



**Economic and Social
Council**

Distr.
GENERAL

MP.WAT/2000/5/Add.1
8 February 2000

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

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

Second meeting,
The Hague, Netherlands, 23-25 March 2000
Item 5 (c) of the provisional agenda

GENEVA STRATEGY AND FRAMEWORK FOR MONITORING COMPLIANCE WITH
AGREEMENTS ON TRANSBOUNDARY WATERS */

Outcome of the joint UN/ECE-UNEP project with the Netherlands
as lead country

Addendum

EXPLANATORY NOTES TO ANNEX I OF DOCUMENT MP.WAT/2000/5

*/ This document has not been formally edited.

1/ Agenda 21 refers to "effective, full and prompt implementation" (Chapter 39, para. 8).

2/ [C]ompliance is a complex process involving both the intent and the capacity of States" ... "[and] the choice of strategies must be targeted to individual countries intent and capacity". E. Brown Weiss: Strengthening National Compliance with International Environmental Agreements, Environmental Policy and Law, 27(1997), 297.

3/ J. Werksman, Designing Compliance System for the UN Framework Convention on Climate Change, in J. CAMERON ET AL, IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW 92 (1996).

4/ A. Chayes and A.H. Chayes, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL AGREEMENTS 10 (1995). Werksman, supra note 4, suggests that a State may: 1) resist compliance with convention generally; 2) resist strengthening of conventions compliance response procedures; 3) resist taking advantage of such systems should they be put in place.

5/ See, generally, Study on Dispute Avoidance and Dispute Settlement in International Environmental Law and the Conclusions, UNEP/GC.20/INF/16[UNEP Study]; also, R. Wolfrum, Means of Ensuring Compliance with and Enforcement of International Environmental Law, Hague Academy Course (1998), J. Cameron, et al, IMPROVING COMPLIANCE WITH INTERNATIONAL ENVIRONMENTAL LAW (1996); D.G. Vitor et. al, THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS (1998); Implementation, Compliance and Effectiveness, Plenary Session, ASIL Proceedings (1997) 50; L. Boisson de Charzournes, La mise en oeuvre du droit international dans le domaine de la protection de l'environnement: enjeux et defi, Revue générale de droit international public (1995) 37.

6/ Convention on the Law of the Non-Navigational Uses of International Watercourses. United Nations. New York, May 1988. Article 33

7/ Declaration by the Ministers of Environment of the region of the United Nations Economic Commission for Europe. Sofia, Bulgaria, 25 October 1995.

8/ Convention on the Protection and Use of Transboundary Watercourses and International Lakes. E/ECE/1267. United Nations Economic Commission for Europe. New York and Geneva. 1992. See Monitoring (Article 4), Research and Development (Article 5), Exchange of Information (Article 6), Bilateral and Multilateral Cooperation (Article 9), Consultations (Article 10), Joint Monitoring and Assessment (Article 11), Common Research and Development (Article 12), Exchange of Information (Article 13), Warning and Alarms Systems (Article 14), Mutual Assistance (Article 15), and Public Information (Article 16).

9/ Convention on the Protection of the Rhine (Rotterdam, 22 January 1998). The International Commission on the Protection of the Rhine (ICPR) is empowered to prepare international monitoring programmes, analyse the Rhine ecosystems, evaluate results, and cooperate with scientific institutions; See Articles 8, 10, 11, 14, 1998 Rhine Convention.

10/ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. ECE/CEP/43, 1998. United Nations Economic Commission for Europe. New York and Geneva. 1998.

11/ E. Rehbinder, Environmental Agreements - a New Instrument of Environmental Policy, 27 Environmental Policy and Law (1997) 258; P. Széll, Compliance Regimes for Multilateral Environmental Agreements - a Progress Report 27 Environmental Policy and Law (1997) 304.

12/ Relevant practice in the field of international environmental law includes the compliance review procedures adopted under the Montreal Protocol on Substances that Deplete the Ozone Layer, 26 ILM (1987), 1523; Kyoto Protocol to the Convention on Climate Change, 31 ILM (1998) 22; Basel Convention on the control of Transboundary Movements of Hazardous Wastes, 28 ILM (1989) 657; Convention on International Trade in Endangered Species (1973) 993 UNTS 243.

13/ The distinction here can be understood, for example, in the monitoring of a joint body with the efforts of States to meet water-quality targets.

14/ "Compliance procedures combine elements of three distinct processes: processes designed to clarify norms and standards employed by a treaty, processes designed to further the evolution of these norms and standards, and processes designed to resolve problems among Parties", from UNEP Study, supra note 2, p. 29 [citing P.H. Sand].

15/ Articles 17 and 9, 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Article 15, 1999 Protocol on Water and Health.

16/ The obligations contained in a framework agreement are rarely precise enough to provide a baseline for verification of compliance. Thus, elaboration of more clearly defined commitments may have to be undertaken by the Parties.

17/ Articles 4, 6, 9 and 17 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and Articles 7(5), 7(6), 16 of the 1999 Protocol on Water and Health provide the basis for the elaboration of reporting and review provisions aimed at establishing a compliance review procedure.

18/ This follows the format adopted under the Convention on Long-Range Transboundary Air Pollution, concluded under the auspices of the UN/ECE. See Decision 1997/2 Concerning the Implementation Committee, its Structure and Functions and Procedures for Review of Compliance, Annex III to the Report of the Fifteenth Session of the Executive Body.

19/ This is the approach adopted in the 1998 Rhine Commission; see Articles 5-8.

20/ See *infra*, paragraph 3.5 and note the approach taken under the Montreal Protocol.

21/ See Article 1, Accord entre la République Française et la Confédération Suisse sur la déphosphatation des eaux du lac Léman (Berne 20 novembre 1980).

22/ Reh binder, *supra* note 12, refers to a range of innovative options, including "self-commitments" and other forms of self-regulation.

23/ For example, Articles 3, 4, 11, 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Articles 7 and 15, 1999 Protocol on Water and Health.

24/ The Sub-Group of the Basel Convention stated that their compliance regime "should be preventive and forward looking, timely, simple, flexible, consultative (i.e. non-confrontational, non-judicial, non-binding and cooperative), cost-effective and transparent. Its main functions should be: (1) facilitating and assessing Parties' compliance with their obligations, (2) facilitating and assessing implementation of the Basel Convention, and (3) facilitating and assessing reporting under Article 13 of the Basel Convention", UNEP Study, pp. 34-35.

25/ Reporting systems may pursue a variety of goals, from assessment of the implementation of and compliance with international commitments to highlighting whether already existing regulations are adequate to fulfill the objectives set forth by the agreement in question, "Two types of reporting systems can be distinguished: (1) systems that merely require States to communicate the information requested and (2) systems where the information provided is used as the basis for further discussion within the international body on the efficiency of the measures undertaken by the States to implement a certain legal instrument". *Ibid.*, p. 21 [footnote references committed].

26/ "Under the Climate Change Convention on in-depth review process has been established to ensure that the Conference of the Parties receives accurate, consistent and relevant information from the Parties. The review process, which is subject to the consent of the Party concerned, is conducted by multilateral teams. It often results in greater clarity and transparency and in filling information gaps." *Ibid.*, p. 23 [footnote references omitted].

27/ The competence of the Implementation Committee under the Montreal Protocol regime includes the consideration of submissions, information and observation on possible breaches that are drawn to its attention with the aim to achieve an amicable solution.

28/ "...[F]lexibility is not and should not be the hallmark of the assessment and evaluation phase in the non-compliance process ... G. Handl, "Compliance Control Mechanisms and International Environmental Obligations", 5 Tulane Journal of International and Comparative Law 1997, 29 at 44-45.

29/ The Committee may recommend a range of options, such as consultations; certain measures to facilitate compliance; a data for achieving compliance, and so forth.

30/ The involvement of the public in the compliance process must be defined. In the case of the Montreal Protocol, "the absence of observers has promoted grater openness in both the submissions and the Committee's deliberations". UNEP Study, p. 32 [footnote references omitted].

31/ In the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Art. 2(4), "The Public" means "one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups." Article 2(5) also provides a definition for "The Public concerned".