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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

Working Group of the Parties to the Convention
Sixth meeting
Geneva, 5–7 April 2006
Item 6 of the provisional agenda

**REPORT ON THE FIRST MEETING OF THE TASK FORCE
ON ACCESS TO JUSTICE¹**

1. The first meeting of the Task Force on Access to Justice established by the Parties at their second meeting (decision II/2) was held in Geneva on 16–17 February 2006.
2. The meeting was attended by experts designated by the Governments of Armenia, Austria, Azerbaijan, Belarus, Denmark, France, Germany, Hungary, Kazakhstan, Norway, the Republic of Moldova, Sweden, Tajikistan and the United Kingdom.
3. The Commission of the European Communities was represented.
4. The United Nations Environment Programme (UNEP) was also represented.
5. The following regional organizations and international non-governmental organizations (NGOs) were represented: the European Union (EU) Forum of Judges for the Environment (EUFJE), the Regional Environmental Center for Central and Eastern Europe (REC), the European ECO Forum,

¹ This document could not be submitted by the usual deadline for meeting documentation because the Task Force meeting it reports on took place some weeks after that deadline.

the Environment and Public Health Alliance, EarthJustice, Milieucontact Oost-Europa and the World Resources Institute (WRI) representing the Partnership for Principle 10.

6. The following national NGOs were represented: WWF-UK and An Taisce (Ireland).

7. The Chairperson of the Meeting of the Parties to the Aarhus Convention, Ms. Hanne Inger Bjurstrøm, opened the meeting.

I. ELECTION OF OFFICERS

8. On the basis of a proposal made by the Chairperson of the Meeting of the Parties and supported by Austria on behalf of the European Union, the Task Force elected Mr. Håkan Bengtsson (Sweden) as its Chairperson. Having taken the chair, Mr. Bengtsson recalled that, in accordance with its mandate set out in decision II/2, the Task Force would have a practical focus, addressing issues related to the implementation of article 9.

9. The Task Force agreed that it would be useful to have a Vice-Chairperson and invited participants to consider putting forward a candidate from one of the Parties, in particular from the EECCA countries, at the next meeting.

II. ADOPTION OF THE AGENDA

10. Having regard to its mandate, the Task Force adopted the following agenda for its work:

1. Election of officers
2. Adoption of the agenda
3. Relevant developments
4. Information, training or analytical materials and activities
5. Remedies
6. Assistance mechanisms to remove or reduce financial and other barriers to access to justice
7. Alternative dispute resolution (ADR)
8. Mechanisms for information exchange and dissemination
9. Organization of future work, including further meetings
10. Any other business

III. RELEVANT DEVELOPMENTS

11. The expert from the European Commission reminded the Task Force about the Aarhus “package” submitted to the Council of Ministers and the European Parliament in 2003 and consisting of three legal acts. The decision on the conclusion of the Aarhus Convention had been adopted in February 2005. The regulation on the application of the provisions of the Aarhus

Convention to the EU institutions had been adopted in the European Parliament in the second reading in January 2006 and was currently undergoing the reconciliation procedure. The Directive on access to justice had passed the first reading in the Parliament in 2004. While the proposal had been discussed in the Council in June 2005, little progress had been made towards its adoption. The Commission believed that notwithstanding the fact that the European Communities had become a Party to the Convention, the proposed Directive still had added value in the EU legal system. It pointed out, however, that a majority of EU member States were not convinced of the need for a directive on access to justice; as they were already bound by the access-to-justice requirements under the Convention. This view was further confirmed by the Austrian expert, who pointed out the difficulties of such a harmonization at the Communities level, in particular taking into account the almost finalized ratification process as well as the differences in legal systems and traditions among member States.

12. In Sweden, the Government put forward a proposal for a regulation that provides, *inter alia*, for a new possibility for environmental organizations to appeal governmental decisions. The proposed regulation is expected to enter into force on 1 July 2006. In addition, the Swedish Commission on the Environmental Code released its report which, *inter alia*, examined the role of NGOs in environmental litigation. This examination demonstrated that, while NGOs had been active in relatively few cases (approximately 10 per year), they had had a rather significant and positive impact by sharing their knowledge and expertise, by forcing the applicants, the authorities and the courts to motivate their decisions clearly and by channelling arguments and ideas.

13. The expert from the United Kingdom drew the attention of the Task Force to an information note on recent developments in his country. The note, which was distributed at the meeting, provided references to online information on existing legal and practical tools related to remedies, including ongoing research on the possibility of introducing wider powers for regulators to impose civil penalties for environmental violations as well as available assistance and alternative dispute resolution mechanisms (see www.unece.org/env/pp/a.to.j/TF2006/UKinfoNote.doc).

14. A representative from France informed the Task Force that on 1 March 2005, an Environmental Charter had been promulgated in France. The Charter, which was a part of French constitutional law, included such rights as the right to live in an environment that is balanced and healthy and the right of access to environmental information and participation in environmental decision-making. The Charter had already been used both in administrative tribunals and in courts. In another initiative, a review of the effectiveness of the criminal law system in environmental matters had been carried out and a number of proposals and recommendations had been made. These developments provided a stronger framework for access to justice.

15. In Germany, the existing legislation was in principle in accordance with the Convention's provisions on public participation and access to justice. Two new draft acts were being prepared in order to further clarify legal requirements and ensure full compliance with the Convention's objectives and requirements, one on participation in administrative decision-making on environmental matters and the other on access to justice.

16. In Belarus, several legislative developments had been implemented or were under way. Amendments to the Law on Environmental Protection had introduced more detail with regard to the procedures relating to access to information and had established criteria for compensation of damages. Amendments to the Civil Procedure Code proposed in the draft National Environmental Plan took account of the barriers identified in access to justice. Legal assistance was being provided to the public through the Aarhus Center and free advisory services at universities. Work on improving cooperation with the judiciary was ongoing. The Ministry of Environment had organized a joint workshop with judges in 2004 and had developed and sent to all the courts guidance material on the Law on Environmental Protection.

17. In Tajikistan, an analysis comparing the national legislation with the Convention had been carried out. A new draft Law on Environmental Protection had been developed on the basis of its conclusions and had been discussed at the national level with the involvement of other ministries, academics, judges, legal professionals and NGOs. In the field of capacity building, an intergovernmental working group on the Aarhus Convention was organizing, with the support of the Organization for Security and Co-operation in Europe, a number of workshops on access to justice for 2006. Another workshop for judges and legal professionals would be organized by the Aarhus Center with the support of UNEP. The information on the draft Law on Environmental Protection and all the activities on the Convention was available on the website of the Aarhus Centre in Tajikistan (www.aarhus.tj).

18. In Kazakhstan, a draft Environmental Code was being prepared which took account of the access to information and access to justice provisions of the Aarhus Convention. With regard to capacity building for the judiciary, a workshop for judges had been organized in November 2005 in collaboration with the German development agency GTZ. Participating judges had discussed the German experience in implementing the Convention as well as provisions of national legislation. A set of recommendations had been elaborated in the course of the workshop on how to improve both consideration of future cases and the national legislation. In a separate development, the Supreme Court had made several proposals for inclusion in the draft national strategy on implementation of the Aarhus Convention. The recommendations concerned legislative changes to provide for broader standing and exemptions with regard to court fees in environmental cases. The recommendations also proposed that 10 percent of the compensation for damages in successful environmental claims be allocated to the NGO that filed the lawsuit, while 30 percent was earmarked for the environmental protection fund.

19. In Armenia, a constitutional reform carried out at the end of 2005 had led to the recognition of the right to a healthy environment. The Constitutional Court had also become more accessible to the public. In addition, a provision establishing the liability of public officials failing to provide information had been introduced. In the field of capacity building, a compendium of environmental legislation had been published and a training event had been organized for judges, lawyers and prosecutors in December 2005.

20. Lord Reed and Mr. Ulf Bjällås, President and Vice-President of EUFJE respectively, presented the organization and its activities relevant to the work of the Task Force. The Forum, established in

2004, provided an opportunity for discussion and exchange of information among EU member States' judges interested in environmental law. The organization's purpose was to promote and contribute to better implementation and enforcement of national, European and international environmental law by facilitating sharing of experience with environmental case law and relevant judicial training as well as by fostering knowledge of environmental law among judges. EUFJE held annual conferences dedicated to particular areas of environmental law. The first such conference, held in the Hague in December 2004, had focused on the Aarhus Convention. The next conference had dealt with issues of waste law, and the upcoming 2006 conference would be held in Helsinki in September 2006 and would address issues related to Natura 2000 areas. EUFJE had also surveyed its members with regard to their national legal systems, the organization of their judiciary and the training and information available to judges. The survey's results were available on EUFJE's website (www.eufje.org).

21. The EUFJE representative highlighted several lessons stemming from EUFJE's 2004 annual conference and its overall activities. He noted in particular that, in order to function effectively, the judiciary required clear and accessible legislation and actual cases to work with as well as training and exchange of information and experience. Clarity of criteria for standing, the timeliness of reviews and non-prohibitive costs were also very important. Organizations such as EUFJE could play a role in improving the clarity of legislation, helping to achieve coherence and consistency and providing a forum for sharing of experience among organization members as well as with other judges.

22. The REC reported that User Guides for Officials and NGOs had been prepared under the EuropeAid-funded project in Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine between 2002 and 2004 in English, Russian and national languages. They included training material, covering all three pillars of the Convention, for use in developing and implementing training courses. The materials can be accessed on the REC's website (www.rec.org/AarhusConvention). In a current project funded by the Netherlands Ministry for Foreign Affairs, an assessment of gaps and needs was being prepared in Albania regarding the access to justice pillar of the Convention. The draft assessment, including recommendations, would be discussed in a roundtable meeting with the involvement of the relevant ministries, judges, prosecutors, legal professionals and NGOs. Based on the assessment, a capacity-building workshop for future judges, prosecutors, legal counsellors and lawyers would be organized at the Magistrate School in cooperation with the Spain's development agency and Spanish lawyers. In Montenegro, an implementation guide to the Convention was being developed, taking into account local legislation and practice. The guide was intended for use by legal departments of ministries, judges, the office of the ombudsman and legal professionals. A South-East European regional event on access to justice was planned for ministries, judges, prosecutors, other legal professionals and NGOs from the involved countries and entities, back to back with a regional capacity-building workshop, in May or November 2006. The event could be expanded to a sub-regional workshop for South-Eastern Europe, subject to additional funding. Under a project in Romania, the REC would support the establishment of a Romanian network of environmental advocates and would provide training and capacity building. Materials in Romanian would be developed under this project.

23. An expert from WRI explained that the organization was serving as secretariat for both the Partnership for Principle 10 (PP10) and the Access Initiative (TAI). PP10 is a partnership of governments, international organizations and NGOs dedicated to the accelerated implementation of Principle 10 of the Rio Declaration on Environment and Development, while TAI is a global coalition of civil society organizations. Within the TAI framework, national assessments had been carried out in 40 countries to identify legal and practical gaps and to engage governments to make change on the ground. He introduced the Web-based TAI research toolkit and said that 148 indicators had been developed, of which 46 were on access to justice. The access to justice indicators covered such issues as legal standing, the competence of the tribunal, the burden of proof and the timeliness of redress. A publicly accessible global database of the assessments was being created and its linkage to the Aarhus Clearinghouse was being discussed. The latest set of indicators had been applied in water sector studies in four countries including Estonia and Ireland. TAI Assessments were available or would soon be available for a number of European countries including Bulgaria, Estonia, Hungary, Ireland, Lithuania and Ukraine. The European Commission and the Governments of the United Kingdom, Sweden, Denmark and the United States had provided financial support for these activities.

24. A representative of WWF-UK, which is a member of the Coalition for Access to Justice for the Environment (CAJE), reported that CAJE had submitted a complaint to the European Commission regarding Article 3 of the Directive on public participation (2003/35/EC). That article requires member States to provide review mechanisms which are not prohibitively expensive. CAJE referred to a significant body of research, including that by WWF, which identified the application of the cost rule in England and Wales as a major barrier to access to justice. The complaint had been registered by the general secretariat, and the complainants were awaiting the outcome of the Commission's investigations with interest.

25. A representative of Milieukontakt Oost-Europa presented the organization's online training module on the Convention. The module had been developed with regard to the first two pillars of the Convention, and a section on access to justice was being designed. The training was available at www.milieukontakt.nl.

26. An expert from the European ECO Forum drew the attention of the Task Force to Chapter 7 of the *Handbook on Access to Justice under the Aarhus Convention*, involving financial barriers. There had been little progress towards reducing such barriers throughout the UNECE area. The funding and sustainability of NGOs working on environmental law were of particular concern. Owing to lack of funding, the number of such organizations was decreasing. He gave an example of reductions in funding for environmental NGOs, in particular from foundation sources. The sustainability of training and capacity-building programmes, in particular for the judiciary, was also a serious issue in the EECCA region. On another matter, he said that the Court of First Instance of the European Communities had, notwithstanding the Aarhus Convention, repeatedly issued a very unfavourable opinion on the standing of environmental NGOs in a series of decisions issued in November 2005.

IV. INFORMATION, TRAINING AND ANALYTICAL MATERIALS AND ACTIVITIES

27. The secretariat presented an informal discussion paper raising a number of options related to the possible development of materials and organization of capacity-building events. The paper had been prepared by the secretariat and made available to participants in English and Russian in advance of the meeting.

28. The paper stated that a large amount of information, training and analytical materials related to the implementation of the third pillar of the Convention had already been developed. It provided references to examples of such material. It noted, however, that there was a gap in legal analysis of obstacles encountered by legal professionals in application of article 9 which might justify the preparation of new material. Such material might include analyses of best practices with regard to specific issues that posed specific obstacles, such as criteria for NGO standing under article 9, paragraph 2; standards for granting interim injunctive relief and/or application of proportionality tests; criteria applied in setting bonds; procedural guarantees for timely review; and measures to facilitate effective enforcement of judicial decisions. The large amount of information on practices in various countries that had been collected in the course of the work of the previous Task Force provided a starting point for work on analysis of practices with respect to most of the issues identified as obstacles.

29. With regard to possible activities related to training or information exchange, the paper noted that the Parties particularly emphasized the importance of training and exchange of information among the judiciary and legal professionals. It explored several possibilities for such activities, including seminars exclusively for the judiciary as well as joint workshops for judges and other legal professionals. Several options also existed regarding the geographic scope of such events. These could be held on a sub-regional level, which would make possible, *inter alia*, more in-depth discussions, a greater focus on common issues and, in some cases, the use of a common language. Region-wide seminars, on the other hand, would enable the sharing of a wider range of experience as well as facilitate networking among legal professionals from different sub-regions. The costliness of this option could, however, be an obstacle. The paper also noted that while national-level workshops could be an effective way to facilitate implementation of article 9, such efforts were best undertaken by stakeholders within the countries rather than by the Task Force.

30. The Task Force proceeded to discuss various options for further work. While noting that the Meeting of the Parties recognized the importance of capacity building for the judiciary, other legal professionals, civil servants, academics and the public, it proposed, given existing financial constraints, to prioritize and focus its initial activities as indicated in the following paragraphs. At its next meeting the Task Force will review the progress achieved and plan further steps.

Information, analytical and training materials

31. Considering the wealth of information, analytical and training materials available, and in light of the fact that no comprehensive analysis of this material had been undertaken, the Task Force found it premature to decide what additional materials needed to be produced. Instead, the Task Force

requested the Chair and the secretariat, in consultation with interested members of the Task Force, to prepare such an analysis in order to identify gaps in relation to the various elements contained in article 9, and to circulate this in advance of the next meeting of the Task Force. Should the Chair identify any gaps that seemed to require urgent action, these could be brought to the attention of the members of the Task Force by e-mail.

Capacity building

32. The Task Force proposed that such activities initially be aimed at supporting the judiciary, if possible at all levels, particularly in countries with economies in transition. While the independence of the judiciary should be fully respected, the main objectives should be (a) to increase awareness of the Convention among the judiciary; and (b) to enable them to exercise their discretion in a way that promoted effective implementation of article 9 of the Convention. The Task Force underlined the importance of effective outreach to ensure that interested members of the judiciary were aware of the activities and had the opportunity to participate.

33. The Task Force consequently invited the Chair to (a) investigate which relevant ongoing or planned capacity-building activities in the broader context of environmental law undertaken by other actors, such as UNEP and the REC, could usefully incorporate an access to justice component, and to offer the Task Force's cooperation in organizing appropriate Aarhus modules, emphasizing the third pillar of the Convention, within those activities; and (b) further explore the possibilities and develop a proposal for organizing capacity-building activities, in particular for the higher levels of the judiciary and initially focusing primarily on the sub-regional level, which could be organized under the auspices of the Task Force and/or in cooperation with other actors. The proposed focus on the judiciary would not exclude the possibility that other actors might be involved in the activities.

34. Such proposals should be circulated to the members of the Task Force electronically for consultation with a view to organizing some of these activities before the next meeting of the Task Force.

V. REMEDIES

35. The Meeting of the Parties invited Parties to give special attention to the potentially irreversible nature of the consequences of violations of provisions of national law relating to the environment when considering the adequacy and effectiveness of remedies. It also invited Parties to share their experiences regarding the effective contribution of the remedies available under their legal system to the achievement of the Convention's objectives. It requested the Task Force to consider, based on the experiences of Parties, Signatories and other stakeholders, the effective contribution of remedies available under different legal systems to the achievement of the Convention's objectives, including the relevance of interim and permanent injunctive relief (decision II/2, paras. 17–20 and 33(c)).

36. Mr. Jan Darpö (Uppsala University, Sweden) presented an analysis of the requirement to ensure the availability of adequate and effective remedies, including injunctive relief, set out in article 9,

paragraph 4, of the Convention. Interpreted in the light of the Convention's overall objectives, the provision refers to various possibilities for the public concerned to secure and enforce their interests by effective means. These possibilities must be available from before the stage when the challenged activity starts (e.g. in the permit procedure) until it is terminated (e.g. requests for remediation).

37. When interpreting article 9, paragraph 4, one should allow for differences in the Parties' legal systems as well as in the meaning of certain terms. Terms such as "remedies" and "injunctive relief" have to be understood in the national context. For example, in most national legal systems, a decision by an environmental authority can be appealed to the next level in the administration, and such an appeal usually suspends the decision. At the same time, the interested parties can also initiate a judicial review of the decision by challenging its legality. Judicial review leaves substantial room for the administration's own discretion by limiting the hearing to the issues of law. On the positive side, however, such systems tend to grant standing to a wide range of actors ("everyone", competitors, etc.). Other systems based on an ordinary appeal establish different limitations – for example, limiting standing criteria to the plaintiff's own rights and interests. Such appeals are usually cassatory (i.e. the court can only confirm or reverse the administrative decision). However, in some countries the courts use the inquisitorial principle in review of appeals. In such cases, both the legality and the expedience of the decision can be challenged, and the court is not limited by the parties' submissions but has to examine all the relevant facts. Furthermore, the court has to weigh all the interests and decide the case on its merits. Last but not least, the court itself has the power to replace the challenged administrative decision by another one. In such a system there is little or no room for the authority's own discretion.

38. Most national legal systems also offer the affected parties the possibility to request a court order to make the operator undertake precautionary measures or terminate the activity. Claims for economic compensation are also quite common. In some systems, the court can also order the supervisory authority to act. While usually the authorities have the option of initiating criminal sanctions by prosecution, there are also systems where the public has a right to prosecute. In some countries, the Attorney General plays almost no role in the environmental arena, and most prosecutions are initiated by the environmental authorities or even by individuals.

39. Because tools available to and obstacles encountered by the parties to an environmental dispute in different systems often vary only in name, one has to disregard the legal labels and concentrate on the purpose of the action. For example, in some systems where an administrative appeal lies on the merits, one can also challenge the authority's failure to act, which, from a procedural point of view, is not very different from the possibility available under other systems of launching civil proceedings seeking a court order requiring the authority to act.

40. By focusing on what is each party's goal in a concrete situation and how this goal can be reached in the specific legal system, one can identify key issues typical of environmental cases. Combining these issues with an array of typical environmentally hazardous activities and situations makes it possible to compare legal systems.

41. The Task Force discussed possible approaches to considering the effective contribution of remedies available under different legal systems to the achievement of the Convention's objectives.

42. The idea of developing a questionnaire to assess what remedies are available in different countries and how effective they are was suggested, and a list (prepared by the secretariat) of possible elements to include in such a questionnaire was circulated. Some participants felt that a questionnaire based on a sample case could be useful. Others argued that an assessment of already existing material, including replies to the questionnaires collected by the previous Task Force as well as materials available from UNEP and the CoE's Commission for the Efficiency of Justice should be evaluated before deciding whether a questionnaire should be developed and what it could focus on. The opinion was expressed that the legal availability of remedies and their actual use were not always the same thing, and that the best way to assess the effectiveness of remedies was to listen to the experiences of those seeking access to justice.

43. The Task Force concluded that it would have to revisit the issue of the questionnaire later, possibly on the basis of an analysis of a specific hypothetical situation. It invited those interested in sharing information on remedies in their respective systems to do so. One way to share such information could be to submit written contributions to the secretariat well before the next meeting of the Task Force, which would allow for their circulation together with the documentation for that meeting. The Task Force also called for further analysis of the material to be prepared for its next meeting. It was also felt that a number of presentations on the issue could be made at the next meeting of the Task Force to stimulate discussion.

V. ASSISTANCE MECHANISMS TO REMOVE OR REDUCE FINANCIAL AND OTHER BARRIERS TO ACCESS TO JUSTICE

44. The Meeting of the Parties noted that the previous Task Force had identified financial obstacles as a matter of public concern and a potential impediment to effective access to justice. Such obstacles varied from one jurisdiction to another. It recommended that the issue be further examined and that further work be carried out to identify best practices and discuss them, bearing in mind the objectives given in article 9, paragraph 5, of the Convention (decision II/2, paras. 22–27 and 33 (d)).

45. Mr. Gabor Baranyai (Hungary) presented the legal framework and mechanisms for facilitating access to justice in Hungary. Hungarian legislation had a traditional focus on strong procedural and institutional guarantees.

46. The review procedure for appeals related to access to information did not foresee administrative review but rather a fast-track review by courts, with the burden of proof being borne by the public authority. With regard to access to justice under article 9, paragraph 2, of the Convention, a two-stage administrative review procedure was foreseen for decisions at first instance, and a further three-stage judicial review of second-instance decisions was possible. Any person whose rights or legal interests were affected had standing in the review of decisions made within the framework of the Act on environmental impact assessment (EIA). In addition, environmental NGOs had automatic standing at all stages of the procedure.

47. Even though the main vehicle for public participation was the EIA procedure, a 2004 decision by Hungary's Supreme Court opened the possibility of appeal by NGOs with respect to any administrative decision taken outside the EIA procedure, provided that the environmental authorities had also taken part in the decision-making (e.g. the procedures permitting construction).

48. NGOs were exempt from administrative and court fees. However, certain legal costs were borne by the losing party (the actual amount payable being subject to judicial discretion). This exemption had resulted in the development by NGOs of a highly litigious participatory culture.

49. However, the combination of a fast and simple NGO registration procedure, the traditional activeness of civil society in the environmental field, low costs associated with appealing administrative decisions, and the slow pace of administration and adjudication often resulted in a long-term deadlock. This situation had recently led to development of a draft act on simplification of administrative procedures on projects of high national interest. (This draft does not affect the EIA procedure.) Earlier, a fast-track review procedure for motorway planning decisions had been adopted. The procedure had been challenged at the national level as well as before the Convention's Compliance Committee, which had noted that the legislation had not, *prima facie*, fallen below the minimum level required by the Convention.

50. Mr. John Bonine (European ECO Forum) made a presentation on costs as barriers to access to justice. He drew the attention of the Task Force to the Lviv statement signed by chief justices and senior judges from supreme and constitutional courts in 11 EECCA countries (see MP.PP/WG.1/2004/3, para. 15). In their statement, the judges had acknowledged the important role played by citizens and their organizations in bringing matters before the courts and had called for further identification of the need for financial and other support for, *inter alia*, lawyers to help citizens and their organizations apply to the courts to defend environmental rights.

51. Mr. Bonine mentioned a number of general obstacles to access to justice, including lack of knowledge by citizens, officials, lawyers and judges; lack of legal standing; lack of the injunction remedy; and occasionally even corrupt judges. He pointed out, however, that costs posed the biggest problem to filing a lawsuit in the first place: if one was not in a position to file a lawsuit, issues such as training, standing, remedies and corruption became irrelevant.

52. Some of the issues related to the problem of costs, such as lawyers' fees, scientific experts' fees and costs associated with paying appeal lawyers, were common to the entire region. Others were more relevant in particular sub-regions. Security bond requirements for injunctions created an obstacle in Eastern and Western Europe. Court fees were an issue in filing suit in some courts in Eastern Europe and Central Asia. The requirement that the loser pay the fees of the defendant's lawyers was a significant deterrent in many countries of the European Union. Last but not least, the possibility of having to defend against retaliatory actions was an issue in Eastern and Western Europe, while threats to life and liberty had been known in Central Asia and Eastern Europe.

53. There were, however, also numerous examples of good practices in overcoming the issue of costs. Foundation funding and grants were sometimes available for NGO lawsuits. Countries like

Spain and the United Kingdom had provisions for legal aid that could be used in some cases. In the United States, under the Freedom of Information Act and the Equal Access to Justice Act, the government was required to cover NGO lawyers' fees if the court ruled against the government, but it could not collect lawyers' fees from NGOs should they lose. In countries like Hungary, Spain and Mexico, NGOs were exempted from paying filing fees. In the United States and Australia, injunction bonds were not required in public-interest cases or were symbolic. In countries like Spain and Mexico, there was no requirement to pay opposing lawyers' fees in unsuccessful cases against the government, while in Hungary a clear schedule of limitation applied to covering the opponent's fees.

54. Mr. Bonine invited the Task Force to consider identifying financial barriers and cataloguing good practices through means such as a Web-based questionnaire.

VI. ALTERNATIVE DISPUTE RESOLUTION

55. Ms. Anna Muner of the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management presented the use of alternative dispute resolution (ADR) mechanisms in Austria and several related regional initiatives. Austrian environmental law explicitly recognizes environmental mediation: the Environmental Impact Assessment Act enables the public authority to interrupt the permitting procedure if strong conflicts of interest arise between project proponents and other parties, provided that the project proponent agrees to enter mediation. The results of the mediation procedure can be taken into account by the public authority in its final decision.

56. A conference on environmental mediation in Vienna (2001) had focused mainly on the then-member States of the European Union. In light of the issue's link to implementation of the Aarhus Convention, the Ministry had taken several further initiatives to promote the debate on environmental mediation and other ADR instruments.

57. Due to an increasing interest in ADR instruments in Central and East European countries, the REC, together with the Austrian Society for Technology and Environment (ÖGUT) and the Ministry, was actively involved in a project on environmental mediation and other ADR mechanisms in Central and South-Eastern Europe. Using the term "environmental mediation" in its broad sense, the scope of the project related to various mechanisms of consensus building and environmental dialogue and was not limited to the strict understanding of the mediation procedures (e.g. as having to fulfil certain criteria, such as the use of a professional independent mediator).

58. Ms. Muner pointed out that mediation could be used in different phases of a procedure. In general, the best results were achieved when mediation was initiated at a very early stage, when it was most likely to affect the final decision and prevent escalation of conflict. Environmental mediation was an interesting and potentially very useful instrument that should complement rather than replace existing public participation and access to justice provisions. Mediation could help address highly confrontational issues and support the development of a culture of dialogue and

cooperation. More information on the project, including case studies and a handbook on mediation, was available at www.partizipation.at.

59. Ms. Kaidi Tingas (REC) presented further information on the outcomes of the REC-ÖGUT project, in particular with regard to lessons learned in Central and Eastern Europe (CEE) (project website www.rec.org/REC/Programs/PublicParticipation/mediation/default.html). The 16 case studies from CEE, Austria and Germany analysed in the course of the project demonstrated structural and institutional differences in environmental conflict management between the “old” and “new” EU member States.

60. There was very little experience with ADR in the CEE region; parties to environmental conflicts preferred traditional administrative or judicial review procedures and were rather reluctant to use alternative mechanisms. Unlike in Western Europe, mediation and related mechanisms were mostly chosen (a) when administrative or judicial procedures had failed to solve the problem, (b) when an out-of-court agreement was recommended by the court, or (c) as a process parallel to the administrative or juridical procedures.

61. One of the common and controversial features demonstrated by the case studies from the region is the significant role that environmental NGOs (rather than environmental or other public authorities) play in conflict resolution overall and in facilitating the participation of local communities in particular. This gives them a double role: they are a party to the conflict as well as a facilitator in the resolution process. However, this combination can be detrimental to finding a generally accepted solution. Using an independent mediator or facilitator accepted by all parties tended to result in a smoother process and an outcome that was perceived as fair and balanced.

62. Other problems with the use of ADR in the region included weak preparation, partial mediators, insufficient knowledge of the method, lack of willingness to reach consensus, the non-binding character of any agreements reached and insufficient monitoring of the results.

63. Nevertheless, many parties found ADR useful. Benefits identified in the course of the project included the following, among others:

- (a) Parties to the conflict learn the views of the opposing side as well as their own real attitudes, values and stereotypes.
- (b) The process helps decrease social tension and come up with creative solutions.
- (c) The outcome leaves no party totally unsatisfied.
- (d) The process is faster and less expensive than more traditional ones.
- (e) The decisions reached are long-lasting.
- (f) The joint process gives both sides a feeling of ownership of the decision and its implementation.

64. The political support and involvement of all key stakeholders are essential for an effective and efficient ADR process. Careful preparation, a neutral mediator, understanding of the process by the stakeholders, motivation to cooperate, and monitoring of how the agreements are implemented also contribute to the sustainability of the outcomes.

VII. MECHANISMS FOR INFORMATION EXCHANGE AND DISSEMINATION

65. The Task Force was unable to discuss this agenda item due to a shortage of time.

VIII. ORGANIZATION OF FURTHER WORK

66. The Task Force took note of the preliminary schedule of meetings presented by the secretariat, in which the next meeting of the Task Force was planned for spring 2007. The Chairman noted that some tasks would have to be performed in advance of the next meeting, in particular as noted in paragraphs 30–34 and 41–43 above. Some issues regarding which there had not been enough time for discussion, in particular assistance mechanisms, ADR and mechanisms for information exchange and dissemination, would be taken up again at the next meeting.

IX. CLOSURE OF MEETING

67. The secretariat informed the Task Force that the draft report of the meeting would be distributed by e-mail in English to the meeting participants offering a brief period for comments. The report would then be finalized by the Chair and the secretariat, if possible in time for submission to the sixth meeting of the Working Group of the Parties, which would take place on 5–7 April 2006.

68. The Chairman thanked all participants for their contributions to the discussions and the secretariat for its support, and closed the meeting.