



ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

Working Group for the Preparation of the
First Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters
(Second meeting, Geneva, 22-24 May 2002)

ESTABLISHMENT OF AN INTERSESSIONAL BODY

Prepared by the secretariat in consultation with the Bureau

Introduction

1. At its first meeting, the Working Group agreed that a draft decision for the first meeting of the Parties reflecting the option of establishing an intersessional body should be prepared for its next meeting (CEP/WG.5/2001/2, para. 39). The draft should take account of the draft decision on the work programme.
2. There is a clear need to establish an appropriate infrastructure and well-defined modalities for overseeing activities under the Convention between the meetings of the Parties (intersessional periods). In determining what sort of infrastructure is needed, the following issues are relevant: the interval between meetings of the Parties; the mandate of the Meeting of the Parties according to the Convention; what type of intersessional body could be established and what would be its mandate, taking into account the work programme of the Convention; the relationship between an intersessional body and other bodies, e.g. the Meeting of the Parties and other proposed subsidiary bodies, such as the Working Group on Pollutant Release and Transfer Registers (PRTRs).

3. This document aims at addressing these issues to assist the Working Group in preparing a draft decision for the first meeting of the Parties. Where relevant, the document makes reference to practices and experience of other multilateral environmental agreements, in particular those for which UNECE provides the secretariat.

I. FREQUENCY OF THE MEETINGS OF THE PARTIES

4. The necessity of having a body to oversee the activities between meetings of the Parties and to prepare for those meetings depends to some extent on their envisaged frequency. The longer the interval between meetings, the greater the need for such a body.

5. Article 10, paragraph 1, of the Convention stipulates that meetings of the Parties shall be held at least once every two years unless the Parties decide otherwise. Thus, two years may be seen as a “suggested maximum” interval between ordinary meetings, which the Meeting of the Parties has the power to waive.

6. Within the UNECE environmental conventions, the text of the treaties as well as the practices under them differ with respect to the frequency of the meetings of the Parties. Under the Espoo Convention, two meetings of the Parties have been held so far (May 1998 and February 2001). The Water Convention has also held two meetings with approximately a three-year interval and the third is scheduled for autumn 2003 – three and a half years after the second. The second meeting of the Conference of the Parties to the Industrial Accidents Convention will be convened two years after the first meeting. The Executive Body of the Convention on Long-range Transboundary Air Pollution meets every year in December.

7. Within other multilateral environmental agreements, the practice differs as well. Some tend to meet every year (Montreal Protocol and the United Nations Framework Convention on Climate Change), others with a one- to two-year interval (Convention on Biological Diversity), some with a two- to three-year cycle (CITES and Ramsar Convention), or with irregular intervals (Basel Convention). There seems to be a tendency to hold the meetings of the Parties more often in the period immediately following the entry into force of the instrument and over time to extend the interval.

8. It would be expected that the first meeting of the Parties to the Aarhus Convention would make at least a provisional decision as to the timing of the second meeting to allow efficient planning of the intersessional activities (indeed, rule 9 of the draft rules of procedure requires the provisional agenda of each meeting to include an item on the date and venue of the next meeting).

II. POSSIBLE TYPE OF AN INTER-SESSIONAL BODY AND ELEMENTS FOR A MANDATE

9. Experience with other UNECE conventions shows that a number of solutions for overseeing intersessional activities exist.

10. Under the Water Convention, the first meeting of the Parties established the Working Group on Water Management. It is responsible for intersectoral issues of water management and

provides guidance on the implementation of the work plan and to the various task forces and expert groups. It meets once a year and elects its own officers.

11. At their first meeting, the Parties to the Espoo Convention established the Working Group on EIA to review the implementation of the work plan and report on progress to the Meeting of the Parties. This body also prepares for the meetings of the Parties. It meets once or twice a year.

12. Under the Convention on the Transboundary Effects of Industrial Accidents, it is the Bureau of the Conference of the Parties which is charged with the task of overseeing the implementation of the work plan, and thus so far no additional body has been established.

13. The intersessional activities under the Aarhus Convention could be undertaken and overseen by an open-ended body or by a representative/restricted body. In the case of the former, the body would be a working-group-type body with a mandate similar to that of the Meeting of the Parties, but the body would also deal with the preparation of the meetings of the Parties. In the case of the latter, the body would be a bureau-type body with a more limited mandate to be decided upon by the Meeting of the Parties. Since a bureau is already envisaged under the draft rules of procedure, it is assumed that the Working Group is referring to a body other than the Bureau of the Meeting of the Parties.

14. Irrespective of the type of body to oversee the intersessional activities, it should be considered whether the body constitutes itself or whether the Meeting of the Parties elects the officers of the body. These could also be the same as the officers of the Meeting of the Parties to ensure the coherence of decisions and activities. On the other hand, this might create a problem if meetings of the Parties are held at ministerial level and therefore chaired by a minister, who would almost certainly not be available to chair lower-level bodies. In that case, the designation of a substitute might be needed.

15. If an open-ended intersessional working group of the Parties to the Aarhus Convention is established, it could be charged with inter alia the following tasks:

- Assessing the need for adapting or amending the Convention to changing circumstances and preparing proposals to this end for the Meeting of the Parties;
- Overseeing the implementation of the work programme, including providing guidance on specific activities, adapting the work programme to changing circumstances and making ad hoc arrangements for further developing it;
- Preparing the meetings of the Parties, including documentation such as draft decisions and future work programmes;
- Providing intersessional guidance for or direction to subsidiary bodies, such as task forces, established by itself or by the Meeting of the Parties.

III. RELATIONSHIP BETWEEN AN INTERSESSIONAL BODY AND OTHER SUBSIDIARY BODIES

16. Already at this stage, it seems clear that other subsidiary bodies are likely to be established at the first meeting of the Parties. The draft decision on PRTRs (CEP/WG.5/2001/3) aims to establish an open-ended ad hoc working group on PRTRs to replace the current Working Group established under the Committee on Environmental Policy. The draft decision concerning arrangements for reviewing compliance (CEP/WG.5/AC.1/2002/2) aims to establish a

compliance committee. Other subsidiary bodies on inter alia access to justice, genetically modified organisms and reporting requirements have been mentioned as possible means of dealing with some of the aspects of the Convention which require special attention.

17. In order to avoid any lengthy formalistic discussions on the relationship between the these bodies and any intersessional body charged with the implementation of the work programme, which are all acting under the authority of the Meeting of the Parties and within a given mandate, it could be useful to address the issue when establishing the various bodies.

18. One question is whether the various working groups and task forces should all be accountable to the intersessional body charged with the implementation of the work programme, whether they should be accountable directly to the Meeting of the Parties or whether a differentiation with respect to the different bodies should be made. Some discretion for the intersessional body is probably necessary to enable it to carry out its functions and to ensure coherence between the activities of the different bodies. However, in some cases it could be argued that the separate bodies must be allowed enough room for manoeuvre in fulfilling their mandate and that interference from other bodies might complicate and blur the decision-making process unnecessarily. This issue could be addressed in the decision establishing the intersessional working group, or in the decision establishing each subsidiary body, or in both.

AnnexDRAFT DECISION I/[..]
ESTABLISHMENT OF THE WORKING GROUP OF THE PARTIESThe Meeting.

Recalling article 10, paragraph 2 (d), of the Convention, stipulating that the Parties may establish such subsidiary bodies as they deem necessary,

Recalling also its decisions I/[..] and I/[..] on [the procedures for preparing and adopting work programmes and on the work programme and budget for 2003-2005],

Recognizing the need for an effective decision-making structure to oversee activities under the auspices of the Convention between the meetings of the Parties,

1. Establishes an open-ended subsidiary body, to be called the Working Group of the Parties to the Aarhus Convention, to oversee intersessional activities carried out under the auspices of the Convention;
2. Requests the Working Group to:
 - (a) Oversee the implementation of the work programme, adapting it where necessary to meet changing circumstances and unforeseen needs;
 - (b) Prepare the meetings of the Parties, including documentation such as draft decisions and future draft work programmes;
 - (c) Oversee and direct the activities of specified subsidiary bodies, such as task forces and ad hoc expert groups, established by itself or by the Meeting of the Parties;
 - (d) Provide appropriate support and advice to other subsidiary bodies which are directly accountable to the Meeting of the Parties;
 - (e) Keep under review the need for adapting or amending the Convention and prepare proposals to this end for the Meeting of the Parties; and
 - (f) Make such proposals and recommendations to the Meeting of the Parties as it considers necessary for the more effective implementation and further development of the Convention;
3. Also requests the Working Group to meet as often as it deems necessary but no less than once a year, and to organize its work in the way that it deems most effective, e.g. by establishing ad hoc expert groups and by holding meetings back to back with other meetings; and
4. Requests the officers of the Meeting of the Parties to serve as the officers of the Working Group or to designate substitutes.