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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

Settlement of disputes **

Note by the secretariat

1. Under paragraphs 2 and 3 of Article 18 of the Stockholm Convention on Persistent Organic Pollutants, one of the means for settlement of a dispute that a Party may declare that it recognizes as compulsory in relation to any Party accepting the same obligation is:

“Arbitration in accordance with procedures to be adopted by the Conference of the Parties in an annex as soon as practicable.”

2. Paragraph 6 of Article 18 of the Convention states that:

“If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2 (*of Article 18*), and if they have not been able to settle their dispute within twelve months following notification by one party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute... Additional procedures relating to the conciliation commission shall be included in an annex to be adopted by the Conference of the Parties no later than at its second meeting.”

* UNEP/POPS/INC.6/1.

** Stockholm Convention, Article 18; Conference of Plenipotentiaries of the Stockholm Convention, resolution 1, paragraphs 2, 3 and 6.

3. The secretariat has reviewed the relevant provisions contained in or developed under the following multilateral environmental conventions: the Vienna Convention for the Protection of the Ozone Layer; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the Convention on Biological Diversity; and the latest draft of the settlement of dispute annex, developed under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade as agreed upon by the last, eighth, session of its Intergovernmental Negotiating Committee (see UNEP/FAO/PIC/INC.8/19, Annexes V and VI). Provisions of other relevant international instruments have also been taken into consideration.
4. On the basis of the above-mentioned provisions the secretariat developed a draft annex on arbitration and conciliation to the Stockholm Convention. The draft annex is attached in the appendix to the present note.

Possible action by the Committee

5. The Committee may wish to review the draft rules on arbitration and conciliation as found in the appendix and consider forwarding them with any amendments to the first meeting of the Conference of the Parties.

Appendix

Annex

DRAFT RULES ON ARBITRATION

The arbitration procedure for purposes of paragraph 2 (a) of Article 18 of the Convention shall be as follows.

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 18 of the Convention by written notification addressed to the other party to the dispute. The notification shall be accompanied by a statement of the claim, together with any supporting documents, and state the subject-matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that the parties are referring a dispute to arbitration pursuant to Article 18. The notification shall be accompanied by the written notification of the claimant party, the statement of claim and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

Article 2

In disputes between two parties, an arbitral tribunal shall be established. It shall consist of three members.

2. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The President of the tribunal shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

5. If the parties do not agree on the subject-matter of the dispute before the President of the arbitral tribunal is designated, the arbitral tribunal shall determine the subject-matter.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of the Convention and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

A Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. It shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that decision, may be submitted by any of them for decision to the arbitral tribunal which rendered it.

DRAFT RULES ON CONCILIATION

The conciliation procedure for purposes of paragraph 6 of Article 18 of the Convention shall be as follows.

Article 1

1. A request by a party to a dispute to establish a conciliation commission in consequence of paragraph 6 of Article 18 shall be addressed in writing to the Secretariat. The Secretariat shall forthwith inform all Parties accordingly.
2. The conciliation commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement.

Article 3

If any appointments by the parties are not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1, the Secretary-General of the United Nations shall, upon request by a party, make those appointments within a further two-month period.

Article 4

If the President of the conciliation commission has not been chosen within two months of the fourth member of the commission being appointed, the Secretary-General of the United Nations shall, upon request by a party, designate the President within a further two-month period.

Article 5

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, determine its own rules of procedure.
2. The parties and members of the commission are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the commission.

Article 6

The conciliation commission shall take its decisions by a majority vote of its members.

Article 7

The conciliation commission shall render a report with recommendations for resolution of the dispute within twelve months of being established, which the parties shall consider in good faith.

Article 8

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

Article 9

The costs of the Commission shall be borne by the parties to the dispute in shares agreed by them. The Commission shall keep the record of all its costs and shall furnish a final statement thereof to the parties.
