



**United Nations
Environment
Programme**

Distr.
GENERAL

UNEP/POPS/INC.7/21
20 February 2003

ORIGINAL: ENGLISH

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

Seventh session
Geneva, 14-18 July 2003

Item 5 of the provisional agenda*

Preparations for the Conference of the Parties

SYNTHESIS OF VIEWS ON NON-COMPLIANCE**

Note by the secretariat

Introduction

1. Article 17 of the Stockholm Convention on Persistent Organic Pollutants 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 the treatment of Parties found to be in non-compliance.
2. At its sixth session, the Intergovernmental Negotiating Committee initiated deliberations for the development of the draft non-compliance procedures. In its decision INC-6/18, the Committee invited Governments and the secretariats of multilateral environmental agreements to provide the secretariat with their views on non-compliance addressed in article 17 and requested the secretariat to prepare and submit to the Committee at its seventh session a report that provides a compilation of views submitted and a synthesis of those views.

* UNEP/POPS/INC.7/1.

** Stockholm Convention on Persistent Organic Pollutants, article 17; decision INC-6/18 (in document UNEP/POPS/INC.6/22, annex I); document UNEP/POPS/INC.7/INF/8.

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3. The secretariat circulated the request to all Governments to provide it with their views on non-compliance and collected the views submitted. The following Governments and regional economic integration organizations submitted comments on non-compliance pursuant to decision INC-6/18: Argentina, Australia, Canada, Colombia, the Republic of Moldova, Switzerland, the United States of America and the European Community.

4. Those comments, as submitted, are reproduced in document UNEP/POPS/INC.7/INF/8. The range of views expressed in the comments is summarized below and arranged into sections by issue. Please note that the secretariat did not attempt to consolidate the views into a single approach or view, and that many of the views expressed are mutually exclusive.

I. SYNTHESIS OF VIEWS ON NON-COMPLIANCE

A. Timing, process and further work on non-compliance issues

5. The comments received reflected four different approaches to the issue:

(a) One Government expressed the view that the non-compliance regime should be developed as soon as practicable (article 17), and that matters which are more pressing for the Convention should be given higher priority. The practical needs of the Convention should guide the timing of development of a non-compliance regime, and practical experience of the operation of the Convention will be needed to understand the kind of compliance problems which may arise;

(b) Another Government stated that the issues to be resolved at the first and second meeting of the Conference of the Parties should be given priority by the legal drafting group, but work on non-compliance mechanisms should continue in the interim period;

(c) In several comments the view was expressed that efforts to develop a non-compliance procedure should start as early as possible, beginning at the first meeting of the Conference of the Parties or shortly thereafter. It was suggested also that a compliance regime should be in place on the entry into force of the Convention;

(d) One Government was of the opinion that the secretariat should establish a first draft text identifying options in order to assist Governments in opening negotiations on the issue in an open-ended working group, which should start work as soon as possible.

B. Nature and objectives of the non-compliance regime

6. The desired nature of non-compliance procedures was described in all comments received using non-conflictual and complementary terms such as non-confrontational, non-adversarial, non-punitive, facilitative, flexible, fair, transparent, efficient, cost-effective, simple, and focused on cooperation between Parties.

7. In several comments the view was expressed that the objective of the compliance regime should be to assist Parties experiencing difficulties in meeting their obligations and to facilitate the provision of various types of assistance. Compliance procedures should focus on preventing potential incidents of non-compliance, should identify, at the earliest stage possible, difficulties encountered by Parties and should encourage Parties to maintain compliance.

C. Institutional arrangements

8. The majority of comments received on the issue expressed the view that the Conference of the Parties must have the ultimate authority in ensuring compliance. Several supported the establishment of a compliance committee or other compliance body. Some of those comments included statements to the effect

that discussions on the mandate, functions, composition and procedures of a compliance committee should begin immediately or as soon as possible.

9. Concerning the possible functional aspects of the compliance committee or body, the following views were expressed:

(a) In some comments the view was expressed that the compliance committee should be a standing body. One Government was of the opinion that it should be an ad hoc body with the status of a subsidiary body of the Conference of the Parties;

(b) Two different points of view were expressed on the composition of the compliance committee or body:

(i) That it should consist of either a limited number of Parties or experts acting in their personal capacities and providing legal and technical expertise; or

(ii) That it should consist of Parties elected by the Conference of the Parties which would then designate individuals to represent them;

(c) In the majority of comments received on the issue, it was pointed out that the composition of a compliance committee should be representative of regions, and that consideration should be given to equitable geographical distribution;

(d) According to several of the comments received, the compliance committee's functions could include examining cases of non-compliance, reviewing specific and general issues of compliance, advising Parties, facilitating the provision of assistance, deciding on the treatment of Parties found to be in non-compliance, and making recommendations to the Conference of the Parties;

(e) One Government expressed the view that the compliance committee should be empowered to decide as many matters as possible in order to provide timely responses, and that the Conference of the Parties should not be involved in dealing with individual cases;

(f) Some Governments were of the view that the compliance body should make recommendations to the Conference of the Parties, which would then decide whether to act on those recommendations;

(g) One Government stressed that the final word should remain with the Conference of the Parties when sanctions were considered;

(h) One Government suggested that recommendations of the compliance committee to the Conference of the Parties, together with its reports and the Conference's decisions on non-compliance, should be made public;

(i) The submission from the European Community provided a draft text of a possible decision of the Conference of the Parties on a compliance committee (see document UNEP/POPS/INC.7/INF/8).

D. Invocation of procedures and procedural safeguards

10. All comments received on this issue were to the effect that a Party should be able to initiate non-compliance procedures with respect to itself.

11. In several comments, the view was expressed that a Party or Parties should be able to invoke the procedures with regard to another Party or Parties, although one Government cautioned that such cases should be considered carefully.

12. Regarding procedures to trigger non-compliance procedures by the Conference of the Parties and the implementation or compliance committee, a range of views was expressed, inter alia that the question should be studied further; that the Conference of the Parties and the compliance or implementation committee alone should have the power to trigger the non-compliance procedures; that submissions by the secretariat might serve as a trigger, or as a trigger only in respect of a limited number of obligations; and that non-governmental organizations and civil society should not be entitled to invoke non-compliance procedures;

13. One Government did not support the use of the phrase “to invoke non-compliance procedures” and took the view that it should be replaced by “to refer matters to the compliance body”, with the proviso that the compliance body would decide whether procedures were triggered. The same Government felt that referrals should be made by a Party with respect to its own compliance, and by the Conference of the Parties.

14. Several comments referred directly or indirectly to the need to include procedural safeguards in the procedure, such as communication of relevant information to the actors, the opportunity for the allegedly non-compliant Party to make presentations, support of submissions by corroborating information, time limits for procedural steps, the possibility of exclusion of ill-founded submissions and de minimis cases, and openness protection in respect of confidentiality.

E. Secretariat

15. Comments on this issue were to the effect that the main role of the secretariat in non-compliance procedures should be to collect information. One Government expressed the opinion that the degree of initiative allowed the secretariat in the matter should be considered carefully.

F. Obligations

16. There were two points of view on the issue:

(a) In several comments, the view was expressed that non-compliance procedures should apply to all obligations under the Convention;

(b) In other comments, Governments stated that non-compliance procedures should take into account the various kinds of obligations under the Convention – i.e., obligations that were variously collective, individual, susceptible to objective assessment or qualitative by their nature – and that certain obligations may not appropriately be addressed under a non-compliance regime.

G. Information

17. Most of the comments on this issue were to the effect that national reports would be crucial for information collection on general compliance matters, that other information provided by Parties should be made available to the Committee, and that Parties concerned should be able to comment on any information considered by the Committee. In several comments, the view was expressed that the question of confidentiality must be taken into consideration.

H. Relationship with other provisions of the Stockholm Convention

18. All comments on this issue stated that the non-compliance procedures should not duplicate other provisions in the Convention, such as the procedures for reporting, effectiveness evaluation, the settlement of disputes, and so on, and that the specific provisions of the Convention should be considered when framing the compliance mechanism. The common view was expressed that non-compliance procedures should not prejudice the dispute-settlement procedure.

I. Relationship with other multilateral environmental agreements

19. There were two mutually non-exclusive approaches to this issue:

(a) Several Governments stated that non-compliance procedures should not merely duplicate provisions codified in another convention. Efforts should be focused on developing a mechanism tailored for the Stockholm Convention. Within this first approach, one Government took the view that relationships of various kinds between the Stockholm Convention and other multilateral environmental agreements might be considered in the future. Others did not support that action either now or for the future, stating that the obligations, membership and work of compliance bodies differ under each agreement;

(b) Several other Governments took the view in their comments that synergies and linkages between the non-compliance procedures of the Stockholm Convention and those of other multilateral environmental agreements should be considered. The recently completed compliance mechanism for the Basel Convention¹ was mentioned by one Government as a significant contribution.

J. Measures in the event of non-compliance

20. There were also two points of view with regard to treatment of Parties with regard to non-compliance: whereas one Government stated that all Parties should be treated equally with respect to consideration of their compliance, in their comments other Governments supported the view that any special circumstances of the Party in question should be taken into account when considering facilitating its return to compliance.

21. Measures to be taken in the event of non-compliance that were mentioned in comments on the issue included measures aimed at restoring compliance, such as consultation, advice, assistance both financial and technical, development of compliance plans and submission of progress reports, and also statements of concern regarding non-compliance and issuance of recommendations to a Party on the matter. One Government specified that measures should be described as exactly as possible and applied in a flexible way, and that lack of capacity of Parties should be duly taken into account. Another Government stated that measures should be tailored to the specific case of non-compliance. In other comments, the view was expressed that provision should be made for monitoring of measures to rectify non-compliance.

22. Several Governments were of the opinion that consideration should be given to additional persuasive measures and disincentives to prevent cases of non-compliance, in particular in the event of serious or repeated non-compliance, and to the implications of such measures and disincentives for Parties where non-compliance is the result of lack of capacity. Such additional measures might include issuance of cautions, declarations of non-compliance, and, in the view of one Government, partial or full suspension of specific rights and privileges. That last, however, was not supported in other comments received.

23. One Government stressed that the issue of non-compliance was separate from any issue of liability that might arise under the Convention.

K. Review

24. There was a common view that the Conference of the Parties should be empowered to review the effectiveness of the non-compliance procedures and the work of the compliance committee.

L. Other issues

25. One Government set forth a two-part proposed structure for the non-compliance procedures: firstly, the institutional mechanisms, and secondly the procedures themselves. The need for transparency of the procedures, and for participation by civil society, was stressed.

¹ Decision VI/12 of the Conference of the Parties at its sixth meeting, appendix. In document UNEP/CHW.6/40.

II. POSSIBLE ACTION BY THE COMMITTEE

26. The Committee may wish to consider the views expressed by the Governments which made comments and decide whether further action with regard to non-compliance procedures is required and, if so, what the nature of such action might be.
