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COMMITTEE ON ENVIRONMENTAL POLICY

**Working Group for the preparation of
a draft convention on access
to environmental information
and public participation
in environmental decision-making**

REPORT OF THE FIRST SESSION

1. The first session of the Working Group for the preparation of a draft convention on access to environmental information and public participation in environmental decision-making took place in Geneva from 17 to 19 June 1996.
2. The meeting was attended by delegations of: Austria, Belgium; Canada; Denmark; Finland; Germany; Greece; Hungary; Italy; Lithuania; Netherlands; Norway; Poland; Portugal; Russian Federation; Slovakia; Sweden; Switzerland; Turkey; United Kingdom.
3. The session was attended by a representative of the Commission of the European Communities.
4. Representatives of the United Nations Environment Programme (UNEP), the World Health Organization's Regional Office for Europe (WHO/EURO) and the Council of Europe also attended.
5. The following non-governmental organizations were represented: Environmental NGOs Coalition; GLOBE Europe Network; the International Council of Environmental Law (ICEL); the Regional Environmental Center for Central and Eastern Europe (REC); and the World Conservation Union (ACNE).

6. In his opening statement, Mr. K. Bärlund, Director of the ECE Environment and Human Settlements Division, recalled the decision of the Ministerial Conference "Environment for Europe", which took place in Sofia in October 1995, to initiate the preparation of a convention on this subject. He also underlined the importance of the participation of representatives from countries in transition in the work. He therefore appealed to possible donor countries to provide financial support to the Trust Fund for Assistance to Countries in Transition (TFACT). He welcomed the presence of many non-governmental organizations and expressed the hope that it would strengthen the convention.

7. The Working Group adopted the agenda as contained in document CEP/AC.3/1.

8. The Working Group unanimously elected Mr. W. Kakebeeke (Netherlands) as Chairman on the understanding that a vice-chairman or an enlarged bureau would be nominated at a later stage.

9. The Working Group had before it a document prepared by the secretariat containing draft elements for the convention on access to environmental information and public participation in environmental decision-making (CEP/AC.3/R.1). Delegations taking part in the discussion commended the secretariat for these draft elements, which they considered a useful basis for the preparation of the convention.

10. It was generally agreed that the structure set out in document CEP/AC.3/R.1 was acceptable. The delegations taking part in the discussion provided general comments. In this respect, the delegation of Belgium suggested including a provision regarding the fundamental right to a healthy environment. This proposal was circulated and included in annex I to this report for discussion at a later stage. Some delegations supported the proposal and suggested further strengthening it, while others considered it inappropriate for this convention. The Working Group welcomed the offer of the Belgian delegation to prepare a background paper substantiating its proposal and to make it available to participants in advance of the next session. It was also suggested that the secretariat could prepare a list of international environmental agreements which contained provisions related to those which would be included in the convention. Some delegations proposed that the scope of the convention should also apply to emergencies as well as to the transport of dangerous goods. Some delegations indicated that, because of the federal structure of their countries, issues regarding the implementation of such a convention were uncertain at this stage.

11. Delegations recognized the complexity of the issues to be included and therefore provided their comments without prejudice to their positions in the future. Some delegations indicated that the article on public participation in environmental decision-making should be further strengthened. It was also held that the article on access to justice was an essential element for such a convention. Some delegations expressed the opinion that the text on capacity building should be expanded. The delegation of Italy suggested amendments to the preamble to the Convention, which were circulated for discussion at a later stage (see annex II below).

12. In concluding its general debate on the draft elements for the convention, the Working Group requested the secretariat to prepare, for the

next session, a note, in English only, containing a reference list of international environmental agreements linked to the provisions of the convention. The Working Group decided to discuss in further detail articles 1, paragraphs (ii), (iii) and (iv), 2 and 3. The delegations taking part in the discussion provided comments without prejudice to their positions in the future (see annex III below).

13. The meeting was informed of the schedule of meetings of the Working Group for 1996 (see annex IV below). The Working Group requested the secretariat to prepare a tentative schedule of meetings for 1997 for consideration at its second session. The Working Group requested the secretariat to send a letter to the heads of delegation to the Committee on Environmental Policy asking for comments on the draft elements for the convention, as included in document CEP/AC.3/R.1, by 30 August 1996 at the latest. It also requested the secretariat to compile these comments in a document for consideration at the second session. The Working Group noted the absence of a number of representatives from countries in transition and considered ways and means of helping them to attend future meetings.

14. The Working Group adopted its report on Wednesday, 19 June 1996.

Annex I

PROPOSAL BY THE DELEGATION OF BELGIUM

Insert the following new preambular paragraph:

Considering that every person has the right to live in a healthy environment,

Insert the following new article before the article on "General provisions":

OBJECTIVE

In order to protect the right of every person to live in a healthy environment, each Party shall guarantee the rights of public participation in environmental decision-making and access to environmental information in accordance with the provisions of the present Convention.

Annex II

PROPOSAL BY THE DELEGATION OF ITALY

Replace the third and fourth preambular paragraphs by:

Recognizing that, in order to increase awareness of short, medium and long-term environmental problems and to promote effective public participation, appropriate access to environmental information must be guaranteed,

Recognizing also that public participation contributes to the endeavours of public authorities to prepare for and prevent accidents to implement measures aimed at protecting the environment and human health from accidental pollution caused by industrial or natural hazards,

Recognizing further that public participation can be a source of additional information and scientific and technical knowledge for the decision makers, and bearing in mind that in environmental policy formulation and decision-making due account must be taken of the concerns of the public with the aim of reducing the occurrence of accidents and their consequences,

Annex III

**PROVISIONAL COMMENTS ON ARTICLES 1, PARAGRAPHS (II), (III) AND (IV), 2 AND 3
AS INCLUDED IN DOCUMENT CEP/AC.3/R.1, DRAFT ELEMENTS FOR THE CONVENTION
ON ACCESS TO ENVIRONMENTAL INFORMATION AND PUBLIC PARTICIPATION
IN ENVIRONMENTAL DECISION-MAKING**

Article 1

Paragraph (ii)

Sub-paragraph (a)

It was suggested that "the international level" should be added. "Regional" should be understood to mean at a regional level within each country.

Sub-paragraph (b)

Some delegations were of the opinion that the words "persons" and "in relation to the environment" were not clear and should be deleted.

Others were in favour of keeping these words in this paragraph.

Paragraph (iii)

Some delegations were in favour of having an exclusive list of environmental factors, others disagreed.

The following issues were considered:

- Deleting "economic or financial analysis" and either "historical monuments" or "cultural heritage or socio-economic conditions".
- Adding "genetically modified organisms", "technical analysis", "landscape", "atmosphere" and "information related to national and technological hazards".

Paragraph (iv)

During the discussion on this paragraph, it was suggested that this text required further clarification, in particular the following terms: "procedure", "regional", "decisions" and "significant". Some delegations suggested that this paragraph should also apply to parliamentary procedures, standard setting, the promulgation of other regulations and administrative rules as well as to policies, plans or programmes, others did not share this opinion. It was suggested that "at the international level" should be added to the paragraph. It was also considered important to stipulate in this paragraph at what phase the provisions of this convention would apply. It was suggested that "impact" should be replaced by "effect" and "significant" by "appreciable" and that this paragraph should also apply to voluntary agreements. Some delegations stated that "political decision-making" should not be included.

Article 2

Some delegations suggested that certain paragraphs of this article could be combined. Others held that the paragraph on capacity building required further strengthening.

Paragraph 1

It was considered appropriate to replace "to ensure" by "the possibility of ensuring" as well as to add "access to justice" to this paragraph. Some delegations indicated that they would put forward proposals for amendments at a later stage.

Paragraph 2

Some delegations suggested deleting this paragraph, while others reserved their position in this regard. It was also suggested that arrangements for an expedient judicial or administrative process should be set out.

Paragraph 3

Some delegations considered that the term "guarantees" should be clarified. It was suggested "access to justice" should be added to this paragraph. Some delegations proposed to add "where appropriate" at the beginning of the last sentence, while others suggested keeping the original wording.

Paragraph 4

Some delegations suggested replacing "is undertaken" by "is provided for", while others suggested replacing "significant impact" by "harmful effect". Other delegations considered that this paragraph needed further clarification. It was also suggested the reference to "significant impact" should be deleted, as this was already included in the definition on "environmental decision-making". In this respect, removing this entire paragraph to this definition was also considered.

Paragraph 5

Some delegations indicated that they would prepare properly for further strengthening of this paragraph, while others were of the opinion that this paragraph should be shortened. It was proposed, *inter alia*, to replace "promote" by "encourage", to add "access to justice" and to retain the sentence with respect to "the training of officials". It was also suggested that there should be a separate article on education and training or that this paragraph should be moved to the preamble or be restricted in order to exclude education and training regarding environmental problems in general.

Paragraph 6

Some delegations suggested that the term "groups" required further clarification, others considered this paragraph a fundamental right. Some delegations indicated that this paragraph should concentrate on the issues included in the convention. It was also held that the second sentence required further discussion.

Paragraph 7

It was suggested that the term "stringent" required further discussion.

Paragraph 8

Some delegations pointed out that the wording of this paragraph was not clear, while others referred to the definition of environmental decision-making in this respect.

Paragraph 1

In the discussion, it was suggested that "in response to a request" should be inserted after "provide" and that "including the actual documentation containing or comprising such information" should be deleted. It was also suggested that in sub-paragraph (b) "proved" should be replaced by "stated". The time-frame in sub-paragraph (c) was also discussed.

Some delegations indicated that the terms "make available environmental information" needed clarification and suggested that the wording of paragraph 2 (h) of this article should be inserted in this paragraph. With regard to the time-limit, it was suggested that the experience with the implementation of the EC Directive on access to information should also be taken into account.

It was also pointed out that the time-limit could be differentiated in accordance with the different types of replies; e.g. for an acknowledgement of receipt of a request, the onward referral of a request and an unreasonable or a general request, the time-limit could be one week. If a request was refused, the time-limit could be two weeks, with the possibility of an extension. When the information was in fact provided, the time-limit as indicated would apply.

Paragraph 2

Article 3

Some delegations indicated that a further discussion on the exemptions in paragraph 2 was required. It was mentioned that the heading of this paragraph could hamper the possibility of creating general exceptions.

Sub-paragraph (a)

It was indicated that this paragraphs should be strengthened. Issues regarding international relations and national defence could be included in a separate sub-paragraph.

Sub-paragraph (b)

In the opinion of some delegations, the term "public security" was too general and possibly required further discussion.

Sub-paragraph (c)

In the discussion, it became clear that delegations wished to reconsider this subparagraph.

Sub-paragraph (d)

Some delegations suggested including issues relating to intellectual property rights in a separate sub-paragraph; others proposed to consider the wording of this sub-paragraph at a later stage.

Sub-paragraph (e)

No comments were put forward at this stage regarding the wording of this sub-paragraph.

Sub-paragraph (f)

During the discussion, it was pointed out that the wording of this sub-paragraph could give rise to practical problems. It was also indicated that the material referred to in this sub-paragraph should be made available to the public when the concerned project was implemented.

Sub-paragraph (g)

No comments were put forward at this stage regarding the wording of this sub-paragraph.

Sub-paragraph (h)

It was suggested that this sub-paragraph should be moved to paragraph 1 of this article or deleted.

Sub-paragraph (i)

It was agreed that the wording of this sub-paragraph required further discussion and that there was a link between this sub-paragraph and the current wording of article 4.

Sub-paragraph (j)

In the discussion, it was stated that the wording of this sub-paragraph seemed reasonable, but could also be interpreted in a restrictive way. It was also held that certain kinds of information could not be confidential.

One delegation was of the opinion that none of these grounds may be used to refuse a request for information if the information could reduce risks associated with an imminent danger to health and the environment.

Paragraph 3

Some delegations indicated that the terms "reasonably expected to know" could give rise to misunderstanding. It was also suggested that the reference to "the officer" mentioned in paragraph 3 of article 2 should be deleted. It

was suggested that a provision should be added to this paragraph stipulating that the public requesting information would be notified that the request had been transmitted to another public authority for reply.

Paragraph 4

Most delegations held that this paragraph seemed reasonable, but at the same time it was pointed out that the wording needed to be reconsidered, in particular to avoid a situation where assistance would have to be provided in all cases. In this respect, it was also suggested that this paragraph should be moved to article 2.

Paragraph 5

It was indicated that the wording of this paragraph was not clear and required further discussion.

Paragraph 6

During the discussion, the time-limit of four weeks was considered. Some delegations considered that a written refusal in all cases was an unnecessary burden for the relevant authorities, others disagreed. It was also suggested that "one or more of reasons" should be replaced by "the reason"

Paragraph 7

Sub-paragraph (a)

Some delegations stated that the charge for supplying information should in some cases also include the costs of compiling or retrieving the information, others held a different view. It was also indicated that information should be available for inspection free of charge.

Sub-paragraph (b)

It was generally agreed that this sub-paragraph required further discussion.

Sub-paragraph (c)

It was pointed out that the wording "low-cost format" needed further discussion.

Paragraph 8

It was generally held that this paragraph seemed reasonable and that there was a need for an administrative appeals procedure.

Annex IV

Tentative schedule of meetings for 1996

29 October 1996	-	Informal meeting with interpretation
30 October-1 November 1996	-	Second session
11-13 December 1996	-	Third session