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Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context
Working Group on Environmental Impact Assessment
(Second meeting, 29-31 May 2000)
(Agenda item 2 (e) of the provisional agenda)

REPORT OF THE TASK FORCE ON COMPLIANCE

Submitted by the delegation of the United Kingdom

Introduction

1. At their first meeting, the Parties to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context agreed that the work-plan for the implementation of the Convention during the period 1998 to 2000 should include work on non-compliance guidelines, to be undertaken by a task force led by the United Kingdom (ECE/MP.EIA/2, annex VI, item 5).
2. The task force met twice in London on 25 and 26 November 1999 and on 10 and 11 January 2000.
3. It prepared, for consideration at the second meeting of the Working Group on Environmental Impact Assessment, a draft decision on establishing an implementation committee for the review of compliance by the Parties with their obligations under the Espoo Convention. The draft appears in the appendix below.

Principles

4. The task force considered the relationship between the proposed compliance mechanism and the inquiry procedure provided for in Article 3, paragraph 7, of, and appendix IV to, the Convention. The task force considered that there was no reason why a compliance mechanism should not co-exist with the inquiry procedure. It was strengthened in this view by the provision, at the end of Article 3, paragraph 7, for Parties to agree to use alternatives to the inquiry procedure for settling whether particular activities will have significant adverse transboundary impacts. That said, the task force considered that it would not be necessary for the implementation committee to consider an issue that had already been subject to the inquiry procedure in Article 3, paragraph 7, and so paragraph 14 of the appendix to the draft decision does not allow such duplication to take place.

Reporting

5. It was noted that virtually all environmental conventions provided for the collection of data on the way Parties meet their obligations. These data provide raw material for compliance mechanisms. The more extensive the data, the more effective compliance mechanisms are likely to be. The Espoo Convention is silent on reporting requirements.

6. However, the task force considered that it would be worthwhile to work further on the guidelines for providing information as included in ENVWA/WG.3/4, annex II, with a view to strengthening the reporting system under the Espoo Convention. It would be preferable for this work to be undertaken between the second and third meetings of the Working Group with a view to enabling the Working Group at its third meeting to make some recommendations for the second meeting of the Parties.

Scientific and technical advice

7. The task force considered that it would be important for the implementation committee to be able to seek scientific and technical advice, and that in the absence of any subsidiary body mandated to consider scientific and technical matters, the committee would have to do so on an ad hoc basis.

Participation of the public in the compliance procedure

8. The task force considered public participation in the compliance procedure and agreed that the preamble to the draft decision would draw attention to the possibility of participation of the public.

Resources

9. The Working Group and the Meeting of the Parties may need to consider the resource implications for the secretariat to fulfil its task.

The draft decision

10. The draft decision is based on decision 1997/2 of the Executive Body to the 1979 Convention on Long-range Transboundary Air Pollution concerning the Implementation Committee, its structure and functions and procedures for review of compliance. The main differences between the draft decision and the 1997 decision are as follows:

S Its preamble draws attention to the role of the public and the necessity for better reporting by the Parties, and the decision recommends that further steps should be taken to strengthen reporting under the Convention;

S Paragraph 3 of the appendix elaborates the objectives of the committee;

S Paragraph 6 of the appendix provides for the committee to take the initiative;

S Seeking technical advice is no longer a function of the committee (under paragraph 3) but is now one of the powers of the committee to gather information (under paragraph 7 of the appendix);

S The committee is required to consult the Parties concerned about draft reports or recommendations (paragraph 9 of the appendix);

S The committee's reports under paragraph 10 of the appendix are to be made through the secretariat;

S There is detailed provision about the relationship between the compliance procedure on the one hand and the inquiry procedure provided in Article 3, paragraph 7, and the settlement of disputes procedure provided for in Article 15 on the other (paragraphs 13 and 14 of the appendix).

11. The task force recommended that the Working Group should finalize the draft decision for transmission to the Parties at their second meeting.

Annex

DECISION II/... CONCERNING REVIEW OF COMPLIANCE

The Meeting of the Parties,

Determined to promote and improve compliance with the Convention on Environmental Impact Assessment in a Transboundary Context ("the Convention") and recalling Article 11, paragraph 2, of the Convention and decision I/6,

Recognizing the necessity for rigorous reporting by Parties of their compliance with the Convention,

Bearing in mind the possibility of informal public participation in the compliance procedure, by communicating to the secretariat or a Party reservations about the compliance of Parties or by participating as observers in the Meeting of the Parties,

1. Establishes the Implementation Committee for the review of compliance by the Parties with their obligations under the Convention;
2. Decides that the structure and functions of the Implementation Committee and the procedures for review of compliance shall be those set out in the appendix to this decision;
3. Resolves that the Implementation Committee as well as the structure, functions and procedures set out in the appendix to this decision shall be available for the review of compliance with any future amendments or protocols to the Convention;
4. Recommends that further measures should be taken to strengthen reporting under the Convention.

Appendix

**STRUCTURE AND FUNCTIONS OF THE IMPLEMENTATION COMMITTEE
AND PROCEDURES FOR REVIEW OF COMPLIANCE**

Structure

1. The Committee shall consist of eight Parties to the Convention. The Parties shall, as soon as practicable, elect four Parties to the Committee for a term of [two years] and four Parties for a term of [one year]. At each session thereafter, the Meeting of the Parties shall elect four new Parties for a term of [two years]. Outgoing Parties may be re-elected for one consecutive term, unless in a given case the Meeting of the Parties decides otherwise. The Committee shall elect its own President and Vice-President.

Meetings

2. The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service its meetings.

Objective and functions of the Committee

3. The objective of the Committee shall be to assist Parties fully to comply with their obligations under the Convention, and to this end it shall:

Consider any submission or referral made in accordance with paragraphs 4 and 5 below with a view to securing a constructive solution;

(a) Review periodically, in accordance with any guidelines or criteria formulated by the Meeting of the Parties, compliance by the Parties with their obligations under the Convention on the basis of the information provided in their reports;

(b) Prepare the reports referred to in paragraph 10 with a view to providing any appropriate assistance to the Party or Parties concerned, for example by ratifying and resolving questions; providing advice and recommendations relating to procedural, technical or administrative matters; and providing advice on the compilation and communication of information; and

(c) Prepare, at the request of the Meeting of the Parties, and based on any relevant experience acquired in the performance of its functions under subparagraphs (a), (b) and (c) above, a report on compliance with or implementation of specified obligations in the provisions of the Convention.

Submission by Parties

4. A submission may be brought before the Committee by:

(a) One or more Parties to the Convention that have reservations about another Party's compliance with its obligations under that instrument. Such

a submission shall relate specifically to that reservation and shall be addressed in writing by the focal point of the Party in question to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it to the focal point of the Party whose compliance is at issue. Any reply and information in support thereof shall be submitted to the secretariat and to the focal points of the Parties involved within three months or such longer period as the circumstances of a particular case may require. The secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable; or

(a) A Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Convention. Such a submission shall be addressed in writing to the secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider it as soon as practicable.

Referrals by the secretariat

5. Where the secretariat becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months or such longer period as the circumstances of the matter may require, the secretariat shall bring the matter to the attention of the Committee.

Committee initiative

6. Where the Committee becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. Any reply and information in support shall be provided to the Committee within three months or such longer period as the circumstances of a particular case may require. The Committee shall consider the matter as soon as practicable in the light of any reply that the Party may provide.

Information gathering

7. To assist the performance of its functions under paragraph 3 above, the Committee may:

(a) Request further information on matters under its consideration, through the secretariat;

(b) Undertake, at the invitation of the Party of origin and/or the affected Party, information gathering in the territory of that Party;

(c) Consider any information forwarded by the secretariat concerning compliance with the Convention;

(d) Consult the information in the database under the Convention; and

(e) Seek the services of scientific experts and other technical advice as appropriate.

8. The Committee shall ensure the confidentiality of any information that has been provided to it in confidence.

Entitlement to participate

9. A Party in respect of which a submission or referral is made or which makes a submission shall be entitled to participate in the consideration by the Committee of that submission or referral, but shall not take part in the preparation and adoption of any report or recommendations of the Committee. The Committee shall send a copy of the draft report or recommendations to the Parties concerned, and shall take into account any representations from such Parties in the finalization of the report.

Committee reports to the Meeting of the Parties

10. The Committee shall report at least [once a year] on its activities to the Meeting of the Parties through the secretariat and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with the Convention. Each report shall be finalized by the Committee not later than ten weeks in advance of the session of the Meeting of the Parties at which it is to be considered.

Competence of Committee members

11. If as a result of the operation of paragraph 9 the size of the Committee is reduced to five members or less, the Committee shall forthwith refer the matter in question to the Meeting of the Parties.

Consideration by the Meeting of the Parties

12. The Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention, including measures to assist a Party's compliance. The Parties shall make every effort to reach a decision by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the decision shall, as a last resort, be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

Relationship to settlement of disputes and the inquiry procedure

13. The present compliance procedure, as a non-adversarial and assistance-oriented procedure, shall be without prejudice to the settlement of disputes provisions in Article 15 of the Convention.

14. Where a Party has submitted a matter to an inquiry procedure under Article 3, paragraph 7, that matter may not be the subject of a submission or referral under this decision.