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ECONOMIC COMMISSION FOR EUROPE

**WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR EUROPE**

MEETING OF THE PARTIES TO THE
PROTOCOL ON WATER AND HEALTH
TO THE CONVENTION ON THE PROTECTION
AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL
LAKES

Compliance Committee

**REPORT ON THE FIRST MEETING OF THE COMPLIANCE COMMITTEE
HELD IN GENEVA ON 12 MARCH 2008**

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1. At its first meeting, by its decision I/2 on the review of compliance, the Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes established the Protocol's Compliance Committee and agreed on its structure and functions as well as procedures for the review of compliance (see ECE/MP.WH/2/Add.3 - EUR/06/5069385/1/Add.3). On the same occasion, the Meeting of the Parties elected the nine members of the Committee by consensus, taking into account the geographical distribution of membership and diversity of experience.
2. The first meeting of the Compliance Committee took place in Geneva on 12 March 2008. The following seven members of the Committee were present at the meeting: Mr. Pierre Chantrel (France), Mr. Zeljko Dacic (Croatia), Ms. Ilona Drulyte (Lithuania), Ms. Diana Iskрева-Idigo (Bulgaria), Mr. Truls Krogh (Norway), Mr. Attila Tanzi (Italy) and Mr. Serhiy Vykhryst (Ukraine). The meeting was only serviced by the United Nations Economic Commission for Europe (UNECE) secretariat.
3. A representative of the non-governmental organization (NGO) Earth Justice and a scholar from the University of Parma (Italy) participated in the meeting as observers.
4. The meeting was opened by Mr. Keith Bull, Chief of the Pollution Prevention Team, Environment, Housing and Land Management Division, UNECE, who welcomed the participants. Mr. Bull noted that the Compliance Committee would be serving Parties to facilitate compliance as well as populations potentially adversely affected by non-compliance. He pointed out that one of the main challenges for the Committee would be to maintain and reconcile its supportive and non-judicial nature with the decision-making under the Convention. The latter was important for communications received from the public. He expressed a view that the non-controversial approach to considering of communications from the public should be seen as an opportunity for creation of a platform where dynamic and open dialogue between the general public, the Parties and the Committee could be achieved. He also pointed out that the amicable spirit of the compliance mechanism was well balanced with the persuasive tools afforded to the Committee, which if necessary could address recommendations as well as issue cautions directly to a Party found in non-compliance with its obligations. Mr. Bull also stated that, to avoid duplication of procedural work as well as to promote efficiency in the implementation of the multilateral environmental agreements, good cooperation and partnerships should be established among all the compliance committees of UNECE.
5. The members of the Committee signed a declaration in which they undertook to perform their duties impartially and conscientiously.

I. ELECTION OF OFFICERS

6. The Committee elected Mr. Tanzi as its Chairperson and Ms. Drulyte as Vice-Chairperson. Having taken the chair, Mr. Tanzi reiterated that the Committee should carefully comply with the mandate that it had been given by the Meeting of the Parties, and that the Committee was not a judicial body and that it would always operate on the assumption of

Parties' good faith. He considered it fortunate that the Committee consisted not only of lawyers because scientific background would be useful in the work and would prevent the Committee from having too legalistic an approach to some issues. He called for flexibility in future work and for close cooperation with other committees on compliance and implementation established under other agreements.

7. As Mr. Mátyás Borsányi (Hungary), elected to the Committee by the Meeting of the Parties, could not fulfil his duties, the Committee discussed potential candidates for his replacement in accordance with paragraph 7 of the annex to decision I/2. Two alternative candidates were brought to its attention: Ms. Magdalena Bar (Poland) and Mr. Ilya Trombitsky (Moldova), both of them known and highly esteemed by some members of the Committee. After deliberation, it was agreed that these two candidates would be brought to the attention of the Bureau. In order to achieve a balanced composition between technical experts and lawyers, Ms. Bar would be recommended as first preference, on the understanding that the final decision would be made by the Bureau.¹

II. ADOPTION OF THE AGENDA

8. The Committee adopted the agenda as contained in document ECE/MP.WH/C.1/2008/1 - EUR/08/5069385/3.

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

9. Members of the secretariats of the committees dealing with compliance of three other UNECE conventions were invited to inform the Committee about their rules of procedures, modalities of working and experience with specific issues of non-compliance. Mr. 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 the Convention and all its protocols, drawing attention to lessons learned and specific practical issues. Mr. Jeremy Wates, Secretary to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), spoke about the work of the that Convention's Compliance Committee, in particular in relation to procedures for receiving and considering communications from the public. Finally, Mr. Wiecher Schrage, Secretary to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), informed the meeting about that Convention's Implementation Committee, including its mechanism and procedures, possible recommendations and the role of its Enquiry Committee.

¹ After the meeting, the Bureau, taking into account the Committee's recommendations, appointed Ms. Bar as the new Committee member to replace Mr. Borsányi.

IV. RULES OF PROCEDURE OF THE COMPLIANCE COMMITTEE

10. In accordance with decision I/2 of the Meeting of the Parties (and para. 8 of the annex thereto), the Committee is to approve its rules of procedure, taking into account the Rules of Procedure of the Meeting of the Parties, in particular Rule 21. The Committee thus discussed the way in which it would function, using as a basis an informal paper (no. 1) prepared by the secretariat.

11. In introducing this item, the Chairperson briefly described two different examples of rules of procedure, namely those of the Compliance Committee of the Kyoto Protocol² and the modus operandi of the Compliance Committee of the Aarhus Convention. It was agreed that the Committee's rules of procedure should be developed taking primarily into account the example of the Compliance Committee of the Aarhus Convention. It was stressed that the Committee's rules should be flexible, but at the same time should ensure predictability and certainty.

12. In accordance with Rule 21 of the Rules of Procedure of the Meeting of the Parties, it was noted that the latter were applicable, *mutatis mutandis*, to the Committee, with the exclusion of those on representation and credentials, on the establishment of the Bureau and on official working languages. Special rules were provided on the distribution of documents (Rule 21 (5)), quorum (Rule 21 (6)) and voting rights of the Chairperson (Rule 21 (7)). Rules on dates of meeting and working languages were left to the Committee itself, whereas those on attendance by the public and participation without the right to vote were to be decided with reference to the rules and principles of decision I/2.

13. With respect to the frequency of the meetings, the Committee members pointed out a number of issues to be taken into account. They agreed that they should not bind themselves by introducing, at this point, a specific number of meetings per year. It was agreed that the Committee should have flexibility and that the number of meetings should be related to the amount of work to be undertaken (e.g. communications, submissions it would receive). However, it was recognized that the predictability of future meetings was an important factor, in particular for those who planned to submit communications. It was agreed that at the end of each meeting, the Committee should set tentative dates for its next two meetings, to be publicized on the Protocol website and reflected in the report. Another aspect to be taken into account when planning future meetings was budget constraints.

14. The meeting noted that the application of the rules of procedure with respect to decision-making would imply that the presence of the majority members of the Committee would be required for any decisions to be taken and that decisions on substantive matters could be taken by a two-thirds majority of the members present and voting or by five members, whichever was the greater number.

15. 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

² Kyoto Protocol to the United Nations Framework Convention on Climate Change.

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.

16. The Committee agreed that communications and consultations between it and the secretariat could be conducted by e-mail. Moreover, it was stated that some decisions could also be taken by e-mail in order to ensure continuous progress; however, to maintain the balance between flexibility and credibility, this means of communication should not be overused. In any case, the members agreed that all decisions taken by e-mail between Committee meetings would be reflected in the report of the following meeting.

17. Regarding confidentiality and the right to participate in Committee meetings, it was recognized that clear guidance was provided in paragraphs 24 to 31 of the annex to decision I/2. Thus, all meetings should be open to the public; however, the parts of the meeting when findings, measures or recommendations were prepared and adopted should be limited to the participation of only Committee members.

18. The Committee members agreed that NGOs which had observer status with the Meeting of the Parties to the Protocol would have ex-officio observer status with the Committee. Moreover, the Committee reserved itself the right to grant observer status on a case-by-case basis to additional NGOs that might request it. The members considered that this kind of decision could be taken by e-mail.

19. The Committee also noted that there were differences between the status of the public and that of observers in meetings. However, the Committee reserved itself the right to give the floor to the public, if it deemed this useful.

20. It was agreed that, as a working practice, the Committee could decide to delegate specific tasks (e.g. preparation of documents, preparation of recommendations in specific cases) to the Chairperson, the Vice-Chairperson, a "special curator" or a smaller sub-group of members.

21. It was agreed that meetings of the Committee should be publicized through the website, with the provisional agenda, meeting reports and other official documents (other than confidential items) also being posted there.

22. The Committee agreed that English should be its working language. It also agreed that it would accept communications made in one of the four official languages of the Protocol, i.e. English, French, German or Russian.

23. Potential conflict of interest of Committee members was also discussed, and it was agreed that the rules of procedure should address this issue.

24. As for the responsibility of the secretariat, the importance of its liaison role between Parties, the public and the Committee was stressed.

25. The Chairperson agreed to prepare, in cooperation with the secretariat, draft rules of procedure for consideration by the Committee at its second meeting.

V. PROCEDURES FOR HANDLING SUBMISSIONS, REFERRALS AND COMMUNICATIONS

26. The Committee agreed to consider at its first meeting only the procedures for handling communications and to postpone until its second meeting the discussion of submissions by Parties and referrals by the secretariat. It requested the secretariat to prepare background information on these issues.

27. On the basis of an informal paper prepared by the secretariat based on the experience of the Aarhus Compliance Committee, the Committee discussed the procedures for handling communications from the public.

28. The Committee decided to prepare guidelines for the preparation of communications as a helpful instrument serving both the Committee and the general public. This would reduce the cases of inadmissibility of communications. Ms. Iskrevá-Idigo and Mr. Vykhryst were entrusted with the preparation of the first draft of the guidelines, which would be considered by the Committee at its second meeting. Ms. Iskrevá-Idigo and Mr. Vykhryst were invited to take into account the “Guidance Document on the Aarhus Convention Compliance Mechanism”. The Committee also agreed that the guidelines could be updated on the basis of practices developed by the Committee.

29. The Committee discussed the admissibility criteria for communications. It was agreed that, as a general rule, it would consider any communication, unless the communication fell under the criteria of inadmissibility stipulated in paragraph 18 of the decision I/2.

30. The Committee agreed that it was not a requirement for a communicant to be represented by a lawyer: this would be a right of the communicant but not an obligation. In the event that a communicant decided to be represented by a lawyer, the power of attorney should be documented before the Committee.

31. The Committee agreed that communications should be sent, via e-mail or registered mail, to the secretariat only. It was suggested that, in order to minimize the cases of inadmissibility, an informational checklist including all necessary information for making a communication should be developed and included in the guidelines for communications.

32. With regard to the issue of domestic remedies, it was agreed that the “rule of exhaustion of local remedies” should be provided as a guidance to communicants, who should be encouraged to make the best possible use of domestic remedies before making a communication. It was suggested that communicants should provide information on whether any local remedy had been applied and whether the communicant was aware of the availability of local remedies. Communicants should be conscious that such information would give more credit to the

communication. However, the exhaustion of local remedies was not to be considered as a criterion for admissibility of a communication.

33. The Committee members agreed that in obvious cases (e.g. anonymous communication) the secretariat could suggest the inadmissibility of a communication. However, in unclear cases, the curator dealing with the specific communication would send his/her motivated opinion to the other Committee members. It was agreed that the decision of admissibility or inadmissibility could be communicated and taken via e-mail.

34. With regard to the time frame in which a given Party had to react to a communication brought to its attention by the Committee, it was agreed that such Party should, as soon as possible, possibly within two months but in any case not later than five months, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.

VI. OVERVIEW OF THE REPORTING REGIME IN THE PROTOCOL

35. The secretariat briefly informed the Committee on the work carried out in preparation for the first meeting of the Task Force on Indicators and Reporting (Geneva, 13–14 March 2008). The need to establish a close cooperation between the Committee and the Task Force, in particular for the development of the reporting system under the Protocol, was stressed.

36. The Committee was also informed about progress made with respect to target-setting as reported by Parties for the Task Force meeting. Some concerns were expressed about the fact that, with few exceptions, Parties seemed to be still far from fulfilling their obligations under article 6 of the Protocol. The Chairperson was requested to raise the Committee's concerns at the upcoming Task Force meeting.

VII. ROLE OF THE MEMBERS OF THE COMPLIANCE COMMITTEE IN SUBSIDIARY BODIES

37. The Committee discussed the question of whether and in what capacity its members could or should participate in official meetings held under the auspices of the Protocol. It was agreed that to avoid conflict of interest, members of the Committee could not represent Governments or organizations in meetings of other bodies of the Protocol. Technical expert meetings such as task forces were considered as an exception.

VIII. PROGRAMME OF WORK AND CALENDAR OF THE NEXT MEETINGS

38. The Committee discussed which issues should be addressed at its next meetings in addition to the issues previously raised (e.g. rules of procedure and communications), and shared responsibilities for preparation of background documentation. These included:

- (a) Information gathering, with a background paper to be prepared by the Chairperson;
- (b) Submissions and referrals, with a background paper to be prepared by the secretariat;
- (c) Reporting to the Meeting of the Parties;
- (d) Strategy for publicizing the work of the Committee.

39. With respect to item (d), the Committee agreed to prepare a press release on its first meeting.

40. The Committee tentatively scheduled its second and third meetings for 24–25 September 2008 and 25–26 February 2009.

41. The Committee noted with concern the lack of resources allocated to its work and to the organization of its future meetings. It requested the secretariat to bring this issue to the attention of Parties.

XI. ADOPTION OF THE REPORT

42. The Committee entrusted the secretariat, with the assistance of the Chairperson, to prepare the report and to circulate it by e-mail to the members of the Committee for comments and approval.
