: legal, financial, reputational, environmental and health-related. In the event of a serious accident or emergency involving hazardous waste transported

from or to a Pacific island country, harm arising from some or all of these risks will materialise acutely, potentially causing immediate and long-lasting detrimental impact.

SPREP and its members regard the Waigani Convention as a discrete component of regional programs in the area of hazardous wastes and chemicals management. Expressed differently, despite apparent available synergies, little attempt has to date been made to integrate the full suite of Waigani Convention obligations – nor its key institutional innovation, the Pacific Regional Centre for Training and Technology Transfer for the Joint Implementation of the Basel and Waigani Conventions (PRC) – into relevant regional strategies or workplans.

FUTURE DIRECTIONS

The evaluation identified three future strategic directions for the Waigani Convention: Business as usual with minor revision; Achieving efficiencies and eliminating duplication by suspending the Waigani Convention; Achieving efficiencies and eliminating duplication by synergizing Waigani Convention obligations and institutions within regional frameworks, strategies and workplans.

1. Business as usual – the central argument in favour of this is that it requires the least change in current arrangements as it involves doing essentially the same things more energetically and conscientiously.

The central argument against it is that there has already been a decade of discussions and well-considered proposals aimed towards this goal, none of which have proven effective. Considerably more staff time and resources would need to be allocated to the Secretariat functions by SPREP if this option were to have a likelihood of making substantial improvements.

Another argument favouring business as usual would point to the suite of project-based activities promising substantial improvements in the short-to-medium term in key areas of noncompliance such as monitoring, reporting, national planning, governance, technical capacity, etc. It is

noted however that a strong emphasis on these connections favours the third option over the first.

2. Achieving efficiencies and eliminating duplication by suspending the Waigani Convention – the central argument for this option is that the Waigani Convention, for most intents and purposes, duplicates the Basel Convention. Since all Waigani Convention Parties either are, or are intending to become, Basel Convention Parties, the same ends could be achieved using less time and money by suspending the Waigani Convention. Adding weight is the finding that Waigani Convention-related bodies, especially the STAC and SCPRC, have not functioned as intended and that repeated efforts to improve their functioning have not worked.

The argument against this outcome most often presented to the reviewer by PIDP representatives related to a mistaken belief that the Waigani Convention provides the benefit of receiving notification and prior informed consent rights for transboundary movements of radioactive waste. An argument relying on the ban on imports of radioactive waste for disposal is somewhat, but not entirely, undermined in light of the absence of national legislation. One PIDP representative stated that the likely increase in regional transboundary movements was reason in itself to maintain the Waigani Convention.

Absent a reprioritization of the Waigani Convention by its Parties and Secretariat, the justifications for eliminating duplication and inefficiency by suspending the Waigani Convention are strong. Going forwards, the SPREP Hazardous Waste Management Adviser could thereafter allocate the time and resources formerly spent on Waigani Convention Secretariat administration upon assisting PICTs to implement the Basel Convention, as is currently the case with the other waste and chemical MEAs.

3. Achieving efficiencies and eliminating duplication by synergizing Waigani Convention obligations and institutions within regional frameworks, strategies and workplans – the central argument

in favour of this option is that the Waigani Convention was originally intended as a legal and institutional framework for hazardous waste governance in the region, and particularly through the institution of the PRC, it still has a potential to serve that function. This suggests applying at the regional level the same logic of synergizing waste and chemical programs as has been undertaken with some success at the global level.

The central argument against this option, in the context of this evaluation, is that it is not within the purview of the Waigani Convention COP to decide. The necessary discussions would need to take place within a wider group of stakeholders who would bring a range of interests and priorities that have not been considered herein.

The reviewer makes no recommendations regarding the above, beyond suggesting that either the second or the third option is to be preferred to the first.

It is noted that choices made regarding the above impact some of the recommendations made (this is indicated where relevant). It is also noted that while these matters might alter the manner in which regional programs are arranged, at national level, tasks relating to implementing international law for transboundary movements of hazardous waste remains substantially unchanged under all three scenarios.

TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE

F1. No transboundary movement of hazardous or radioactive waste contravening Waigani Convention Article 4.1 was reported.

F2. Exports of hazardous waste are, and will remain, a component of the hazardous waste management systems of all PIDPs.

F3. Papua New Guinea and Fiji have plans to host regional recycling hubs relying in part upon imports of hazardous waste from within the Convention Area.

F4. A public-private agreement, the Moana Taka Partnership, has removed some economic barriers to transboundary movements of hazardous waste within the region. However, Samoa has reported that China refuses to be used as a transit point for their transboundary movement of wastes and the Moana Taka Partnership offers little assistance as most of Swire's shipping routes pass through Chinese ports.

F5. In view of the three preceding findings, ongoing increases in transboundary movements of hazardous waste within the region should be anticipated and planned for.

F6. PIDPs cannot export hazardous waste outside of the Convention Area unless they are also Party to the Basel Convention.

- R1. It is recommended that Fiji, Niue and the Solomon Islands join the Basel Convention.

PARTIES

F7. A majority of PIDPs do not have in place legislation implementing the obligations of the Waigani and Basel Conventions in national law.

- R2. It is recommended that all Waigani Convention Parties that are yet to do so should as a priority develop, enact and implement national legislation fulfilling Waigani and Basel Convention requirements.

F8. A majority of PIDPs seek through administrative measures to comply with the notification and consent procedures of the Basel and Waigani Conventions in respect

of exports of hazardous waste.

F9. A majority of PIDPs do not submit annual reports as required by the Waigani Convention.

- R3. It is recommended that PIDPs enhance current efforts towards fulfilling Waigani and Basel Convention reporting requirements. At a minimum this should include reporting transboundary movements.

F10. PIDPs identified multiple capacity deficits as the primary reason for non-compliance.

F11. PIDPs noted the following issues as priorities for assistance:

- Storage facilities for hazardous waste pending export;
- Development of implementing legislation;
- Insurance – contacts, requirements, regional arrangements with provider/s
- Training in complying with notification and consent procedures;
- Training in completing the Convention reporting forms;
- Special consideration for exports sent as samples for analysis;
- Training in packing hazardous waste for shipping; and
- Assistance with outreach to private sector stakeholders.

F12. Of the above, the issue of insurance was raised by several PIDPs as highly problematic, making compliance with the Waigani and Basel Conventions substantially more difficult, and something they believe the Secretariat's resources could be brought to bear in facilitating better outcomes.

SECRETARIAT

F13. The Secretariat performs some functions as required under the Waigani Convention. This includes providing advice on issues of hazardous waste management on as-needs basis, and developing materials to assist legal and administrative compliance.

F14. The Secretariat does not adequately perform some functions as required under the Waigani Convention, such as the timely dissemination of all meeting documents.

F15. Improved time and information management, and a more proactive approach by the Secretariat would lead to some improvement in existing performance.

- R4. It is recommended that the Secretariat assist Parties by connecting Waigani Convention reporting with the Inform Project.
- R5. It is recommended that the Secretariat update and enhance the information regarding the Waigani Convention that is available on the website. (NOT REQUIRED UNDER SD 2).
- R6. It is recommended that the Secretariat prioritise distributing meeting documents in accordance with the timeframes set out in the rules. (NOT REQUIRED UNDER SD 2).

F16. Referring to the F12 on insurance -

- R7. It is recommended that the Secretariat in cooperation with interested Parties, identify all options available to facilitate ease of access to necessary coverage for Pacific island governments and other stakeholders seeking to insure transboundary exports of hazardous waste.

F17. There are two underlying reasons why the Secretariat

does not perform some of its functions adequately. The first is that most Parties do not submit information that the Secretariat requires to fulfil certain obligations. The second is that insufficient resources are allocated within SPREP to enable the Waigani Convention Secretariat role to be fully performed.

F18. Recent developments, particularly the Basel Plastics Amendment, may increase the administrative workload required of the Waigani Convention Secretariat.

- R8. It is recommended that SPREP allocate more resources, specifically including more staff, to the Waigani Convention Secretariat. (NOT REQUIRED UNDER SD 2).

STAC

F19. STAC was intended to serve as a source of technical and scientific advice on matters relating to hazardous waste management in the region. It has not, and due to lack of appropriately qualified experts in every country probably cannot, fulfil that purpose.

F20. STAC has served as a consultative forum enabling Parties to communicate at least some of their needs and priorities in the area of hazardous waste management to each other and the Secretariat.

F21. There remains an unfulfilled need for a standing advisory committee able to provide expert technical and scientific advice on matters relating to hazardous waste management in Pacific island contexts.

- R9. It is recommended that the role of STAC be reconsidered in light of any choices made regarding strategic directions: under SD2,

STAC would be dissolved.

PRC/SCPRC

F22. PRC is governed by Parties to the Waigani and Basel Convention, with a capacity to serve all of SPREP's members, with the purpose of being the Pacific region's leading institution for strengthening and building capacity in integrated hazardous waste and substances management.

F23. Important regional strategic documents, such as Cleaner Pacific 2025, indicate that the PRC is not an important aspect of integrated hazardous waste and substances management in the region.

F24. The five-member Steering Committee of the PRC has not been performing the functions identified in the terms of reference for the same reasons as outlined in relation to STAC.

- R10. It is recommended that the role of the PRC be reconsidered in light of any choices made regarding strategic directions: under SD2, PRC may be dissolved. Even under SD1, retaining PRC seems questionable upon grounds of disuse and inefficiency. Conversely, under SD3 a reorganised PRC could fulfil its original vision of being the region's permanent institutional hub and centre of excellence.

CURRENT ISSUES ARISING IN THE WAIGANI CONVENTION COP

F25. The proposal to remove the word 'south' from the title of the Waigani Convention is simple and uncontroversial. There are no budgetary implications, no Party obligations are impacted in any conceivable way, and there are

numerous recent precedents for it in comparable regional contexts.

- R11. It is recommended that if Parties remain interested in this objective the amendment process should be commenced. (NOT REQUIRED UNDER SD 2).

F26. The proposal to amend Article 16 "Amendments to this Convention" so that the manner in which the Convention would thereafter be amended would mirror the process set out in Article 18 "Adoption and Amendment of Annexes" is not strongly justified.

- R12. It is recommended that the proposal to amend Article 16 not be progressed.

F27. The work of the proposed Compliance Committee could be undertaken equally effectively, and more efficiently, by STAC. It is noted that the STAC terms of reference includes: "The provision of advice on priority measures and activities in the legal and technical fields for the implementation of the Convention."

- R13. It is recommended that the proposal to establish a Compliance Committee not be progressed.

F28. Plastics amendments impact the Waigani Convention: As of 1 January 2021, there is disjuncture between the materials covered by the two Conventions.

- R14. It is recommended that the Waigani Convention Parties and Secretariat as a matter of priority commence the process of amending the Waigani Convention annexes so that they again cover precisely the same materials as the Basel Convention. (NOT REQUIRED UNDER SD 2).



APPENDIX 1

Summary of Known Transboundary Movement of Hazardous Waste in the Convention Area 2011-2021

The information provided below is supplied primarily by New Zealand and Australia. It is thought to be complete as regards imports into those countries from PIDPs. As regards other exports from PIDPs it is incomplete. In particular, it omits any Fiji import data.

No imports into PIDPs from outside of the Convention Area were recorded or reported.

EXPORTS:

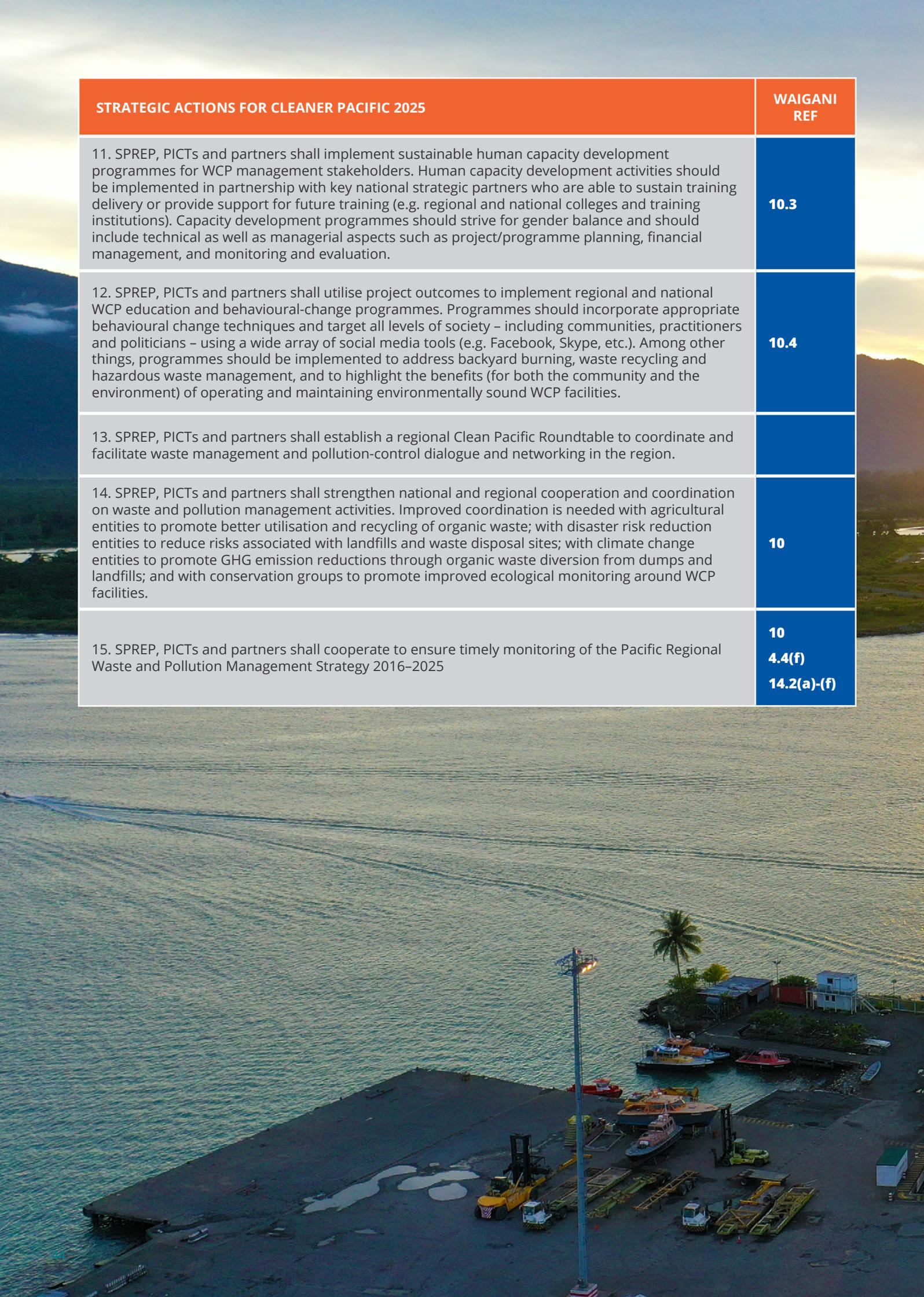
Cook Islands	Lead contaminated waste, asbestos, old chemicals to New Zealand 2013, 2015, 2017
Fiji	Pharmaceutical waste to New Zealand 2013, old chemicals and various to New Zealand in 2016
FSM	Batteries to Korea, Guam
Kiribati	Waste oil and chemicals to New Zealand 2015, waste oil to India, batteries to?
Niue	Lead contaminated waste, asbestos to New Zealand 2014 – 2015
PNG	56 permits covering a wide variety of wastes to Australia 2010-2021
Samoa	Lead, acid contaminated waste to NZ 2013, waste oil to New Zealand 2014, batteries to Korea 2015
Solomon Islands	Batteries and waste oil to Australia 2011-2014, batteries to Fiji
Tonga	Waste oil to New Zealand 2011; Lead, acid contaminated waste to New Zealand 2015, waste oil to India, batteries to Korea
Tuvalu	Waste oil to Fiji
Vanuatu	Batteries to Fiji, Korea, waste oil to India

APPENDIX 2

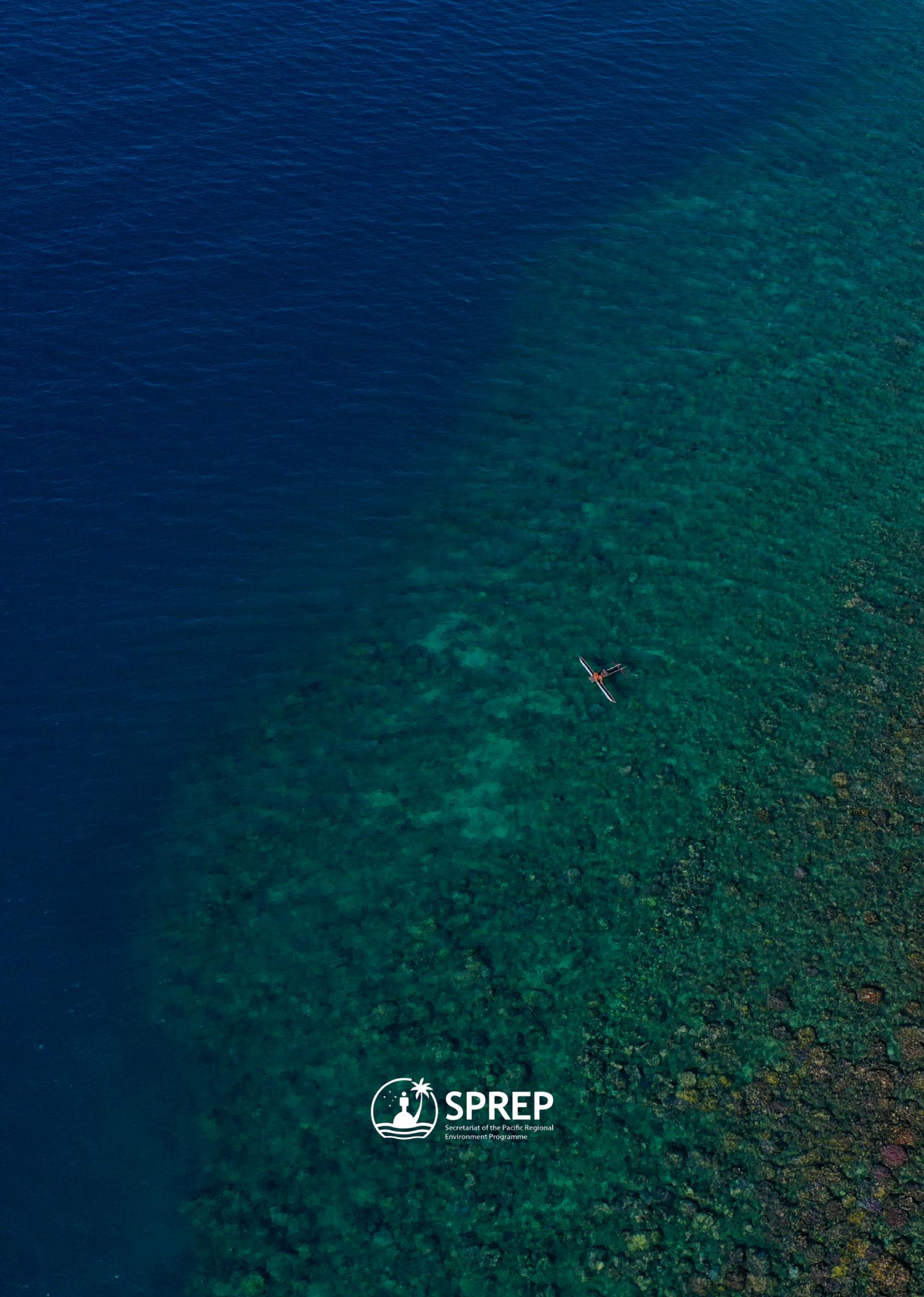
Strategic Actions for Cleaner Pacific 2025 matched against Waigani Convention Obligations

STRATEGIC ACTIONS FOR CLEANER PACIFIC 2025	WAIGANI REF
1. SPREP, PICTs and partners shall undertake regular WCP data collection and management (including storage, interpretation, dissemination and sharing). Data sets should include uPOP releases; inventories of hazardous substances and wastes; WCP facility locations; climate change impact on WCP facilities; estimation, measurement and tracking of GHG and ODS emissions from WCP activities; and fate and impacts of marine litter on the marine ecosystem.	4.4(f) 14.2(a)-(f)
2. PICTs, supported by SPREP and partners, shall develop and enforce national policies, strategies, plans and legislation and strengthen institutional arrangements to support and promote best practice WCP management. Policies should also address uPOP emission reduction, climate change adaptation in WCP management, and GHG emission reduction through improved WCP management.	4.4(e)
3. SPREP, PICTs and partners shall strengthen existing and develop new public-private partnerships including through strengthened public-private partnership frameworks.	
4. SPREP, PICTs and partners shall implement best practice occupational health and safety measures for formal and informal workers in the WCP management sectors. Occupational health and safety should encompass awareness of the health impacts of uPOPs.	4.4(c)
5. PICTs, supported by SPREP and partners, shall implement WCP prevention and reduction programmes. Programmes should target waste streams such as single-use plastic bags, styrofoam containers, tyres and products containing hazardous substances. WCP prevention and reduction are also cost-effective climate adaptation and GHG-mitigation strategies, since less waste means reduced pressure on landfills and fewer management steps that produce GHG emissions (such as collection, treatment and disposal).	4.4(a)
6. PICTs, supported by SPREP and partners, shall implement resource recovery programmes. Resource recovery programmes should be implemented in partnership with the private sector (and informal sector where appropriate) and should be supported by appropriate sustainable financing mechanism. Resource recovery programmes should include organic waste recycling activities that reduce backyard burning and disposal of organic waste at dumps and landfills, which in turn reduces emissions of uPOPs and GHGs.	
7. PICTs, supported by SPREP and partners, shall remediate contaminated sites and WCP stockpiles in accordance with best practices. Removal and environmentally safe disposal of poorly managed WCP stockpiles such as chemicals, used oil, asbestos, healthcare waste and tyres reduces the associated environmental contamination and public health hazard. It also reduces the likelihood of dispersal and further damage and pollution that can occur during severe weather events.	4.4(c) 6
8. PICTs, supported by SPREP and partners, will expand user-pays WCP collection services. Improved coverage of and access to WCP collection services will increase the amount of WCP captured and contribute to reducing backyard burning (and uPOP generation, illegal dumping and pollution to natural ecosystems).	
9. PICTs, supported by SPREP and partners, shall improve WCP management infrastructure and support sustainable operation and maintenance. Improvement and environmentally sound operation of infrastructure and equipment – such as waste incinerators; waste dumps and landfills; hazardous waste storage facilities; collection vehicles; port waste reception facilities; and sewage treatment facilities – will reduce releases of uPOPs, reduce risk from climate change impacts, reduce GHG emissions, and reduce pollution to natural ecosystems.	4.4(c)
10. PICTs, supported by SPREP and partners, shall implement best practice environmental monitoring and reporting programmes.	4.4(f) 14.2(c)

STRATEGIC ACTIONS FOR CLEANER PACIFIC 2025	WAIGANI REF
<p>11. SPREP, PICTs and partners shall implement sustainable human capacity development programmes for WCP management stakeholders. Human capacity development activities should be implemented in partnership with key national strategic partners who are able to sustain training delivery or provide support for future training (e.g. regional and national colleges and training institutions). Capacity development programmes should strive for gender balance and should include technical as well as managerial aspects such as project/programme planning, financial management, and monitoring and evaluation.</p>	<p>10.3</p>
<p>12. SPREP, PICTs and partners shall utilise project outcomes to implement regional and national WCP education and behavioural-change programmes. Programmes should incorporate appropriate behavioural change techniques and target all levels of society – including communities, practitioners and politicians – using a wide array of social media tools (e.g. Facebook, Skype, etc.). Among other things, programmes should be implemented to address backyard burning, waste recycling and hazardous waste management, and to highlight the benefits (for both the community and the environment) of operating and maintaining environmentally sound WCP facilities.</p>	<p>10.4</p>
<p>13. SPREP, PICTs and partners shall establish a regional Clean Pacific Roundtable to coordinate and facilitate waste management and pollution-control dialogue and networking in the region.</p>	
<p>14. SPREP, PICTs and partners shall strengthen national and regional cooperation and coordination on waste and pollution management activities. Improved coordination is needed with agricultural entities to promote better utilisation and recycling of organic waste; with disaster risk reduction entities to reduce risks associated with landfills and waste disposal sites; with climate change entities to promote GHG emission reductions through organic waste diversion from dumps and landfills; and with conservation groups to promote improved ecological monitoring around WCP facilities.</p>	<p>10</p>
<p>15. SPREP, PICTs and partners shall cooperate to ensure timely monitoring of the Pacific Regional Waste and Pollution Management Strategy 2016–2025</p>	<p>10 4.4(f) 14.2(a)-(f)</p>







SPREP
Secretariat of the Pacific Regional
Environment Programme