

SC-3/20: Non-compliance

The Conference of the Parties,

Recalling article 17 of the Stockholm Convention,

Mindful that procedures and institutional mechanisms are called for under article 17 for determining non-compliance with the provisions of the Convention and for treatment of Parties found to be in non-compliance,

1. *Decides* to negotiate further and to consider for adoption at its fourth meeting the procedures and institutional mechanisms on non-compliance required under article 17 of the Convention;

2. *Decides also* that the draft text contained in the annex to the present decision, bearing in mind the proposal of the Chair of the contact group contained in the appendix to the draft text, shall be the basis for its further work on the procedures and institutional mechanisms at its fourth meeting.

Annex to decision SC-3/20

[[Non-compliance][Compliance] procedures under Article 17 of the Stockholm Convention¹

Objective, nature and underlying principles

1. The objective of the procedures and institutional mechanisms (hereinafter referred to as “the procedures”) is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor, assist in, advise on and aim to secure the implementation of and compliance with the obligations under the Convention.

[2. The procedures shall be administered in a manner that is simple, effective, non-confrontational, non-adversarial, forward-looking, flexible, transparent, fair, predictable and cooperative.²

3. The procedures shall complement the work performed by other Convention bodies and the financial mechanism established under Article 13 of the Convention.

4. All obligations under the Convention are subject to the present non-compliance procedures and mechanisms. The non-compliance procedure shall take into account [all principles of the Convention and the] special needs of developing country Parties and Parties with economies in transition and the specific characteristics of the Convention, such as Articles 12, 13 and 7.]

The Compliance Committee

Establishment

5. A Compliance Committee, hereinafter referred to as the “Committee”, is hereby established.

Composition

6. The Committee shall consist of [10] [15] [19] [20] members. Members shall be experts nominated by Parties and elected by the Conference of the Parties. In the election of members, due consideration shall be given to [the principle of equitable geographical representation [of the regional groups of the United Nations]] [a balance between developed and developing country Parties and Parties with economies in transition] and gender balance.

7. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall act objectively and in the best interests of the Convention.

Election of members

1 The following text will be inserted into a decision adopting these procedures: “The following procedures and institutional mechanisms have been developed in accordance with Article 17 of the Stockholm Convention, hereinafter referred to as ‘the Convention’.”

2 To be reflected in the decision by which the procedures are adopted as a preambular paragraph: “The procedures shall be applied in an expeditious manner in order to ensure that the threat to human health and the environment caused by a Party’s failure to comply with provisions of the Convention is minimized.”

8. At the meeting at which the present decision is adopted, the Conference of the Parties shall elect half the members for one term and half the members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of the present procedures and mechanisms, "term" shall mean the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.

9. If a member of the Committee resigns or is otherwise unable to complete her or his term of office or to perform her or his functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the term.

Officers

10. The Committee shall elect its own Chair. A Vice-chair and a rapporteur shall be elected, on a rotating basis, by the Committee in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

Meetings

11. The Committee shall hold meetings as necessary, at least once a year and whenever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

12. [XX]³ members of the Committee shall constitute a quorum.

13. Subject to paragraph 22 below, the meetings of the Committee shall be open to Parties and the public unless the Committee decides otherwise. When the Committee is dealing with submissions pursuant to paragraph 17, the meetings of the Committee shall be open to Parties and closed to the public unless the Party whose compliance is in question agrees otherwise.

14. The Parties or observers to whom the meeting is open shall not have a right to participate in the meeting unless the Committee and the Party whose compliance is in question agree otherwise.

Decision-making

[15. The Committee shall [make every effort to] reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a [two-thirds][three-quarters] majority of the members present and voting [or by six members, whichever is greater]. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members.]

16. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. When a member finds himself or herself faced with a direct or indirect conflict of interest, or is a citizen of a Party whose compliance is in question, that member shall bring the issue to the attention of the Committee before consideration of the matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter.

Procedures for submissions

Submissions

17. Submissions to the Committee may be made by:

(a) A Party which decides that, despite its best endeavours, it is, or will be, unable to comply with its obligations under the Convention. Any submission under this subparagraph shall be made in writing, through the Secretariat, and should include details as to which specific obligations are concerned and an assessment of the reason why the Party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, shall be provided. Any such submission may include suggestions for solutions which the Party considers may be most appropriate to its particular needs;

(b) A Party that is affected or may be affected by another Party's difficulties in complying with the Convention's obligations. Any Party intending to make a submission under this subparagraph should before so doing undertake consultations with the Party whose compliance is in question. Any submission made under this subparagraph shall be made in writing, through the Secretariat, and is to include details as to which specific obligations are concerned and information substantiating the submission];

³ This number will be decided once the number of members in the committee is decided. Representatives at the first meeting of the Open-ended Working Group suggested a range of options including two-thirds or three-quarters of the size of the committee or, if the committee consists of 10 members, a quorum of 8.

[(c) The Secretariat, if, while acting pursuant to paragraph 2 of Article 20 of the Convention, it becomes aware that a Party may face difficulties in complying with its obligations under the Convention on the basis of the second and subsequent reports received pursuant to Article 15, provided that the matter has not been resolved within ninety days by consultation with the Party concerned. Any submission made under this subparagraph shall be made in writing and shall set out the matter of concern, the relevant provisions of the Convention and the information substantiating the matter of concern.

OR

(c alt) The Committee, if a Party's second or subsequent report to the Conference of the Parties under Article 15 indicates difficulties in complying with its obligations under the Convention.]

18. The Secretariat shall forward submissions made under subparagraph 17 (a) above, within fifteen days of receipt of such submissions, to the members of the Committee for consideration at the Committee's next meeting.

[19. The Secretariat shall, within fifteen days of receipt of any submission made under subparagraph 17 (b) above, send a copy to the Party whose compliance with the Convention is in question and to the members of the Committee for consideration at the Committee's next meeting.]⁴

[20. The Secretariat shall send any submission it makes in accordance with paragraph 17 (c) above directly to the Committee and the Party whose compliance is in question within fifteen days of the conclusion of the ninety-day period referred to in paragraph 17 (c) above;]⁵

21. A Party whose compliance is in question may present responses or comments at every step of the proceedings described in the present procedures and mechanisms.

22. Such Party shall be entitled to participate in the consideration of the submission by the Committee. For this purpose the Committee shall invite such a Party to participate in the discussions on the submission no later than sixty days before the start of the discussions. Such Party, however, may not take part in the elaboration of a recommendation of the Committee.⁶

23. Comments or additional information in response to a submission, provided by a Party whose compliance is in question, should be forwarded to the Secretariat within ninety days of the date of receipt of the submission by that Party, unless the Party requests an extension. Such extension may be provided by the Chair, with a reasonable justification, for a period of up to 90 days. Such information shall be immediately transmitted to the members of the Committee for consideration at the Committee's next meeting. [Where a submission has been made pursuant to subparagraph 17 (b) above, the information shall be forwarded by the Secretariat to the Party that made the submission.]

24. The Committee shall share its draft conclusions and recommendations with the Party concerned for consideration and an opportunity to comment within ninety days of receipt of the draft by the Party. Any such comments are to be reflected in the report of the Committee.

25. The Committee may decide not to proceed with submissions which it considers to be:

- (a) De minimis;
- (b) Manifestly ill-founded.

Facilitation by the Committee

26. The Committee shall consider submissions made to it in accordance with paragraph 17 above with a view to establishing the facts and the root causes of the matter of concern and to assisting in its resolution, and may after consultation with the Party whose compliance is in question:

- (a) Provide advice;
- (b) Issue non-binding recommendations, including on establishing and strengthening domestic regulatory measures and monitoring, as appropriate, and on steps to remedy the non-compliance situation;

4 This paragraph is in brackets as paragraph 17 (b) is still in brackets.

5 This paragraph is in brackets as paragraph 17 (c) is still in brackets.

6 One representative considered that this paragraph referred to a Party-to-Party trigger, the inclusion of which has not yet been agreed.

- (c) Following consideration of the need for technical and financial assistance, facilitate technical and financial assistance, including by providing advice on sources and modalities of technology transfer, training and other capacity-building measures;
- (d) Request the Party concerned to develop a voluntary compliance action plan, including timelines, targets and indicators and submission of progress reports within a timeframe to be agreed upon by the Committee and the Party concerned, and provide information and advice, upon request, in the development of such a plan;
- (e) Provide assistance, upon request, in the review of the implementation of the action plan;
- (f) Pursuant to subparagraph (d) above, report to the Conference of the Parties on efforts made by the Party concerned to return to compliance and should maintain the case as an agenda item of the Committee until the matter is adequately resolved.

Possible action by the Conference of the Parties

27. If, after undertaking the facilitation procedure set forth in paragraph 26 above and taking into account the cause, type, degree, duration and frequency of compliance difficulties, including the financial and technical capacities of a Party whose compliance is in question and the extent to which financial or technical assistance has been previously provided, the Committee considers it necessary to pursue further action to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider one or more of the following actions [, to be taken in accordance with international law]:

- (a) Providing further support under the Convention for the Party concerned, including further advice and the facilitation, as appropriate, of access to financial resources, technical assistance, technology transfer, training and other capacity-building measures;
- (b) Providing advice regarding future compliance in order to help Parties implement the provisions of the Convention and avoid non-compliance;
- [(c) Issuing a statement of concern regarding current non-compliance;]
- [(d) Requesting the Executive Secretary to make public cases of non-compliance;]
- [(e) In case of repeated or persistent non-compliance, [as a last resort,] suspending rights and privileges under the Convention, in particular rights under Articles 3, 4, 12 and 13 of the Convention[undertaking any final action that may be required to achieve the objectives of the Convention;]]
- (f) The Conference of the Parties considers and undertakes any additional action that may be required for the achievement of the objectives of the Convention under Article 19(5)(d).

[28. In case a developing country is found to be non-compliant because of a lack of technical and financial assistance, sub-paragraphs 27 (c)–(f) shall not be applicable.]⁷

Monitoring

29. The Committee should monitor the consequences of action taken in pursuance of paragraphs 26 and 27 above, including efforts made by the Party concerned to return to compliance, maintain the case as an agenda item of the Committee until the matter is adequately resolved, and report on it to the Conference of the Parties pursuant to paragraph 33.

Information

Consultation and information

- 30. In carrying out its functions, the Committee may:
 - (a) Request further information from all Parties, through the Secretariat, on issues of general compliance under its consideration;
 - (b) Seek the advice of the Conference of the Parties and consult with other bodies of the Convention, including the Persistent Organic Pollutants Review Committee;
 - (c) Exchange information with the Council of the Global Environment Facility, in particular for the purpose of drawing up its recommendations, related to the provision of financial assistance under Articles 12 and 13 of the Convention;
 - [(d) Request further information from experts, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;

⁷ One delegation wished to retain this provision until the outcome of negotiations on paragraph 27.

(d alt) Request further information from any source and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party whose compliance is in question or as directed by the Conference of the Parties;

(d alt2) Use and request information from all sources it considers relevant;]

(e) Undertake, with the agreement of any Party, information gathering in that Party's territory for the purpose of fulfilling the functions of the Committee;

(f) Consult with the Secretariat and draw upon its expertise and knowledge base and request through the Secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration;

(g) Take into consideration national reports of Parties required by the Convention or submitted pursuant to decisions of the Conference of the Parties with a view to gathering information relevant to non-compliance.

Handling of information

31. Subject to paragraph 5 of Article 9 of the Convention, the Committee, any Party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

General procedures

General compliance issues

32. The Committee may examine systemic issues of general compliance and implementation of interest to all Parties when:

(a) The Conference of the Parties so requests;

(b) The Secretariat, while acting pursuant to its functions under the Convention, obtains information from Parties on the basis of which the Committee decides that there is a need for an issue of general non-compliance to be examined and for a report thereon to be made to the Conference of the Parties;

(c) The Secretariat draws the attention of the Committee to relevant information it has obtained through reports by Parties under the Convention and other sources.

Reports to the Conference of the Parties

33. The Committee shall submit a report to each ordinary meeting of the Conference of the Parties reflecting:

(a) The work that the Committee has undertaken;

(b) The conclusions and recommendations of the Committee;

(c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work, for the consideration and approval of the Conference of the Parties.

Other subsidiary bodies

34. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Stockholm Convention body, the Committee may consult with that body.

Other multilateral environmental agreements

35. Where relevant, the Committee may solicit information, upon request by the Conference of the Parties [, or directly,] from compliance committees dealing with hazardous substances and wastes under the auspices of other relevant multilateral environmental agreements and report on those activities to the Conference of the Parties.

Review of the compliance mechanism

36. The Conference of the Parties shall regularly review the implementation and effectiveness of the procedures.

Relationship with dispute settlement

37. The procedures shall be without prejudice to Article 18 of the Convention.

Rules of procedure

38. The rules of procedure of the Conference of the Parties shall apply *mutatis mutandis* to the meetings of the Committee except as otherwise provided for in the procedures.

39. The Committee may develop any additional rules, including those on languages, that may be required and shall submit them to the Conference of the Parties for its consideration and approval.]

Appendix to decision SC-3/20

Chair's proposal

~~Non-compliance~~ **Compliance** procedures under Article 17 of the Stockholm Convention

2. The procedures shall be administered in a manner that is simple, effective, non-confrontational, non-adversarial, forward-looking, flexible, transparent, fair, predictable and cooperative ~~in nature~~.

3. The procedures shall complement the work performed by other Convention bodies and the financial mechanism established under Article 13 of the Convention.

4. All obligations under the Convention are subject to the present non-compliance procedures and mechanisms. The non-compliance procedure shall take into account ~~all principles of the Convention and the~~ special needs of developing country Parties and Parties with economies in transition and the specific characteristics of the Convention, such as Articles 12, 13 and 7.]

6. The Committee shall consist of ~~{10}{15}{19}{20}~~ members. Members shall be experts nominated by Parties and elected by the Conference of the Parties. In electing members, due consideration shall be given to ~~{the principle of equitable geographical representation {of the regional groups of the United Nations}} {a balance between developed and developing country Parties and Parties with economies in transition}~~ and gender balance.

Comment: The release of all brackets in the principles section is meant to balance off the very strong views supporting their importance for this document, and the equally strong views on having a committee that is a manageable size and representative in the traditional manner.

~~{16. — The Committee shall [make every effort to] reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a [two thirds]{three quarters} majority of the members present and voting [or by six members, whichever is greater]. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members.}~~

17. Submissions to the Committee may be made by:
[...]

{(b) A Party that is affected or may be affected by another Party's difficulties in complying with the Convention's obligations. Any Party intending to make a submission under this subparagraph should before so doing undertake consultations with the Party whose compliance is in question. Any submission made under this subparagraph shall be made in writing, through the Secretariat, and is to include details as to which specific obligations are concerned, and information substantiating the submission};

{(c) The Secretariat, if, while acting pursuant to Article 20 (2) of the Convention, it becomes aware that a Party may face difficulties in complying with its obligations under the Convention on the basis of the second and subsequent reports received pursuant to Article 15, provided that the matter has not been resolved within ninety days by consultation with the Party concerned. Any submission made under this subparagraph shall be made in writing and shall set out the matter of concern, the relevant provisions of the Convention and the information substantiating the matter of concern. }

OR

(c alt) The Committee, if a Party's second or subsequent report to the Conference of the Parties under Article 15 indicates difficulties in complying with its obligations under the Convention.

27. If, after undertaking the facilitation procedure set forth in paragraph 26 above and taking into account the cause, type, degree, duration and frequency of compliance difficulties, including the financial and technical capacities of a Party whose compliance is in question, and the extent to which financial or technical assistance has been previously provided, the Committee considers it necessary to pursue further action to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider one or more of the following actions ~~to be taken in accordance with international law, ~~including~~~~:

(a) Providing further support under the Convention for the Party concerned, including further advice and the facilitation, as appropriate, of access to financial resources, technical assistance, technology transfer, training and other capacity-building measures;

(b) Providing advice regarding future compliance in order to help Parties implement the provisions of the Convention and avoid non-compliance;

(c) Issuing a statement of concern regarding current non-compliance;

~~[(d) Requesting the Executive Secretary to make public cases of non-compliance]~~

~~[(e) In cases of repeated or persistent non-compliance, [as a last resort,] suspending rights and privileges under the Convention, in particular rights under Articles 3, 4, 12 and 13 of the Convention [undertaking any final action that may be required to achieve of the objective of the Convention.]]~~

(d) The Conference of the Parties considers and undertakes any additional action that may be required for the achievement of the objectives of the Convention under Article 19 (5) (d).

~~[28. In case a developing country is found to be non-compliant because of a lack of technical and financial assistance, sub-paragraphs 28 (e)–(f) shall not be applicable.]~~

Comment: To balance off concerns about triggers, consensus decision-making is proposed. The current provision on decision-making is deleted, leaving the rules of procedure of the Conference of the Parties to apply, which require consensus. Due to concerns expressed about a secretariat trigger, two versions of this were retained, along with a (c) alt which tries to accomplish the same thing but leaves the secretariat out of the equation. Again, given the importance of these two triggers to most Parties, the concerns of other Parties are also addressed through deletion of subparas. (d) and (e) of para. 28. With those subparas removed, there is no need for 29.

30. In carrying out its functions, the Committee may:

[subparagraph (d) deleted]

(d alt) Request further information from any reliable source and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party whose compliance is in question or as directed by the Conference of the Parties;

[subparagraph (d alt2) deleted]

35. Where relevant, the Committee may solicit information, upon request by the Conference of the Parties ~~[or directly,]~~ from compliance committees dealing with hazardous substances and wastes under the auspices of other relevant multilateral environmental agreements and report on these activities to the Conference of the Parties.

Comment: although most delegations favoured retaining this, they indicated they could be flexible for the one delegation who has insisted upon this.