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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

Ninth session

Bonn, 30 September-4 October 2002

Item 5 (c) of the provisional agenda\*

PREPARATION FOR THE CONFERENCE OF THE PARTIES: NON-COMPLIANCE

Procedures and institutional mechanisms for handling cases of non-compliance

Note by the secretariat

Introduction

1. In its article 17, the Rotterdam Convention 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 this Convention and for treatment of Parties found to be in non-compliance”.
2. Pursuant to a request by the Intergovernmental Negotiating Committee at its seventh session, the secretariat developed a model for a procedure to handle cases of non-compliance and submitted the model to the Committee at its eighth session in annex to document UNEP/FAO/PIC/INC.8/14. The Committee, assisted by the work of an open-ended legal working group, examined the model and undertook initial debate, and decided to reconvene the working group as a “compliance” working group and to discuss the matter at its ninth session. To this end, the Committee requested the secretariat to produce a paper based on the draft model procedures and institutional mechanisms set out in document UNEP/FAO/PIC/INC.8/14, the specific ideas brought forward in plenary meeting of the Committee at its eighth session, the views expressed by representatives in the working group, and any comments on non-compliance forwarded to the secretariat in writing by 31 March 2002.

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\* UNEP/FAO/PIC/INC.9/1.

3. The secretariat submits to the Committee the draft model procedures and institutional mechanisms as contained in annex to this note, which has been prepared pursuant to the request of the Committee and following the modalities for preparation which it specified.

AnnexPROCEDURES AND INSTITUTIONAL MECHANISMS FOR  
HANDLING CASES OF NON-COMPLIANCE: A MODELPart One

## INSTITUTIONAL MECHANISMS

Objective

1. This set of procedures and institutional mechanisms (hereinafter referred to as the “compliance mechanism”) are established [to promote [and facilitate] compliance][for determining non-compliance] with the provisions of the Convention and [assist Parties in complying with their obligations under the Convention][to prevent non-compliance][for treatment of Parties found to be in non-compliance].

Authority of the Conference of the Parties

2. The Conference of the Parties shall oversee the operation of the compliance mechanism.

Compliance Committee

3. A Compliance Committee is hereby established by the Conference of the Parties as its [ad hoc] subsidiary body responsible for the operation of the compliance mechanism.

Functions of the Compliance Committee

4. The Compliance Committee shall undertake the functions as specified in the procedure under Part Two below and those as otherwise entrusted by the Conference of the Parties.

Membership of the Compliance Committee

5. The Compliance Committee shall consist of [10][14][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][who have expertise and specific qualification in the subject matter under the Convention and are to serve in their individual capacity].

6. The membership shall give due consideration to an equitable geographic distribution [of the seven PIC regions]. Due regard should be given to a balance between [developed and developing Parties] [importing and exporting Parties].

7. [The members of the Compliance Committee shall 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 shall 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.]

[Alternative text: Members of the Compliance Committee shall be [elected][appointed] by the Conference of the Parties for the period of four years, this being a full term. At the meeting at which the decision to establish this mechanism is adopted, the Conference of the Parties shall [elect][appoint]“X” members to serve half a term, and “Y” members to serve a full term. Each time thereafter, the Conference of the Parties shall [elect][appoint] for a full term new members to replace those whose term has expired, or is about to expire. Members shall not serve for more than two consecutive terms.]

#### Officers of the Compliance Committee

8. The Compliance Committee shall elect its own officers. For the election, due consideration shall be given to an equitable geographic distribution and a balance between [developed and developing][importing and exporting] Parties.

#### Meetings of the Compliance Committee

9. The Compliance Committee shall hold meetings [normally twice a year][with the periodicity to be determined at its first meeting, which may be changed at its subsequent meetings on the basis of the work required of the Committee]. [In determining the date of the meeting, due consideration should be given to the meeting schedules of][Where possible, the meetings are to be held in conjunction with meetings of] the Conference of the Parties and other relevant subsidiary bodies. It may hold additional meetings as required.

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

#### Decision-making in the Compliance Committee

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

#### Public and confidential information

12. The report of the meetings of the Committee shall be available to the public. [The information managed under the compliance mechanism shall base itself on the principle of openness with confidentiality as an exception.]

13. Confidential information [as identified by a Party] shall be treated as such throughout [and after] the process.

#### The secretariat

14. The secretariat shall 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.

15. The secretariat may receive relevant information from all sources [in conformity with the provisions of these procedures and mechanisms and the Convention][in accordance with the rules on handling of such information to be adopted under the compliance mechanism].

#### Reporting to the Conference of the Parties

16. The Compliance Committee shall submit a report to each ordinary meeting of the Conference of the Parties for [its consideration and necessary action][information]. Such report may presents:

(a) The work that the Committee has undertaken in fulfilling its functions concerning facilitation of individual States' compliance;

(b) Conclusions or recommendations of the Committee concerning general compliance issues for consideration of the Conference of the Parties;

(c) Any suggestions on the future work of the Committee and/or the Conference of the Parties on general compliance issues for approval of the Conference.

Relationship with dispute settlement and other provisions of the Convention

17. The compliance mechanism shall be implemented without prejudice to article 20 of the Convention.

Relationship with other subsidiary bodies or those established under different conventions

18. 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.

19. 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

20. 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.]

21. 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 [from all sources] through the implementation of the provisions of the Convention.]

#### Consultation

22. 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][Identify the likely cause(s) of a Party's compliance problems].

#### Measures regarding non-compliance

23. The Compliance Committee, once it has determined that non-compliance exists or will be in existence, shall 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, in accordance with international law, to restore compliance [where the Conference has the authority to impose such measure], including the following:

(i) [Advice;]

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

(iii) Other facilitative incentive measures;

[and , in case of repeated or continued non-compliance and where the measures (i) to (iii) above have been exhausted:

(iv) Issuance of cautions; or

(v) Other measures to bring a Party back into compliance, including certain forms of sanctions: an indicative list of such other measures is to be established by the Conference of the Parties].

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

Monitoring

25. The Compliance Committee shall monitor the consequences of the action taken to rectify non-compliance or the source of possible non-compliance [with respect to the Party concerned, through its report to the Committee, on remedial action it has taken against benchmarks and according a timeframe agreed between the Party and the Committee].

Review of the compliance mechanism

26. The Conference of the Parties shall regularly review the implementation of the compliance mechanism and the programme of work of the Compliance Committee.

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