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Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

Compliance Committee

REPORT ON THE FIRST MEETING

1. By their decision I/7 on the review of compliance, the Parties to the Aarhus Convention (21-23 October 2002) established the Aarhus Convention's Compliance Committee at their first meeting and agreed on its structure and functions and on procedures for the review of compliance. On the same occasion, the Meeting of the Parties elected the eight members of the Committee by consensus taking into account the geographical distribution of membership and its diversity of experience (ECE/MP.PP/2, paras. 44-50).
2. The first meeting of the Committee took place in Geneva on 17-18 March 2003. All eight members of the Committee were present at the meeting. A representative of the non-governmental organization Earth Justice participated in the meeting as an observer.
3. The meeting was opened by Mr. Jerzy Jendroska, Chairman of the Meeting of the Parties to the Aarhus Convention. He expressed his belief that, through the work of the Committee, more attention would be devoted to the actual implementation of the Convention as opposed to its further development. He recalled that the Compliance Committee would be serving the Meeting of the Parties and would make recommendations to it and suggested that the Committee should not see itself as a court. Finally, he made the point that election of the Committee at the first meeting of the Parties had been quite difficult because of the need to ensure that each geographical subregion was represented adequately, and that this would perhaps be easier in the future if there were nine instead of eight members of the Committee.
4. Mr. Kaj Bärlund, Director, Environment and Human Settlements Division, said that UNECE governments were giving more emphasis to implementation and compliance with the instruments serviced by UNECE and that this was logical since five environmental conventions and ten protocols had been developed under the auspices of UNECE. He briefly explained what compliance

regimes were in place or being developed under the auspices of the other UNECE instruments, in particular the Convention on Long-range Transboundary Air Pollution, under which an Implementation Committee had been working since 1997. Finally, Mr. Bärlund suggested that the non-confrontational nature of the compliance mechanism should not be compromised by the fact that the Committee would be allowed to consider communications from individuals and that this should rather be seen as an opportunity for creating a dynamic and open spirit in the Committee.

5. Mr. Yves Lador (Earth Justice) was invited to address the Committee as the only NGO representative present at the meeting. He emphasized the high level of interest in the compliance regime among NGOs, which considered it to be an extremely important development in environmental rights. Just as the Convention had already been able to influence other parts of the world and the development of other multilateral agreements, he thought that through the Compliance Committee the jurisprudence of the European Court of Human Rights in the field of the 'right to know' could be strengthened. He emphasized that it was crucial that the Committee should consider cases of potential non-compliance independently from the reasons for the non-compliance and any measures to be taken to remedy the situation; it was essential that the public and Parties knew what the Committee considered to be the law of the Convention and when it considered that this law had been violated. Mr. Lador suggested that the Committee should rely on other bodies to support capacity-building activities, in the same way that the Committee on the Rights of the Child enjoyed very close cooperation with the United Nations Children's Fund (UNICEF). He stated that the establishment of the compliance mechanism sent the important political message that implementation of the Convention was partly in the hands of the public. NGOs would have an important role to play in bringing information to the Committee and helping ensure that it would not be flooded with communications through coordinating their efforts. Finally, the NGOs should assist the public in understanding the mechanism in order to make the most effective use of it.

6. To fulfil the requirement of paragraph 11 of the annex to decision I/7, the members of the Committee signed a declaration in which they undertook to perform their duties as members of the Committee impartially and conscientiously.

I. ELECTION OF OFFICERS

7. The Committee elected Mr. Veit Koester as its Chairperson and Ms. Svitlana Kravchenko as Vice-Chairperson. Having taken the chair, Mr. Koester reiterated that the Committee should be careful to comply with the mandate that it had been given by the Meeting of the Parties and keep the Meeting of the Parties fully informed of its activities. He considered it fortunate that the Committee consisted not only of lawyers because other professional backgrounds would be useful in the work and would prevent the Committee from having too legalistic an approach to some issues.

II. ADOPTION OF THE AGENDA

8. The Committee adopted the agenda as circulated in advance by the secretariat.

III. LESSONS TO BE LEARNED FROM OTHER COMPLIANCE MECHANISMS AND ENHANCEMENT OF SYNERGIES

9. Following earlier consultations with the members of the Committee, the secretariat had invited three speakers from the secretariats of other committees dealing with compliance to share their experience and inform the Committee on how they had dealt with specific issues. Mr. Paul Oertly, Office of the United Nations High Commissioner for Human Rights, spoke about the work of the Human Rights Committee, in particular in relation to the procedure for receiving and considering individual complaints. Mr. Keith Bull, Secretary to the Convention on Long-range Transboundary Air Pollution, spoke about its Implementation Committee established in 1997 to promote and improve compliance with its protocols. Finally, Ms. Albena Karadjova, Secretary to the Task Force on Compliance and Enforcement, briefly introduced the draft UNECE guidelines on strengthening compliance with and implementation of multilateral environmental agreements in the UNECE region, addressing in particular the importance of rigorous and comparable reporting by Parties. The secretariat had also invited Mr. Gilbert Bankobeza, Secretary to the Implementation Committee under the Montreal Protocol, but for logistical reasons his possible participation had to be postponed.

IV. MODUS OPERANDI OF THE COMMITTEE

10. The Committee discussed the way in which it would function, using as a basis an informal paper (no. 1) prepared by the secretariat.

11. It was agreed that, as a general rule, even if the Compliance Committee was not a subsidiary body to the Meeting of the Parties, the rules of procedure of the Meeting of the Parties could be applied *mutatis mutandis*. Rules 19, 20, 24 to 27, 29 to 42, 44, 46 and 48 were considered to be the most relevant.

12. It was noted that the application of the rules of procedure with respect to decision-making would imply that the presence of five members of the Committee would be required for any decisions to be taken and that decisions on substantive matters could be taken only with the support of six members out of eight members present and voting; six out of seven members present and voting; five out of six members present and voting; and four out of five members present and voting. Nevertheless, there was general sympathy for the view that at least five members should be in support of any decision being taken. It was agreed that, since Committee members were elected in a strictly personal capacity, an absent Committee member was not entitled to designate a substitute. It was considered self-evident that meetings should be scheduled to take place only at times when there was every expectation that they would have the possibility of resulting in decisions, i.e. that there would be a quorum and that, given the size of the Committee, the aim should be for all members to be present at every meeting of the Committee.

13. It was agreed to leave aside for the time being the issue of how to deal with situations where a decision had to be taken and where there was no three-quarters majority.

14. It was agreed that e-mail communication could be used by the Committee for the purpose of holding consultations, but not at this stage for making important decisions of a substantive nature.

15. It was agreed that all meetings should in principle be open to the public as observers but that, having regard to paragraphs 26, 27, 29, 30 and 33 of the annex to decision I/7, parts of meetings could be closed.

16. The relationship between paragraphs 32 and 33 of the annex to the decision was discussed. It was agreed that, on the one hand, hearings and discussions on particular cases should generally be open to the public as observers, as well as, pursuant to rule 32, to participation by the parties concerned. Participation should be broadly understood in the sense in which the concept was enshrined in the Convention, comprising in particular the right to comment, the right to be heard and the right to have comments taken into account by the Committee, within the framework of the procedures of the meeting.

17. On the other hand, it was agreed that, pursuant to rule 33, the deliberations on the preparation of any decision should generally be closed. Some Committee members stated that the whole procedure, including all deliberations, should be open. However, the prevailing view was that complete transparency could come at the expense of the quality of decision-making; that there were well-established precedents for part of such a process being closed where individual rights were concerned (for example, the Human Rights Committee); and that, insofar as the Convention itself provided a relevant model, there were provisions that supported such an approach (e.g. article 3, paragraph 8; article 4, paragraphs 3 (c) and 4 (c)). It was also considered to be preferable to operate with a general rule whereby a part of the process was always open and another part always closed, unless otherwise decided in a particular circumstance, rather than making decisions on whether or not a part of the process should be open or closed on an ad hoc basis, which could give the appearance of arbitrariness or partiality.

18. It was agreed that meetings of the Committee should be publicized through the web site, with the provisional agenda, meeting reports and other official documents (other than confidential items) also being posted there. The secretariat was requested to work out the practicalities of ensuring that the members of the public wishing to attend meetings would have access to the Palais des Nations or other meeting venue.

19. The Committee briefly discussed the possibility of some specific areas of work being assigned to one or more of its members. It noted that some useful information had been provided on how the Human Rights Committee dealt with individual complaints. In that case, a special rapporteur of the Committee together with the secretariat decided whether a specific case should be registered and circulated to the members of the Committee; another special rapporteur had the task of following up decisions made by the Committee. Finally, each individual case was assigned to one member of the Committee, who prepared the draft decision together with the secretariat. The Compliance Committee agreed that it would keep these possibilities in mind and perhaps at a later stage, when its workload required it to do so, consider delegating specific tasks to one or more of its individual members.

20. The Committee requested the secretariat to prepare a document for consideration at its next meeting on the specific role and tasks of the secretariat in relation to the procedures for review of compliance.

21. The Committee agreed that English should be its working language. It also agreed that it would only accept communications made in one of the official languages of the Convention, i.e. English, French or Russian. If a communication were to be made in Russian or French, the secretariat would arrange for its translation into English. Supporting documentation would also be translated unless it was very bulky. In such circumstances a member of the Committee familiar with the specific language could summarize the information and/or identify those parts of the documentation which it would be essential to translate into English. It was also agreed that when informing the public of its right to make a communication, it should be made clear, that if a communication were not submitted in English, it would slow down the process of its consideration. In this context, the Committee noted the experience of the Human Rights Committee with respect to the translation of official documents such as court decisions or legislation: to avoid lengthy arguments over the translation of a court decision, the Human Rights Committee simply required the State Party to provide a certified translation if not satisfied with the transcript or translation provided by the complainant.

22. Finally, the Committee agreed that 'normal principles' of conflict of interest would apply to the Committee. This would imply that, in a case where a Committee member found himself or herself faced with a possible or apparent conflict of interest, that member would be expected to bring the issue to the Committee's attention and decision before consideration of that particular matter. The Committee agreed that being a citizen of the State whose compliance was to be discussed would not in itself be considered as a conflict of interest.

V. PROCEDURES FOR HANDLING SUBMISSIONS, REFERRALS AND COMMUNICATIONS

23. The secretariat had prepared an informal paper (no. 3) containing suggestions concerning the procedures with regard to communications from the public. The intention was to adapt the paper for public information. Annexed to the paper was a model form for communications to the Committee that the public would be recommended to use.

24. On the basis of the paper the Committee discussed the procedures for handling communications from the public as well as the presentation of the information paper addressed to the public. The secretariat was requested to revise the paper and the model form in the light of the discussions during the meeting. The revised text should be circulated to the Committee members for comments and, after incorporation of the comments, made available on the web site and translated into French and Russian.

25. The Committee considered that the style and the format of the paper were appropriate for the purpose. It recommended that the paper should include in the introduction a prominent reference to decision I/7 making it clear that that was the authoritative legal basis for the compliance mechanism and that any additional provisions with respect to the procedures were established by the Committee for practical purposes and on a provisional basis. The Committee considered it to be counterproductive to try to establish firm procedures at this stage. The paper should be updated regularly on the basis of practices developed by the Committee. It should be indicated that the Committee had discussed the paper during its first meeting.

26. The Committee discussed the admissibility criteria for communications. It agreed that, as a general rule, it would consider communications only if significant events which were the subject, or part of the subject, of a communication had occurred after the entry into force of the Convention for that Party. If all the significant events which were the subject of the communication had occurred prior to the entry into force of the Convention, the Party would have had no relevant legal obligations with which to comply and so there would be no possibility of there being any breach. In this regard, the Committee noted that in some cases it was likely to be unclear when a case started and ended. The Committee discussed whether it would consider communications submitted by a member of the public more than a year after the entry into force of the Convention for that Party – as required by the decision – but where the significant events had occurred during that first year. It also discussed the similar case of communications concerning events that had occurred during the period when the Party had used the opt-out possibility in paragraph 18 of the annex to decision I/7. The Committee considered that paragraph 18 did not give much guidance. On the one hand, the Committee felt that the right to opt out as well as the one-year ‘grace-period’ should be respected. On the other hand, it was clear that a Party had been legally bound by the Convention and by the compliance regime, and that the secretariat and other Parties would be allowed to raise a compliance issue concerning the Party during the period in question even if members of the public were not allowed to do so. The Committee therefore provisionally concluded that it would consider communications made after the expiry of the period when the public was not allowed to make such communications, provided that the significant events had occurred after the entry into force. With respect to the other admissibility criteria (decision I/7, annex, para. 20 (b)-(d)), the Committee thought that some examples of what could be considered inadmissible could be included in the paper (see para. 36-37 below) but that more text on this issue should be developed later on the basis of practice developed by the Committee.

27. The Committee considered that when it determined that a communication was clearly inadmissible, it should, as a general rule, not be forwarded to the Party whose compliance was addressed in the communication. However, in some cases the Committee might consider it useful to forward an inadmissible communication to the Party concerned and it should therefore have the discretion to do so in a particular case. In such a case the views of the author of the communication with respect to the transmission should probably be requested before forwarding the communication to the Party concerned. It noted that the Human Rights Committee always informed the Party in question of any decision on inadmissibility of a registered communication.

28. The Compliance Committee furthermore considered that in cases where it determined that a communication was admissible or probably admissible, it would open a file and forward the communication to the Party concerned for its comments on the admissibility of the communication. However, this should not lead to a practice whereby a Party could considerably slow down the process of considering communications in substance. Comments on the admissibility should therefore preferably be provided as soon as possible - a deadline of six weeks was mentioned as a possibility and in any case at the latest together with the Party's comments on the substance, i.e. five months after the communication was brought to its attention, in accordance with paragraph 23 of the annex to decision I/7.

29. All inadmissible communications would be registered as inadmissible with a short description of the reason but no file would be opened concerning that communication. In this context, it was agreed that the archives of the Compliance Committee, containing inter alia all

details concerning admissible and inadmissible communications would be accessible to the public upon request, except for any confidential information.

30. With respect to the model form for communications to be annexed to the information paper, the Committee had the following comments. It considered that the permanent address of the person submitting the communication would be the relevant information for identification of that person and sufficient to ensure that a communication was not being submitted anonymously; nationality and date of birth would not be essential information for that purpose and should be optional, if included at all. If a communication were submitted by an organization, the Committee agreed that the contact details of the person legally authorized to sign for the organization should be required, and not a person specifically designated for the purposes of the communication. The Committee recommended that the communication should include a two-three page summary of the facts in order to facilitate the consideration and handling of the communication. Where possible, the communication should contain the exact provisions (article(s), paragraph(s), subparagraph(s)) of the Convention, but it would be too legalistic to always require this.

31. The Committee did not have time to discuss the handling of submissions by Parties and referrals by the secretariat.

VI. INFORMATION GATHERING

32. With respect to information gathering, the Committee felt that it was not ready to consider this issue in any depth. Regarding on-the-spot appraisals, it requested the secretariat to look into the practice established under inter alia the Bern Convention, and on that basis to develop some guiding principles concerning on-the-spot information gathering for consideration by the Committee at its next meeting.

33. The Committee considered the issue of information gathering to be linked with that of cooperation with the community of non-governmental organizations and agreed to discuss this issue further at its next meeting on the basis of any proposals by the secretariat.

VII. OVERSEEING THE REPORTING REGIME

34. According to paragraph 13 (c) of the annex to decision I/7, the Committee is required to monitor, assess and facilitate the implementation of and compliance with the reporting requirements. The first reports are due 120 days before the second ordinary meeting of the Parties, i.e. probably in the second half of 2004. The Committee considered that it might be useful to develop a draft recommendation for adoption by the Working Group of the Parties to emphasize the importance of the reports by the Parties as already stated in decisions I/7 and I/8. The Committee requested the secretariat to prepare a text for such a draft recommendation and make proposals with respect to the procedure and timing for bringing the text forward.

VIII. GENERAL CONSIDERATIONS RELATED TO COMPLIANCE ISSUES

35. The Committee noted that although the *reporting regime* established through decision I/8 of the Meeting of the Parties was not legally binding, it was clear that it was considered by the Parties themselves to establish a real requirement. Therefore, failure to submit reports could be considered to belong to the broad framework of the compliance mechanism.

36. The Committee considered the various criteria for the *admissibility* of communications from the public listed in paragraph 20 (b) to (d) of the annex to decision I/7. Examples of ‘an abuse of the right to make communications’ might include resubmission of a communication dealing with a case which had already been dealt with by the Committee, or submission of a communication after an excessive delay. The Committee noted that it would want to take into consideration whether a case had also been submitted for consideration under another international mechanism, and in that case, the criterion might be relevant, there being no other criterion specifically referring to this issue.

37. With regard to the issue of *domestic remedies*, the Committee noted that paragraph 21 of the decision I/7 offered considerable flexibility, but also agreed that given its limited resources, it would make sense if issues were tackled at domestic level where feasible. The question was raised as to how the Committee should deal with a case brought to its attention by one person or NGO where a domestic remedy had been pursued by another person or NGO. It was agreed that since decision I/7 did not contain a firm admissibility requirement for exhaustion of domestic remedies, the Committee would not be prevented from handling such a case.

38. The Committee discussed the various situations in which information in its possession could or should be kept *confidential*. The hypothetical situation in which a Party submitted information in confidence, claiming it to fall under one or other of the exemptions in article 4, paragraphs 3 (c) or 4, of the Convention, but where the Committee did not agree with the assessment of the Party that the information fell within the exemption, was briefly considered by the Committee. It was considered that in all such cases, the Committee would need to consult with the Party concerned before taking any action. Where the information was provided in confidence under paragraph 16 of the annex to decision I/7, it was clear from paragraph 28 that the information should not be publicly disclosed. With respect to other cases, e.g. where the information was provided in response to a communication from the public, it was agreed that the Meeting of the Parties would have an important role to play in deciding how to apply the rules on confidentiality in decision I/7.

39. As regards the right of persons submitting information to request that it should be kept confidential in accordance with paragraph 29 of the annex to decision I/7, the Committee noted that the purpose of this provision was to avoid situations where disclosure of the information could, in the view of the member of the public, lead to a situation where he or she was penalized, persecuted or harassed. Furthermore, it was noted that even though there was no limitation on the scope of the information which may be claimed as confidential under this provision, it would be counterproductive for the communicant to ask for too much information to be kept confidential as it would impede the processing of the case. The person could be invited, through the model form for communications, to indicate whether he or she wished to request the designation of any such information as confidential and to explain why. However, the Committee considered that the person should not be asked for any further justification of the request, as this could discourage communications from the public in certain situations.

40. The Committee briefly discussed the relationship between the various *measures* which could be taken under paragraphs 35, 36 and 37 of the annex to decision I/7. With respect to paragraph 36, the Committee noted that the decision established four criteria for taking interim measures, pending consideration by the Meeting of the Parties, which should all be met: (i) a problem of non-compliance (ii) consultation or agreement with the Party concerned; (iii) some urgency in the matter; and (iv) cause, frequency and degree of the non-compliance.

41. The Committee considered that it would use all relevant, appropriate and available sources in its interpretation of the specific provisions of the Convention, including the Implementation Guide, scientific articles etc. in the context of specific situations of possible non-compliance. It was mentioned that it could be useful for Parties as well as for NGOs working towards an effective implementation of the Convention if the Committee at some point would undertake to give general guidance as to how specific provisions could or should be interpreted. However, it was agreed that the Committee should let some time pass before considering embarking on such a task and that in any case it would have to do so within its mandate.

42. The Committee considered that, as a general rule, the same *benchmark* for compliance should be applied for all countries, irrespective of any specific conditions in the country and whether the Convention had a direct effect in the country or not. It also considered that any measures to be taken in respect of non-compliance should be decided considering all elements of the case, including the cause, frequency and degree of the non-compliance as required in paragraph 37 of the annex to decision I/7 as well as the capacity of the Party concerned to implement the Convention and its socio-economic conditions.

IX. REPORTING TO THE MEETING OF THE PARTIES

43. The Committee provisionally agreed that its report to the Meeting of the Parties would consist of at least the following parts: activities by the Committee (time, venue and attendance of its meetings), general compliance issues, specific cases including any interim measures taken on the basis of paragraph 36 and, finally, any recommendations to the Meeting of the Parties pursuant to paragraph 37. It agreed that the text of the report to the Meeting of the Parties would essentially build on the reports of the individual meetings of the Committee. It was agreed to hold a further discussion on the issue at the next meeting.

X. PROGRAMME OF WORK AND CALENDAR OF MEETINGS FOR 2003

44. The Committee agreed that it would return to some of the general issues at its second meeting to be held during the third week of September 2003. In addition to any issues mentioned above, it would also discuss its procedures for handling submissions by Parties and referrals by the secretariat and its strategy for publicizing the mechanism and facilitating its use, as it had not had the time to address these issues in any depth at its first meeting.

45. A third meeting of the Committee was provisionally scheduled for the end of 2003 or beginning of 2004. However, it was agreed that the necessity for a meeting at that time would

depend on whether any communications, submissions or referrals had been received. If this was not the case, the meeting could be held somewhat later.

XI. ADOPTION OF THE REPORT AND CLOSURE OF MEETING

46. The Committee briefly considered the draft report prepared by the Chairperson and the secretariat. Given the time constraints and the fact that some members had already left, it agreed that the Chairperson and the secretariat would finalize the report and circulate it by e-mail to the members of the Committee for comments and approval. In this context, the Committee requested the secretariat to make the necessary arrangements to ensure that the agenda of the meeting as well as the final report were translated as official documents.