



**Economic and Social
Council**

Distr.
GENERAL

MP.PP/C.1/2004/2
2 March 2004

ORIGINAL: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

Compliance Committee

REPORT ON THE THIRD MEETING

1. The third meeting of the Aarhus Convention's Compliance Committee, established by the Meeting of the Parties through decision I/7, took place in Geneva on 22-23 January 2004. All eight members of the Committee were present. A representative of the non-governmental organization Earth Justice participated as an observer.
2. The meeting was opened by the Chairman, Mr. Veit Koester.

I. ADOPTION OF THE AGENDA

3. The Committee adopted its agenda as set out in document MP.PP/C.1/2004/1 with the addition of a new agenda item (2bis) on updating the informal documents on its modus operandi and other topics since the previous meeting, and a new agenda item (6bis) on other information received by the Committee relevant to possible cases of non-compliance.

**II. RELEVANT DEVELOPMENTS
SINCE THE PREVIOUS MEETING OF THE COMMITTEE**

4. The secretariat reported on the main points of discussion on the compliance mechanism that had taken place at the first meeting of the Working Group of the Parties (MP.PP/WG.1/2003/2, paras. 33-36 and 56). Its Chairman had communicated the content of the letter from the Chairman of the Compliance Committee raising the issue of the resources available for the Committee and

expressing the need for flexibility in the allocation of resources. The Working Group had considered the issue and decided that, should it become impossible for the secretariat and the Committee to process communications received from the public with the resources allocated under the work programme, the secretariat would, in consultation with the Bureau, undertake provisional measures to deal with the situation and report on them to the Working Group of the Parties at its next meeting. It had also agreed that, should such a situation arise, the secretariat would send a letter to all Parties, Signatories and other States, requesting them to consider making additional contributions for this purpose (MP.PP/WG.1/2003/2, para. 56). The Committee agreed that no further action on this question was required for the time being.

5. The secretariat also reported that, at the meeting of the Working Group of the Parties, concern had been expressed regarding a reference in the information sheet on communications from the public to the effect that a specific instance of a person's rights under the Convention being violated could be the subject of a communication from the public. It had been suggested that this could mislead members of the public into thinking that the compliance procedure was a redress procedure for a specific violation of their rights. The Committee decided to amend the paper accordingly (see para. 17 below).

6. Finally, the secretariat reported that some delegations had expressed the hope that the Chairman of the Compliance Committee would attend the next meeting of the Working Group of the Parties to report directly on the Committee's activities. The Chairman indicated his willingness to do so.

7. The Secretary to the Executive Body of the Convention on Long-range Transboundary Air Pollution briefed the Committee on the history and composition of the Implementation Committee to that Convention, as well as on recent developments. Members of the Implementation Committee were elected in their individual capacity based on geographical representation and the expertise required. The Committee's main task was to review compliance by Parties with their obligations through review of information contained in the national reports. The mechanism aimed to encourage Parties to meet their obligations. It was noted that while in a number of cases Parties had moved into compliance or were close to achieving compliance, some Parties had failed to submit their reports or had even failed to communicate with the Committee. While the mechanism did not provide for communications from the public, if any such communications were received, they would go through the secretariat, which would then probably request further information from the Party concerned.

8. The Secretary to the Espoo Convention informed the Committee on the progress in developing a compliance mechanism under that Convention, including the handling of the case raised by the Ukrainian organization Eco-Pravo Lviv (see MP.PP/C.1/2003/4, para. 7), and the deliberations of its Implementation Committee related to the review of communications from the public. There was no consensus in the Implementation Committee on whether the decision establishing the compliance mechanism under the Espoo Convention left room for the Committee to consider communications from the public. The Committee had therefore decided to request further clarification from the Meeting of the Parties.

9. The Secretary to the Espoo Convention also informed the Compliance Committee about a

discussion that the Implementation Committee had had with regard to the case of Ireland v. United Kingdom under the United Nations Convention on the Law of the Sea concerning a Mixed oxide fuel plant located in Sellafield, United Kingdom, and a related case that the European Commission had brought to the Court of Justice of the European Union against Ireland for referring the matter to a body outside the Community. The Compliance Committee discussed the possible implications that the ECJ case might have, should the Court decide in favour of the Commission. It was noted that the issue was mostly relevant to submissions by Parties regarding compliance by other Parties. As this was not considered likely to happen often and as other avenues were available under the Aarhus Convention, the implications of the case were thought to be less significant than for other multilateral environmental agreements. The relevance of the case to communications by the public was also discussed. It was noted that decisions of the Court of Justice were binding and therefore had more force than the recommendations of the Compliance Committee. It was also noted that, subject to future decisions of the Court and relevant practice, the remedies available within the European Community could be considered as domestic ones and as such would not necessarily preclude later communications or submissions to the Compliance Committee. It was decided not to look further into the matter at this stage but to wait for further developments under the EC legislation.

10. The Chairman drew the attention of the Committee to a case of Ireland v. United Kingdom, parallel to the case mentioned in paragraph 9 and related to a dispute concerning access to information under article 9 of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR), which had been brought before the Permanent Court of Arbitration in the Hague (Netherlands). The Aarhus Convention was one of the treaties alleged to be violated. While neither party to the case was a Party to the Aarhus Convention, Ireland alleged violation of the Aarhus Convention by the United Kingdom on the grounds that the latter had made a commitment to the principles of the treaty through the act of signing it. This point of view had gained only minority support within the Court.

11. Several other relevant developments and processes were mentioned, including the Alpine Convention, whose Review Committee's mandate included consideration of communications from observers, the Basel Convention's compliance mechanism and the manual on the human rights dimension of the environment to be developed by the Council of Europe. The secretariat reported briefly on the Conference on Civil Society, International Tribunals and Compliance Bodies, which had been held in Milan (Italy) on 24-25 October 2003.

III. UPDATING AND FURTHER DEVELOPMENT OF INFORMAL PAPERS

12. The secretariat presented the modifications made to the paper on the modus operandi, in particular the insertion of several new paragraphs that were taken from the report of the previous meeting of the Committee. It also drew the attention of the Committee to the separate paper that had been prepared on procedures for submissions and referrals. The Committee requested the secretariat to prepare an informal publication that would put together all the main aspects of the mechanism, including the Committee's modus operandi, procedures for submissions, referrals and

communications, information gathering and on-the-spot appraisal, and possibly the relationship between NGOs and the Compliance Committee. Such a compilation could be prepared, circulated to the members of the Committee and posted on the web site of the Convention. However, the Committee postponed any decision on the inclusion of the paper on NGOs and the Compliance Committee until the next meeting.

IV. SUBMISSIONS BY PARTIES CONCERNING OTHER PARTIES

13. The secretariat informed the Committee that no submissions had been made by Parties concerning compliance by other Parties.

V. SUBMISSIONS BY PARTIES CONCERNING THEIR OWN COMPLIANCE

14. The secretariat informed the Committee that no submissions had been made by Parties concerning their own compliance.

VI. REFERRALS BY THE SECRETARIAT

15. No referrals had been made by the secretariat regarding compliance by the Parties.

VII. COMMUNICATIONS FROM MEMBERS OF THE PUBLIC

16. No communications had been submitted to the Committee by any member of the public pursuant to paragraph 18 of the annex to decision I/7.

17. In response to the comments made at the meeting of the Working Group of the Parties (see para. 5 above), the Committee decided to amend the text of the final paragraph in the 'Key Points' of the information sheet on public communications as follows: "Communications to the Committee may concern either general failure by a Party to introduce the necessary legislative, regulatory and other measures to implement the Convention in conformity with its objectives and provisions; specific deficiencies in the measures taken; or (bearing in mind the point about domestic remedies) specific instances of a person's rights under the Convention being violated; or a combination of these. For communications concerning a person's rights under the Convention, it must be stressed that the compliance procedure is designed to improve compliance with the Convention and is not a redress procedure for violations of individual rights". A further amendment was made in chapter IV of the information sheet to reflect the need to take into account the objectives of the Convention as well as its provisions when considering compliance of the Parties with the Convention.

VIII. OTHER INFORMATION RECEIVED BY THE COMMITTEE RELEVANT TO POSSIBLE CASES OF NON-COMPLIANCE

18. The secretariat informed the Committee about some information in the public domain on Turkmenistan's new Act on Public Associations and indicated its intention to seek further information on the matter from the Government of Turkmenistan. The Committee took note of this information and of the fact that the secretariat would seek further information.

IX. SCREENING AND RAPID APPRAISAL OF CASES

19. The Committee exchanged ideas on the possibilities for developing and adopting a framework and an approach for light and standardized screening and a rapid appraisal of cases, and decided to consider the issue of screening in the process of examining national implementation reports. It was furthermore agreed to keep the issue of screening in mind, in the light of experience gained, with regard to the Committee's consideration of referrals, submissions and communications.

X. RELATIONSHIP BETWEEN THE COMPLIANCE MECHANISM AND THE REPORTING REGIME

20. The Committee discussed the relationship between the compliance mechanism and the reporting requirements arising from article 10, paragraph 2, of the Convention and decision I/8, using as a basis a note prepared by the secretariat. It considered how it would monitor, assess and facilitate the implementation of and compliance with the reporting requirements, as required under decision I/7, paragraph 13 (c), as well as how it could use the information gained through the implementation reports. Finally, it considered how the reporting procedures, notably the preparation of the implementation reports and the synthesis report, and its own procedures, including the preparation of its report to the Meeting of the Parties, could be integrated in such a way as to avoid unnecessary duplication and maximize the benefits from the clear links between the two processes.

21. The Committee decided that it would look into whether and how the Parties had prepared their national implementation reports, in order to verify that a process compatible with the procedural requirements of decision I/8 had been followed. Specifically, it would ascertain whether reports had been prepared through a "transparent and consultative process involving the public" and submitted in a timely manner to the secretariat (decision I/8, paras. 3 and 4). Some guidance on what constituted a "transparent and consultative process involving the public" might be found in the Convention itself, notably in articles 6 to 8.

22. Given the tight time frame for the submission and circulation of implementation reports, the Committee did not envisage that, if it received an incomplete report, either it or the secretariat would necessarily contact the Party concerned asking for the missing information to be submitted for inclusion in the report. In some circumstances, a Party having submitted a report considered to be incomplete might be asked to provide the missing information orally at the meeting (or in writing as

an unofficial document). In other cases, the matter could be followed up on after the meeting.

23. When considering the quality and accuracy of information provided in the national implementation reports, the Committee would take into account:

- (a) Information provided by the secretariat in the synthesis report;
- (b) Information provided by other sources, in accordance with paragraph 7 of decision I/8, if available;
- (c) Information received through referrals, submissions or communications in the normal way;
- (d) Other relevant information gathered in accordance with paragraph 25 of the annex to decision I/7.

24. The Committee agreed that among the measures that it might take to fulfil its mandate to facilitate implementation of and compliance with the reporting requirements were the following:

(a) In its report to the Meeting of the Parties, the Committee could to the extent possible refer to issues relating to timeliness, completeness and quality of reports, as well as the degree of transparency and public consultation in their preparation, and make appropriate recommendations (see the report of its second meeting, MP.PP/C.1/2003/4, annex, chap. V);

(b) If any problems in preparing the reports were identified as common for a number of Parties, the Committee could propose the development of guidance materials in its report to the Meeting of the Parties;

(c) If data were missing in one or more implementation reports, or the data submitted were of poor quality, the Committee could recommend the Meeting of the Parties to call on the Party or Parties concerned to provide the missing information or more complete or accurate information to the secretariat and, through it, to the Compliance Committee;

(d) Following the meeting of the Parties, the Compliance Committee could examine any additional information received and decide whether further steps were needed;

(e) If a Party failed to provide further information despite this having been recommended by the Compliance Committee or requested by the Meeting of the Parties, the Compliance Committee could in any case investigate the situation and take such further steps within its mandate as were deemed necessary;

(f) The secretariat could also make a referral to the Compliance Committee if no additional information was received or if the information received demonstrated problems of compliance.

25. The Committee recognized and affirmed the importance of the implementation reports as sources of information on compliance – and non-compliance – with the Convention. It also recognized that the way in which information contained in implementation reports could be used by

the Committee would to some extent be determined by timing considerations. Specifically, the interval between the deadline for submitting the implementation reports and the deadline for completing the Committee's own report would be insufficient to allow for it to arrive at a considered view that, on the basis of its implementation report, a Party was in non-compliance. The Committee concluded that any in-depth examination of the implementation reports as a basis for investigating possible non-compliance would generally take place following the meeting of the Parties for which the reports were prepared and that any significant conclusions reached would be addressed by the Committee in its subsequent report.

26. The Committee discussed the relationship between the synthesis report to be prepared by the secretariat and its own report, noting that both reports needed to be prepared within the same time span and that the subject matter was closely related. It agreed that there was a clear need to avoid duplication of effort and major overlaps in the reports. The former could be achieved through a coordinated process whereby each report would provide an input into the other. The latter could be dealt with by, for example, cross-referencing.

27. As regards the scope, content and style of the synthesis report, the Committee advised that, while the report would need to describe problems with implementation, it should address non-compliance only if a Party had failed to comply with the reporting requirements themselves or if a Party had provided information conceding that it was not in compliance. While the report should name individual countries if necessary, it should not attempt to go too far into questions of whether non-compliance was at stake. The Committee considered that it would be useful if the synthesis report also covered reports submitted under paragraph 6 of decision I/8 (by Signatories and other States not Party to the Convention) and, if possible and appropriate, paragraph 7 (by international, regional and non-governmental organizations).

28. The Committee agreed that, given the closely related subject matters of the two reports and the relevance of the synthesis report to the general review of compliance, it would be willing to play an active consultative or advisory role in the preparation of the synthesis report if so requested. It was agreed that implementation reports would be circulated to the Committee as soon as they became available, and that the Committee would then hold a meeting, possibly preceded by a written commenting process, to discuss both the draft synthesis report and its own report, in time for both to be finalized and submitted by the deadline.

29. The question of alternative reports prepared by NGOs was discussed. The Committee noted that, while the first option for the public, including NGOs, should ideally be through having their input reflected in the official implementation reports, in some circumstances, alternative reports could provide an important source of additional information which should be available to the Meeting of the Parties. While alternative reports could in theory be submitted to the Committee in the form of communications pursuant to paragraph 18 of the annex to decision I/7, in accordance with the related procedural requirements, the Committee considered that this would not be a means of placing an alternative report on implementation before the Meeting, as the Committee's processes were of a different nature, being slower, more in-depth and involving a chain of correspondence.

30. The Committee therefore considered paragraph 7 of decision I/8, providing for reports submitted by NGOs to be available to the Meeting, to be the most relevant provision. However, the Committee considered it worthwhile to elaborate on the provision, either by interpreting it in a sufficiently flexible manner or through a new decision of the Parties, and agreed to communicate this idea to the Working Group of the Parties. The Committee agreed that the notion of “lessons learned”, mentioned in paragraph 7 of decision I/8 on reporting requirements regarding reports by international, regional and non-governmental organizations, should be understood to include information on topics covered by the reporting requirements. The Committee therefore underlined the importance of reports prepared by such organizations being submitted in time to be made available to the Meeting of the Parties.

31. The observer from Earth Justice suggested that, in addition to the participatory process of preparing the national reports, the public would have two possible ways of providing information to the Aarhus Convention’s bodies relating to compliance. If the intention was to provide information alternative to that contained in the report of a Party submitted in accordance with decision I/8, it should submit a report pursuant to paragraph 7 of decision I/8 for consideration by the Meeting of the Parties. However, if it intended to raise a question of compliance review, it would have to submit a communication to the Committee under paragraph 18 of the annex to decision I/7 in accordance with the relevant procedures.

32. The secretariat raised the issue of whether implementation reports should be edited and translated. Decision I/8, paragraph 8 (a), implied that this would be the case, but given the resource constraints facing UNECE, the Committee requested the secretariat to look further into this question.

33. The Committee discussed the status of reports submitted pursuant to paragraph 6 of decision I/8 (by Signatories and other States not Party to the Convention) and paragraph 7 (by international, regional and non-governmental organizations). It agreed that it should be free to refer to information from these sources and to refer to them in its report to the Meeting of the Parties. It requested the secretariat to look further into the question of whether such reports could be considered as official meeting documents, even if editing and translation were not feasible.

34. The Committee recognized that, given the complete lack of practical experience with reporting under the Convention, any conclusions that it had reached with respect to the reporting regime should be regarded as provisional and subject to review in the light of further experience. It might also be useful to take into account the experience acquired with reporting mechanisms under other conventions.

35. The Committee agreed to recommend to the Working Group of the Parties:

(a) To issue recommendations to Parties on the importance of comprehensive reporting, including as complete information as possible and taking into account the items in the reporting format (decision I/8, annex). The recommendation should also underline the importance of timely reporting, while at the same time addressing the benefit of reports not being out of date by the time

of the relevant meeting of the Parties. Such a recommendation might refer to the need for a transparent and participatory process for preparing the national reports and set out a timeline for the process of preparing the reports;

(b) To review the progress in preparing to develop national implementation reports at its third meeting (1-3 November 2004);

(c) To take special note of paragraph 30 of this report;

(d) To consider putting forward a draft decision to the Meeting of the Parties, the operative part of which would invite international, regional and non-governmental organizations engaged in programmes or activities providing support to Parties and/or other States in the implementation of the Convention to provide to the secretariat complementary factual information and relevant comments on country reports. The decision would also request such information and comments to be submitted to the secretariat in time for them to be made available to the Meeting of the Parties. The preambular paragraphs of the decision could refer to the relevant paragraphs of decision I/8 and recognize that international, regional and non-governmental organizations engaged in programmes or activities providing support to Parties and/or other States in the implementation of the Convention could usefully contribute to the work of the Meeting of the Parties in reviewing national reports.

The Committee invited the Bureau of the Working Group of the Parties and the secretariat to take these recommendations into consideration when preparing the agenda for the upcoming meeting of the Working Group of the Parties.

XI. RESOURCES

36. The Committee took note of the reaction of the Working Group of the Parties to the letter sent by the Chairman to the Chairman of the Working Group concerning the future resource requirements of the compliance mechanism (MP.PP/WG.1/2003/2, para. 56). It was considered that no further action was needed on this point at this stage.

XII. ROLE OF THE MEMBERS OF THE 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 Convention, on the basis of an informal note from the representative of Earth Justice. It was considered that such participation could be valuable but that it was important to have some clarity on the matter.

38. The Committee agreed to recommend that its members should participate only in official meetings under the Convention in their capacities as members of the Committee. They could do so either with a specific mandate to represent the Committee, or without any particular mandate. In the latter case, they could contribute their specific expertise relevant to compliance and related issues to

the meeting in their personal capacities. It was agreed that there should be no such restriction on the capacities in which its members might participate in unofficial meetings under the Convention (e.g. NGO meetings) or meetings under other related conventions, though in all cases members should bear in mind the need to maintain the reputation and credibility of the Committee.

39. As regards which meetings under the Convention would be the most important and useful for its members to participate in, the Committee considered that it would be useful for the full Committee to attend the second meeting of the Parties. The Chairman would represent the Committee at the next meeting of the Working Group of the Parties. The Committee agreed to discuss priorities with regard to other forthcoming meetings of subsidiary bodies and other relevant meetings at its next meeting.

40. Financing of participation would need to be decided case by case and would be subject to the availability of funds.

XIII. PROGRAMME OF WORK AND CALENDAR OF MEETINGS FOR 2004

41. The Committee decided to hold its fourth meeting on 13-14 May 2004, followed by a fifth meeting on 23-24 September 2004.

XIV. ADOPTION OF THE REPORT AND CLOSURE OF MEETING

42. The Committee adopted the draft report prepared by the Chairman and the secretariat and requested the secretariat in cooperation with the Chairman to finalize it. The Chairman then thanked the secretariat for its efficient support and closed the meeting.