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ECONOMIC COMMISSION FOR EUROPE

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
Geneva, 12-14 October 2005

REPORT ON THE NINTH MEETING

1. The ninth meeting of the Compliance Committee took place in Geneva on 12 to 14 October 2005. All the members were present. Representatives of the Government of Belgium, the non-governmental organizations (NGOs) Earthjustice and Bond Beter Leefmilieu Vlaanderen (BBLV), as well as one independent expert participated as observers.
2. The meeting was opened by the Chairman, Mr. Veit Koester.
3. To fulfil the requirement of paragraph 11 of the annex to decision I/7, the new members of the Committee signed a declaration in which they undertook to perform their duties as members of the Committee impartially and conscientiously.

I. ADOPTION OF THE AGENDA AND ELECTION OF OFFICERS

4. The Committee adopted its agenda as set out in document ECE/MP.PP/C.1/2005/5.
5. The Committee noted the re-election of Mr. Veit Koester as its Chairperson and Ms. Svitlana Kravchenko as Vice-Chairperson. The election had been carried out in June 2005 through the procedure for taking decisions by e-mail, as amended at the Committee's eighth meeting (ECE/MP.PP/C.1/2005/4, para. 29).

II. RELEVANT DEVELOPMENTS SINCE THE PREVIOUS MEETING OF THE COMMITTEE

6. The secretariat informed the Committee about progress made in the work of the Legal Board under the Working Group on Water and Health to develop a draft decision on the review of compliance with the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.
7. Mr. Koester informed the Committee about the work of the compliance committee under the Cartagena Protocol on Biosafety, of which he was the Chairman.
8. Ms. Kravchenko informed the Committee about the developments with regard to the Bystroe canal in Ukraine, related to submission ACCC/S/2004/01 and communication ACCC/C/2004/03.
9. The representative of Earthjustice provided information to the Committee about the ongoing reform of the United Nations human rights' bodies, including the establishment of a standing committee.

III. OTHER MATTERS ARISING FROM THE PREVIOUS MEETING

10. The secretariat informed the Committee that the compilation of materials related to its modus operandi had been updated to reflect the outcome of its previous meeting and had been placed on the website.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

11. The secretariat informed the Committee that no new submissions had been made by Parties concerning compliance by other Parties.
12. With regard to matters outstanding in relation to Submission ACCC/S/2004/1 (see ECE/MP.PP/C.1/2005/2/Add.3, para. 8), the secretariat informed the Committee that the inquiry procedure under the Espoo Convention was continuing and the inquiry commission was due to meet at the end of October 2005. The Committee confirmed its intention to revisit the matter once the results of the work of the inquiry commission were available.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

13. The secretariat informed the Committee that no submissions had been made by Parties concerning problems with their own compliance.

VI. REFERRALS BY THE SECRETARIAT

14. No referrals had been made by the secretariat.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

15. The Committee prepared draft findings and recommendations on communications ACCC/C/2004/06 (Kazakhstan) and ACCC/C/2004/08 (Armenia) in a closed session. Mr. Ni, who had earlier declared a conflict of interest with communication ACCC/C/2004/06, did not participate in deliberations on that communication. The Committee agreed that given the amount of time that would elapse before the third meeting of the Parties, it would be appropriate to propose measures directly to the Parties concerned, in accordance with paragraph 36 of the annex to decision I/7, at least for the time being. It was agreed that the draft findings and recommendations would be sent to the two Parties concerned for consideration and agreement with regard to the draft recommendations and to the communicants for comments (decision I/7, annex, paras. 34 and 36 (b)). The Committee would take into account any comments when finalizing the draft findings and recommendations at its next meeting.

16. As agreed at its eighth meeting, the Committee entered into discussions on the substance of the communication ACCC/C/2005/11 submitted by the Belgian NGO, BBLV, and concerning compliance by Belgium with certain provisions of article 9 of the Convention.

17. The Chairman explained how the discussions would be conducted as well as the process of finalizing the findings (see MP.PP/C.1/2004/8, paras. 17-18). He had asked Mr. Jonas Ebbesson to be the curator for this communication, taking the file over from the Committee's outgoing member, Mr. Mermet.

18. In general, discussions on the communication proceeded in accordance with the form decided on by the Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 40) and included interventions by the representative of the Government of Belgium, the communicant and observers.

19. The Committee confirmed that the communication was admissible. However, it considered that while many issues had been clarified during the discussion, it might need to put some further questions to either of the parties concerned. It would forward any such questions through the secretariat shortly after the meeting offering a relatively short period for response, with a view to finalising draft findings and recommendations at its next meeting from 5 to 7 December 2005. The draft findings would then be sent for comment to the Party concerned and the communicant in accordance with paragraph 34 of the annex to decision I/7. The Committee would take into account any comments when finalizing and adopting the findings and recommendations at its eleventh meeting.

20. As regards communications ACCC/C/2004/12 (Albania) and ACCC/C/2004/13 (Hungary), which had on a preliminary basis been determined to be admissible at the Committee's previous meeting, no responses had yet been received from the Parties concerned. The deadline for responses in both cases was 29 November 2005. The Committee agreed to enter into discussions on the substance of these communications at its tenth meeting, which would take place on 5 to 7 December 2005. It requested the secretariat to notify the Parties concerned and the communicants of this and of their right to participate (decision I/7, annex, para. 32).

21. Two new communications had been received since the previous meeting:

(a) Communication ACCC/C/2005/14 had been submitted by Mr. Zawyslak of Olsztyn, Poland, with respect to compliance by Poland with article 4 of the Convention. The communication concerned access to information with regard to a toxic waste storage site, and was related to communication ACCC/C/2004/07, which had been found to be inadmissible due to lack of clarity in the information (MP.PP/C.1/2004/6, para. 27 and MP.PP/C.1/2004/8, para. 29).

(b) Communication ACCC/C/2005/15 had been submitted by a Romanian NGO, Alburnus Maior, and concerned compliance by Romania with article 6, paragraphs 3, 4, 6, 7 and 8 of the Convention in decision-making with respect to a proposed open cast gold mine at Rosia Montana, Romania.

22. In accordance with its procedures, the Committee agreed upon distribution of the following communications to curators:

- ACCC/C/2005/14: Mr. Sandor Fülöp;
- ACCC/C/2005/15: Ms. Eva Kruzikova

23. With regard to communication ACCC/C/2005/14, the Committee felt that even though the issues described in the communication clearly had some relevance to the provisions of the Convention, it could not determine the matter of preliminary admissibility on the basis of the information it received. It therefore decided to ask for further clarifications from the communicant.

24. The Committee determined on a preliminary basis that communication ACCC/C/2005/15 was admissible but did not, at this stage, draw any conclusions on the compliance issues raised in it. The Committee also agreed on issues to be raised with the communicant and the Party concerned.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

25. The Committee had received no additional information relevant to possible cases of non-compliance.

IX. MATTERS ARISING FROM THE MEETING OF THE PARTIES

26. On the basis of a background paper prepared by the secretariat, the Committee addressed those aspects of the various decisions of the Parties to the Convention which were most relevant to its work.

A. General matters

27. With regard to paragraph 6 of decision II/5, the Committee confirmed its intention to publish the Guidance Document on the Compliance Mechanism currently available on the website. The document should contain the modus operandi of the Committee, as well as the

procedures with regard to processing communications, submissions and referrals. The Committee requested the secretariat to prepare the publication.

B. Follow-up on specific cases of non-compliance

28. The Committee took note of the request by the Meeting of the Parties to provide advice and assistance to the Parties concerned as necessary in the implementation of the measures referred to in decisions II/5a, b and c (ECE/MP.PP/2005/2/Add.6, para. 2).

29. The Committee noted that it was required to include information regarding implementation by the Parties concerned of the recommendations contained in the decisions (decision II/5, para.1) in its report to the third meeting of the Parties. In this regard, it noted paragraphs 6 and 8 of decision II/5a and paragraph 6 of decision II/5c requesting the Parties concerned to report to the Meeting of the Parties through the Committee four months in advance of the third meeting.

30. Bearing in mind the request contained in paragraph 2 of decision II/5, the Committee agreed that it would follow up on the progress being made in implementing the recommendations in the inter-sessional period. In this regard, it noted that decisions II/5a and II/5b requested the Governments of Kazakhstan and Ukraine, respectively, to submit their strategies for implementing the Convention to the Committee by the end of 2005. The Committee emphasized the importance of these strategies and agreed to examine them at the earliest opportunity. At that stage, it would consider how to enter most effectively into a dialogue with the Parties concerned if the need arose.

31. With regard to decision II/5c, on 27 July 2005, the Committee had received a letter from the Ministry of Environment of Turkmenistan concerning the findings and recommendations of the Committee with regard to compliance by Turkmenistan with the Convention (ECE/MP.PP/C.1/2005/2/Add.5). The letter maintained that Turkmenistan was not out of compliance and provided a series of arguments to that effect.

32. The Committee considered the letter and noted that the findings and recommendations had been endorsed by the decision of the Meeting of the Parties, which it could not change or re-negotiate. It also noted that the Party concerned had failed to make the most of various opportunities to provide information and input during the preparatory process leading up to the adoption of the findings and recommendations, first by the Committee and later during the preparation and adoption of the relevant decision by the Meeting of the Parties. Regarding the substance of the letter, the Committee did not consider that it would have altered its main conclusions and recommendations, even if the information and arguments provided had been available before the Committee finalized its findings and recommendations to the Meeting of the Parties. The Committee was however, ready to enter into a dialogue on the substantive issues addressed in the letter within the framework of the recommendations of the Meeting of the Parties and was optimistic that such a dialogue could be fruitful in contributing to the resolution of the problems identified by the Meeting of the Parties. As a means to foster such a dialogue the Committee formulated a reply, to be signed by the Chairman, setting out these points and conveying its offer to facilitate participation by representatives of Turkmenistan in one of its forthcoming meetings.

33. It was agreed that Mr Merab Barbakadze would serve as curator with respect to the follow-up to decision II/5b concerning compliance by Kazakhstan. Ms. Kruzikova would continue to serve as curator with respect to the follow-up to decision II/5b concerning compliance by Ukraine and Mr Fülöp would continue to serve as curator with respect to the follow-up to decision II/5c concerning compliance by Turkmenistan.

X. REVIEW OF COMPLIANCE WITH REPORTING REQUIREMENTS AND PROCEDURES FOR ADDRESSING COMPLIANCE ISSUES ARISING FROM THE IMPLEMENTATION REPORTS

34. The Committee discussed both specific and general issues related to the reporting requirements under the Convention on the basis of a background paper on reporting prepared by the secretariat.

35. At their third meeting, the Parties called upon all States which were Parties at the time of the deadline for submission of the implementation reports and had failed to submit such reports to the secretariat, to do so by 15 September 2005, for subsequent consideration, inter alia, by the Compliance Committee (decision II/10, para. 4).

36. The secretariat informed the Committee that all four Parties in question, namely Albania, Cyprus, Malta and Romania, had submitted their reports before or close to the new deadline. All the reports had been circulated to Committee members in advance of the meeting.

37. In line with its mandate, and taking account of the request of the Parties at their second meeting (decision I/7, annex, para. 13 (c) and ECE/MP.PP/2005/2/Add.14, para. 4), the Committee reviewed the reports and made a number of observations. In particular, it confirmed that several of the observations regarding implementation reports made in its report to the second meeting of the Parties were relevant for the four reports submitted in September 2005, especially with regard to the following:

- The quality of some of the reports was poor;
- Some of the reports failed to follow the format set out in the annex to decision I/8;
- All of the reports lacked information on practical implementation.

In addition, it appeared that there had not been sufficient public involvement in the preparation of some of the reports.

38. The Committee noted with appreciation that all of the 30 States that were Parties at the time of the original deadline for submission of reports had eventually submitted reports.

39. The Netherlands, which had not been a Party at the time of the deadline for submission of reports to the second meeting of the Parties but had been a Party at the time of the meeting itself, had also submitted a report. The Committee welcomed the submission of the report by the Netherlands.

40. The Committee then turned to the more general question of how the wealth of information contained in the full set of reports could be used in its work. There was general agreement that the reports should be used as background material in consideration of submissions, referrals and communications. Mr. Fülöp offered to look at the material contained in the full set of reports and

consider on which themes of the Convention any future efforts of review could usefully be focused. He also offered to examine in more detail the situation with implementation of article 3 of the Convention. The Committee accepted these offers with appreciation.

XI. PROGRAMME OF WORK AND CALENDAR OF MEETINGS

41. The Committee confirmed that it would hold its tenth meeting in Geneva on 5 to 7 December 2005. The meeting would start in the afternoon of Monday, 5 December 2005. Its eleventh meeting would take place in Geneva on 29 to 31 March 2006. The Committee provisionally scheduled the twelfth meeting for 14 to 16 of June 2006, the thirteenth meeting for 4 to 6 October 2006 and the fourteenth meeting for 13 to 15 December 2006.

XII. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

42. The Committee adopted the draft report prepared by the Chairman and the secretariat. The Chairman then closed the meeting.