



United Nations  
Environment Programme



Food and Agriculture Organization  
of the United Nations

Distr.  
GENERAL

UNEP/FAO/PIC/INC.8/14  
27 July 2001

ORIGINAL: ENGLISH

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN  
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR  
THE APPLICATION OF THE PRIOR INFORMED CONSENT  
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND  
PESTICIDES IN INTERNATIONAL TRADE

Eighth session

Rome, 8-12 October 2001

Item 5 (d) of the provisional agenda\*

PROCEDURES AND INSTITUTIONAL MECHANISMS FOR  
HANDLING CASES OF NON-COMPLIANCE

Note by the secretariat

Introduction

1. The Rotterdam Convention, in its article 17, states that the Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for treatment of Parties found to be in non-compliance.
2. The Intergovernmental Negotiating Committee at its seventh session requested the secretariat to develop a model for a procedure to handle cases of non-compliance based on work that had been or was being undertaken in other forums, taking into account comments received from the floor, and in particular the need for an efficient mechanism in the Convention. It also invited all members to provide their inputs on the issue to the secretariat by 1 February 2001, and requested the secretariat to submit the model to the Committee at its eighth session.
3. In pursuance of that request, the secretariat prepared a model as presented in the annex to this note. During its development, the secretariat took fully into account the views expressed at the seventh session of the Committee as well as the inputs submitted to it by several Governments and a regional economic integration organization. Due consideration was given also to the existing compliance mechanisms under the Montreal Protocol on Substances that Deplete the Ozone Layer and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Furthermore, the ongoing work in the development

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\* UNEP/FAO/PIC/INC.8/1.

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of compliance mechanisms under the following treaties was duly taken into account: Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; Kyoto Protocol to the United Nations Framework Convention on Climate Change; Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

4. The model presented in annex contains elements for the possible procedures and institutional mechanisms. It is intended to highlight the approach widely observed in the existing procedures and mechanisms as well as the ongoing work in developing such procedures and mechanisms. It is not intended to provide an exhaustive list of such elements. Where there are possible alternatives based on different views, these are indicated by brackets enclosing the text. For the convenience of the Committee, it is presented in two parts: institutional mechanisms; and procedures. Furthermore, the model has not been presented in a legal format.

Annex

PROCEDURES AND INSTITUTIONAL MECHANISMS FOR  
HANDLING CASES OF NON-COMPLIANCE: A MODEL

Part One

INSTITUTIONAL MECHANISMS

Objective

1. This set of procedures and institutional mechanisms (hereinafter referred to as the "compliance mechanism") are established to promote and ensure compliance with the provisions of the Convention and to prevent non-compliance

Authority of the Conference of the Parties

2. The Conference of the Parties is to be the ultimate authority in the overseeing of the operation of the compliance mechanism.

3. The Conference of the Parties is to regularly review the implementation of the compliance mechanism.

Compliance Committee

4. A Compliance Committee is hereby established by the Conference of the Parties as its subsidiary body responsible for the operation of the compliance mechanism.

Functions of the Compliance Committee

5. The functions of the Compliance Committee, are, inter alia, to:

- (a) Examine specific compliance or implementation issues relevant to a Party or a specific group of Parties;
- (b) Examine general compliance or implementation issues relevant to all Parties;
- (c) Establish the facts regarding non-compliance with the provisions of the Convention;
- (d) Recommend to the Conference of the Parties an appropriate treatment of Parties found to be in non-compliance;
- (e) Assist a Party which may be experiencing difficulties in meeting its obligations under the Convention and advise it to take appropriate measures to address and rectify the actual cause of non-compliance;
- (f) Advise and promote the activities of the Parties in achieving or maintaining compliance, including measures to prevent potential incidents of non-compliance.

Membership of the Compliance Committee

6. The Compliance Committee is to consist of [10][15] [government-designated legal and technical experts, drawn from a list nominated by Parties and appointed by the Conference of the Parties] [government representatives elected at a meeting of the Conference of the Parties].

7. The membership should reflect an equitable geographic distribution. Due regard should be given to a balance between developed and developing Parties.

8. The members of the Compliance Committee are to serve after the meeting of the Conference of the Parties during which they are [elected][appointed], until the end of the second meeting of the Conference of the Parties following their [election][appointment], unless [re-elected][re-appointed]. For the first [election][appointment], a half the members are to serve for the period up to the next meeting of the Conference of the Parties, during which a half are [elected][appointed] for the period of the following two consecutive meetings of the Conference of the Parties.

#### Officers of the Compliance Committee

9. The Compliance Committee is to elect its own officers. For the election, due consideration should be given to an equitable geographic distribution and a balance between developed and developing Parties.

#### Meetings of the Compliance Committee

10. The Compliance Committee is to hold meetings normally twice a year. In determining the date of the meeting, due consideration should be given to the meeting schedules of the Conference of the Parties and other relevant subsidiary bodies. It may hold additional meetings as required.

11. The meetings of the Compliance Committee are to be [open][closed] to other Parties or the public, unless the Committee and the Parties in question agree otherwise.

#### Agenda of the Compliance Committee

12. The Compliance Committee is to decide its agenda for a meeting at the end of the preceding meeting. In determining the agenda, requests from the Conference of the Parties should be duly taken into account. The agenda for its first meeting will be decided at the meeting of the Conference of the Parties immediately prior to it. Review of outstanding cases may be included in the agenda of each meeting of the Committee.

#### Decision-making in the Compliance Committee

13. The rules of procedure for meetings of the Conference of the Parties are to apply, mutatis mutandis, to the decision-making and proceedings of the meetings of the Compliance Committee.

#### Public and confidential information

14. The report of the meetings of the Committee should be available to the public.

15. Confidential information should be treated as such throughout the process.

#### The secretariat

16. The secretariat is to provide administrative services for the functioning of the compliance mechanism, including receiving and transmitting information on compliance issues to the Compliance Committee and the Parties and providing secretarial assistance and documentation.

17. The secretariat may receive relevant information from all sources in conformity with the provisions of the Convention.

Reporting to the Conference of the Parties

18. The Compliance Committee is to submit a report, on an annual basis, to the Conference of the Parties.

Relationship with dispute settlement and other provisions of the Convention

19. The compliance mechanism should be implemented with due regard to the provisions of articles 15 and 20 of the Convention.

Relationship with other subsidiary bodies or those established under different conventions

20. In the case of issues that overlap with the responsibilities of other subsidiary bodies, the Conference of the Parties may direct the Compliance Committee to work in conjunction with such bodies.

21. Where there is an overlap with the obligations and responsibilities under other multilateral environmental conventions, the Conference of the Parties may request the Compliance Committee to communicate with relevant bodies of the respective conventions, and report back to the Conference of the Parties.<sup>1</sup>

Part Two

## PROCEDURES

## Invocation of the procedures

22. The procedures for specific submission on non-compliance may be initiated by:

(a) A Party, which believes that in spite of its best endeavours, it may be unable to comply with certain obligations under the Convention. That Party may make a written submission to the secretariat seeking advice from the Compliance Committee. The submission should include details as to which specific obligations are concerned, and an assessment of the reason why the Party may be unable to meeting those obligations. Where possible, corroborating information, or advice where such corroborating information may be found, may be provided. The submission may include suggestions for solutions which the Party, or a group of Parties, considers may be most appropriate to its particular needs;

(b) A third Party, submitting its observations to the Compliance Committee, with corroborating information, on the performance of another Party in the application of the Convention; or

(c) The Compliance Committee, in response to a request to it by the Conference of the Parties, or on the basis of the information submitted to it by the secretariat.

23. The procedures on general compliance issues may be initiated by:

(a) The Conference of the Parties, requesting the Compliance Committee to examine and report back on general issues of compliance deemed common to all Parties;

(b) The Compliance Committee on the basis of information submitted to it; or

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<sup>1</sup> A proposal has been made to establish a joint compliance procedure under the Rotterdam Convention and the Basel Convention.

(c) The secretariat on the basis of information collected through the implementation of the provisions of the Convention.

#### Consultation

24. The Compliance Committee, once the procedure is initiated, may undertake the following actions:

(a) Consider the observations and relevant information submitted to it as well as additional information it might gather;

(b) Consult with any Party that has initiated the non-compliance procedure and the Party which is the subject of the submission in order to give the latter a chance to respond;

(c) Establish whether the status of non-compliance exists, and if so identify the cause of the non-compliance.

#### Measures regarding non-compliance

25. The Compliance Committee, once it has determined that non-compliance exists or will be in existence, is to undertake to:

(a) Advise the Party concerned to take action to rectify any detriment caused by the non-compliance, or rectify the source of possible non-compliance;

(b) Assist the Party concerned to develop a programme to restore compliance as soon as possible or to ensure maintenance of compliance. Such assistance may include: oral advice, written information, or assistance through in-country fact-finding visits upon invitation by the Party;

(c) Recommend that the Conference of the Parties take other appropriate measures to restore compliance, including the following:

(i) Advice;

(ii) Provision of appropriate assistance to enable the Party to comply with the obligations;

(iii) Issuance of cautions; or

(iv) Other measures to bring a Party back into compliance, including certain forms of sanctions or incentive measures..

26. Upon the recommendation of the Compliance Committee, the Conference of the Parties may take appropriate action to address compliance issues raised.

#### Monitoring

27. The Compliance Committee is to monitor the consequences of the action taken to rectify non-compliance or the source of possible non-compliance.

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