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**United Nations  
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**Stockholm Convention on Persistent Organic Pollutants  
Open-ended Ad Hoc Working Group on Non-Compliance**  
Geneva, 28–29 April 2006  
Item 3 of the provisional agenda\*

**Consideration of procedures and institutional mechanisms for  
determining non-compliance with the provisions of the Convention  
and for the treatment of Parties found to be in non-compliance**

**Procedures and mechanisms on non-compliance under Article 17  
of the Stockholm Convention**

**Note by the Secretariat**

1. Article 17 of the Stockholm Convention 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. In decision SC-1/14, the first meeting of the Conference of the Parties invited all Governments, both Parties and non-Parties, and relevant organizations to submit to the Secretariat their views and proposals on institutional mechanisms on non-compliance under Article 17. It also requested the Secretariat to prepare, for submission to the open-ended ad hoc working group, a compilation of the views and proposals submitted.
3. Pursuant to the above-mentioned request, as of 20 January 2006, the following Parties had submitted their views and proposals: Canada, European Community (submitted by the United Kingdom on behalf of the European Community and its member States), India, Japan, Mexico, New Zealand, Norway, Republic of Moldova and Switzerland. The Center for International Environmental Law, a relevant observer organization, also submitted its views and proposals. A compilation of these submissions is found in document UNEP/POPS/OEWG-NC.1/INF/1.
4. In decision SC-1/14, the Conference also requested the Secretariat to prepare, for submission to the open-ended ad hoc working group,

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\* UNEP/POPS/OEWG-NC.1/1.

“a draft text of procedures and institutional mechanisms on non-compliance under Article 17, reflecting different options and alternatives, on the basis of the views and proposals above and bearing in mind recent developments concerning compliance within multilateral environmental agreements”

The draft text consequently developed by the Secretariat is set out in the annex to the present note.

5. In preparing the draft text, the Secretariat took into account views and proposals submitted by Governments and relevant organizations. It also took into account recent developments concerning non-compliance in the context of other multilateral environmental agreements, including: the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention for the Protection of the Ozone Layer; and the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Recent developments under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade were also taken into account. The Secretariat also took into account common principles of international law relevant to compliance with international treaties.

6. The draft text contains, in its first part, a draft outline of the objective, nature and underlying principles of the procedures and mechanisms provided in the submissions. Upon agreement on these procedures and mechanisms, Parties may wish to consider including them in the draft text and explicitly describing them as its conceptual basis, following the example of some other multilateral environmental agreements. Alternatively, Parties may wish to present them in a separate paper as background information on the views provided.

7. In pursuance of decision SC-1/14, the draft text of procedures and mechanisms has been developed on the basis of views and proposals submitted to the secretariat and bearing in mind recent developments in this field, reflecting options and alternatives. It should be noted that while certain provisions of the draft reproduce widely shared views, there are divergent views regarding others. Options and alternatives, reflecting these divergent views, are identified in the draft with square brackets.

8. The entire draft text prepared by the Secretariat is enclosed in square brackets. This reflects the position of several Parties that development of operational processes under the Convention should be treated as a priority and that elaboration of a non-compliance regime should not be undertaken until such processes are complete.

#### **Possible action by the Working Group**

9. The Working Group may wish to consider and deliberate on the draft text in the annex to the present document and report on its work, including any recommendations it may wish to make, to the Conference of the Parties at its second meeting in accordance with paragraph 4 of decision SC-1/14.

## Annex

### **[Draft procedures and institutional mechanisms on non-compliance under the Stockholm Convention**

The following procedures and institutional mechanisms have been developed in accordance with Article 17 of the Stockholm Convention, hereinafter referred to as the “Convention”.

#### **Objective, nature and underlying principles**

1. The objective of the non-compliance 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 are intended to be simple, effective, non-confrontational and non-adversarial, forward-looking, flexible and cooperative in nature. 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.
3. The operation of the procedures shall be guided by the principles of transparency, fairness and predictability. Special needs of developing country Parties and Parties with economies in transition shall be taken into account.
4. The Conference of the Parties will act as the supreme authority in all matters related to compliance with the Convention. The procedures shall complement the work performed by other Convention bodies and the financial mechanism established under Article 13 of the Convention.
5. All obligations under the Convention are subject to the present non-compliance procedures and mechanisms. The non-compliance procedure, while respecting widely accepted principles of international law, takes into account the specific characteristics of the Convention, such as technical assistance under Article 12, financial mechanisms under Article 13 and implementation plans under Article 7 of the Convention.

#### **The Compliance Committee**

##### *Establishment*

6. A Compliance Committee, hereinafter referred to as the “Committee”, is hereby established [as a subsidiary body of the Conference of the Parties pursuant to paragraph 5 (a) of Article 19 of the Convention].

##### *Composition*

7. The Committee shall consist of [ten][fifteen][nineteen] members. Members shall be [experts, drawn from a list of individuals] nominated by Parties and elected by the Conference of the Parties. In electing members, due consideration shall be given to [the principle of equitable [gender and] geographical representation [of the regional groups of the United Nations]][and] [a balance between developed and developing country Parties and Parties with economies in transition].
8. Members shall have expertise and specific qualifications in the subject matter covered by the Convention, including in the scientific, technical, socio-economic and legal fields. Members shall serve in their personal capacity. They shall act objectively and in the best interests of the Convention.

##### *Election of members*

9. 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.

10. 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*

11. The Committee shall elect its own Chair [,three vice-chairs] [and] [a rapporteur][any other officers it deems appropriate] taking into account the principle of equitable geographical representation of the regional groups of the United Nations [and [on a rotating basis][balance] between developed and developing country Parties and Parties with economies in transition].

#### *Meetings*

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

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

14. [Subject to paragraph 15 below] the meetings of the Committee shall be open.

[15. Subject to paragraph 16 below, meetings of the Committee dealing with specific submissions relating to the compliance of a Party shall be closed to [Parties and] observers and the public unless the Committee and the Party whose compliance is in question agree otherwise.]

16. Where a submission is made with respect to the possible non-compliance of a Party, that 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. That Party, however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.

#### *Decision-making*

17. The Committee shall [make every effort to] reach agreement on all matters of substance by consensus. The report of any meeting of the Committee at which consensus is not reached shall reflect the views of all the Committee members.

18. [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-fourths] majority of the members present and voting [or by six members, whichever is greater].]

19. Decisions on matters of procedure shall be taken by a majority vote of the members present and voting.

20. If the question arises whether a matter is one of a procedural or a substantive nature, the Chair shall rule on the question. Any appeal against this ruling shall be put to the vote immediately and the Chair’s ruling shall stand unless overruled by a majority of the members present and voting.

21. If on matters other than elections a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.

22. In case a member of the Committee is a citizen of a Party whose compliance is question, that member shall recuse herself or himself from proceedings on the case.

#### *Decisions*

23. The Committee may adopt decisions [, binding upon the Party concerned,] and recommendations.

24. Subject to paragraphs 25 and 26 below, conclusions of the Committee on particular cases of non-compliance shall be deemed final decisions. These decisions shall be forwarded to the Party concerned for consideration and comments forthwith upon their adoption. Any such comments by the

Party shall be forwarded with the report submitted by the Committee under paragraph 49 below to the Conference of the Parties.

25. If, within a month upon adoption of a decision by the Committee, the Party concerned presents arguments or additional information demonstrating that the decision of the Committee is incorrect, the Committee may, should it so decide, reconsider its decision.

26. If a Party concerned by a decision of the Committee disagrees with the decision and the Committee decides not to reconsider it in accordance with paragraph 25 above or the Committee maintains its conclusions upon reconsideration of the decision, the matter may be submitted by the Party to the Conference of the Parties for consideration at its next ordinary meeting. Any such submission to the Conference of the Parties shall be considered a matter of substance for the purposes of the rules of procedure of the Conference.

27. The Conference of the Parties may, pending completion of proceedings initiated by the Committee, issue interim conclusions and recommendations on particular cases of alleged non-compliance.

### **Procedures for submissions**

#### *Submissions*

28. 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 has concerns about or is affected or likely to be affected by an alleged failure to comply with the Convention's obligations by another Party. 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 [should][shall] include details as to which specific obligations are concerned, and information substantiating the submission.];

[(c) The secretariat, if, while acting pursuant to its functions under the Convention, it becomes aware that a Party may face difficulties in complying with its obligations under the Convention, in particular on the basis of reports received pursuant to Article 15, provided that the matter has not been resolved within ninety days by consultation with the Party concerned. In such cases, the secretariat may also consider information received from bodies or agencies having observer status under paragraph 8 of Article 19 of the Convention. 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.]

29. In addition, the Committee may initiate a procedure if in the course of its functions it becomes aware that a Party may face difficulties in complying with its obligations under the Convention.

30. The secretariat shall forward submissions made under subparagraph 28 (a) above, within fifteen days of receipt of such submissions, to the members of the Committee for consideration at the Committee's next meeting.

[31. The secretariat shall, within fifteen days of receipt of any submission made under subparagraph 28 (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.]

[32. The secretariat shall send any submission it makes in accordance with paragraph 28 (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 28 (c) above;]

33. If the Secretariat, while acting pursuant to its functions under the Convention, becomes aware that a Party may face difficulties by a Party in complying with its obligations to submit national

implementation plans and reports under Articles 7 and 15, respectively, of the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within ninety days or such longer period as the circumstances of the matter may require, or the matter is not resolved through administrative action or through diplomatic contacts, the Secretariat shall report to the Parties pursuant to Article 20 of the Convention and shall inform the members of the Committee, which shall consider the matter at its next meeting.

34. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present procedures and mechanisms. The Party whose compliance is in question may comment on the submission within ninety days of its receipt, unless the circumstances of a particular case require an extended period of time, but in any event not later than six months of receipt. The Party shall send such comments to the secretariat, which shall immediately forward them to the members of the Committee for consideration at the Committee's next meeting. When a submission is made under paragraph 28 (b) above, the information shall also be forwarded by the secretariat to the Party that made the submission.

35. The Committee shall consider any submission made to it, as well as any other relevant information, with a view to determining the facts, specific circumstances and possible causes of the matter of concern and the resolution of it. The Committee may request further information from the Party concerned and draw on relevant expertise.

36. Without prejudice to paragraph 34 above, additional information, provided by a Party whose compliance is in question in response to a submission, 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 of no more than ninety days with a reasonable justification. 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 28 (b) above, the information shall be forwarded by the secretariat to the Party that made the submission.

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

38. The Committee shall reject submissions which it considers to be:

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

#### *Facilitation*

39. The Committee shall consider any submission made to it in accordance with paragraph 28 above or any matter referred to it in accordance with paragraph 33 above with a view to establishing the facts and the root causes of the matter of concern and to assisting in its resolution. To that end, the Committee may take the following measures:

- (a) Providing advice;
- (b) Issuing non-binding recommendations, including on establishing and strengthening domestic regulatory regimes and on steps to remedy the non-compliance situation such as safe disposal at the expense of the non-compliant Party or re-import/re-export of the chemical at issue;
- (c) Facilitating the provision and obtaining of technical and financial assistance, including technology transfer, training and other capacity-building measures;
- (d) Requesting 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 providing any further information required to assist the Party in developing such a plan;
- (e) Pursuant to paragraph (d) above, providing help, on request, in the review of the implementation of the action plan and inviting the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Convention;
- (f) Pursuant to paragraph (d) above, reporting to the Conference of the Parties on efforts made by the Party concerned to return to compliance, including through national reporting under Article 15 of the Convention, and maintaining the case as an agenda item of the Committee until the matter is adequately resolved;

*Additional measures*

40. If, after undertaking the facilitation procedure set forth in paragraph 39 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, the Committee considers it necessary to pursue further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider appropriate measures, to be taken in accordance with international law, to attain compliance, including:

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

(b) Providing advice regarding future compliance in order to help Parties to implement the provisions of the Convention and to promote cooperation between all Parties;

[(c) Issuing a statement of concern regarding possible future non-compliance;]

[(d) Issuing a declaration of non-compliance;]

[(e) Issuing a caution;]

[(f) Requesting the Executive Secretary to publish cases of non-compliance on the Stockholm Convention website; and]

[(g) 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 and 4 of the Convention.]]

*Monitoring*

41. The Committee should monitor the consequences of action taken in pursuance of paragraphs 39 and 40 above.

**Information***Consultation and information*

42. As regards submissions made under paragraphs 28 and 33, the Committee may consider information:

(a) Submitted by the secretariat from Parties pursuant to paragraphs 28, 34, and 35;

(b) Obtained by the secretariat from Parties while acting pursuant to its functions under the Convention;

(c) Obtained from observers to the Convention identified in paragraph 8 of Article 19 of the Convention;

(d) As requested by the Committee from any other source.

43. 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) Consult with other bodies of the Convention, in particular the Conference of the Parties and the Persistent Organic Pollutants Review Committee;

(c) Request further information from any source and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;

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

(e) 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;

(f) Review any national reports of Parties required or encouraged by the provisions of the Convention, in particular reports received pursuant to Article 15 of the Convention or decisions of the Conference of the Parties;

- (g) Request information from all other sources it considers relevant.

*Handling of information*

44. Subject to paragraphs 46 and 47 below, the Committee shall ensure openness and transparency in handling information received under this paragraph;

[45 Information considered in deliberations on specific submissions relating to the compliance of a Party shall not be open to other Parties, observers and public unless the Committee and the Party whose compliance is in question agree to its dissemination.]

46. 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.

47. Decisions of the Committee shall not contain confidential information and shall be publicly available. All information exchanged by or with the Committee that is related to any recommendation by the Committee to the Conference of the Parties shall be available to Parties upon request. Each Party shall protect the confidentiality of information it has received in confidence.

**General procedures**

*General compliance issues*

48. 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*

49. 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 on general issues of compliance and implementation developed under paragraph 48 above;

(c) The recommendations to the Conference of the Parties on interpretation of and possible measures to improve compliance with the Convention;

(d) 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*

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

*Other multilateral environmental agreements*

51. Where there is a clear and direct relationship with other multilateral environmental agreements, [the Conference of the Parties may request] the Committee [to][may] communicate and exchange experience with similar types of committees of those other agreements and [to] report to the Conference of the Parties.

*Review of the compliance mechanism*

52. The Conference of the Parties shall regularly review the implementation and effectiveness of the procedures and mechanisms set forth in the present decision.

*Relationship with other provisions of the Convention*

53. These procedures and mechanisms shall be without prejudice to Article 18 of the Convention.

54. These procedures shall be implemented in close relationship with Article 15 of the Convention.

*Secretariat*

55. The secretariat referred to in Article 20 of the Convention shall be the secretariat of the Committee.

*[Rules of Procedure*

56. [The Committee shall develop rules of procedure to govern its meetings and shall submit them to the Conference of the Parties for its consideration and approval.]

57[The rules of procedure of the Conference of the Parties shall apply *mutatis mutandis* to the meetings of the Committee.]]

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