



United Nations
Environment
Programme



Distr.
GENERAL

UNEP/POPS/INC.6/17
31 January 2002

ORIGINAL: ENGLISH

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN
INTERNATIONAL LEGALLY BINDING INSTRUMENT
FOR IMPLEMENTING INTERNATIONAL ACTION ON
CERTAIN PERSISTENT ORGANIC POLLUTANTS

Sixth session

Geneva, 17-21 June 2002

Item 5 of the provisional agenda*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

Non-compliance **

Note by the Secretariat

1. Article 17 of the Stockholm Convention on Persistent Organic Pollutants states: “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 the treatment of Parties found to be in non-compliance.”
2. The Conference of Plenipotentiaries on the Stockholm Convention, held in Stockholm on 22 and 23 May 2001, in paragraph 4 of its resolution 1, invited the Intergovernmental Negotiating Committee “to focus its efforts during the interim period on those activities required or encouraged by the Convention that will facilitate the rapid entry into force and effective implementation of the Convention upon its entry into force, including, for consideration by the Conference of the Parties the development of: ... modalities and procedures relating to non-compliance ...” (UNEP/POPS/CONF/4, Appendix 1).
3. Taking into consideration the above-mentioned provisions of the Convention and the decision taken by the Conference of Plenipotentiaries, the Committee may wish to initiate the development of a procedure and institutional mechanism for determining non-compliance with the provisions of the Convention, with a further aim of developing a procedure for treatment of Parties found to be in non-compliance.

* UNEP/POPS/INC.6/1.

** Stockholm Convention, Article 17; Conference of Plenipotentiaries of the Stockholm Convention, resolution 1, paragraph 4.

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4. The present note outlines the issue of non-compliance within the provisions of multilateral environmental agreements. It does not represent an analysis of compliance regimes adopted or still under development under multilateral environmental agreements, but rather a summary of issues addressed in the development of such regimes.

5. The experience in development of non-compliance regimes under previously adopted multilateral environmental agreements suggests that several rounds of consultations are conducted in order to draw up an initial model of the regime. The issue of non-compliance has been considered, as a general rule, in an overall framework of the implementation of a given convention, taking due account of provisions related to the implementation of the convention, such as reporting, evaluation of effectiveness, capacity-building and dispute settlement, depending on the provisions in each multilateral environmental agreement.

6. On the basis of the analysis of non-compliance provisions adopted or still under development under existing agreements, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the secretariat identified the following elements that have been addressed by the negotiators and that may constitute points of reference for the consultations on the non-compliance regime for the Stockholm Convention:

(a) Objective of the non-compliance regime

Recent multilateral environmental agreements aim at making the non-compliance mechanism non-confrontational and focus mainly on assisting Parties experiencing difficulties in meeting their obligations with the agreement. A review of the implementation of the agreement, with the aim of preventing non-compliance, incentives to facilitate compliance and disincentives to prevent cases of non-compliance play an important role in promoting compliance with the provisions of the agreement.

(b) Institutional mechanism

(i) Conference of the Parties

The role of the Conference of the Parties in general issues, as well as individual cases of non-compliance, is addressed.

(ii) A compliance committee

A number of multilateral environmental agreements opt for a compliance committee/body whose mandate, functions, membership, procedures for meetings, decision-making and reporting processes are considered within the framework of developing non-compliance procedures.

(c) Invocation of the procedures

(i) Authority

The authority to invoke the non-compliance procedures may be attributed to a Party or group of Parties, the non-compliant Party, the Conference of the Parties, and/or the compliance committee.

(ii) Process

The process of submission of cases of non-compliance by one of the above-mentioned authorities is set up. It usually includes provisions on the information to be submitted, verification procedures with the non-compliant Party, and procedures for consultation with the invoking authority.

(d) Secretariat

The role of the secretariat in the process, especially in collection and verification of information, is identified.

(e) Obligations

The non-compliance regime may include a comprehensive evaluation of obligations under the agreement, the breach of which would trigger the application of the regime, thus identifying potential cases of non-compliance specific to each agreement and the criteria to determine non-compliance.

(f) Collection of information

The process of collection of information on general non-compliance issues or specific cases of non-compliance may be identified. It would include the types of information to be collected, ways of corroboration of information, role of assessment of implementation and reporting procedures, issues of transparency and confidentiality of different types of information.

(g) Relationship with other provisions of the Stockholm Convention

The implementation of the following provisions of the Convention may influence the structure of and procedures under the non-compliance regime: reporting mechanism under the Convention (Article 15); evaluation of the effectiveness of the Convention (Article 16); dispute settlement procedures (Article 18); implementation plans (Article 7); information exchange (Article 9), technical assistance (Article 12). Therefore, due consideration shall be given to these provisions in framing the non-compliance regime.

(h) Relationship with other agreements

The possibility to share with other agreements information and expertise in non-compliance and non-compliance procedures and ways of seeking solutions for overlapping cases is usually foreseen in non-compliance regimes.

(i) Treatment of Parties found to be in non-compliance

Non-compliance regimes mainly focus on restoring compliance. A primary means to do so is through the development of a plan to restore compliance. Such a plan would include advice and assistance to the Party concerned, recommendation of action by the Conference of the Parties, and provisions for monitoring the implementation of the plan. The plan may also include a range of other measures aimed at restoring compliance.

It is suggested that the issue of treatment of Parties found to be in non-compliance be considered in conjunction with the issue of liability under the Stockholm Convention, and consultations with the aim of developing a procedure for treatment of Parties found to be in non-compliance be initiated upon a decision on the issue of liability being taken by either the Committee, or the Conference of the Parties, as the case may be.

Possible action by the Committee

7. The Committee may wish to initiate consideration of procedures related to non-compliance with the Convention. Upon consideration of the issue, the Committee may wish to call for comments from its members on the elements identified in the present note. For consideration at further sessions of the Committee or the first session of the Conference of the Parties, as the case may be, the Committee may also wish to request the secretariat to develop a draft model for a procedure to handle cases of non-compliance with the provisions of the Convention based on work undertaken in other relevant international agreements and inputs received from members of the Committee.
