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**Rotterdam Convention on the Prior  
Informed Consent Procedure for Certain  
Hazardous Chemicals and Pesticides in  
International Trade  
Open-ended Ad Hoc Working Group on Non-Compliance  
Rome, 26–27 September 2005**

## **Report of the Open-ended Ad Hoc Working Group on Non-Compliance on the work of its first session**

### **Introduction**

1. In its decision RC-1/10 on non-compliance, adopted at its first meeting, held in Geneva from 20 to 24 September 2004, the Conference of the Parties to the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) decided to convene an open-ended ad hoc working group on article 17 immediately prior to its second meeting with a view to preparing for and carrying forward deliberations on the issue. In its article 17, the 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 treatment of Parties found to be in non-compliance.”

2. Accordingly, a meeting of the Open-ended Ad Hoc Working Group on Non-Compliance was held on 26 and 27 September 2005 at the headquarters of the Food and Agriculture Organization of the United Nations (FAO) in Rome.

### **I. Opening of the meeting**

3. The meeting was opened at 10.20 a.m. on Monday, 26 September 2005, by Mr. Niek van der Graaff of FAO, joint Executive Secretary of the Convention, who welcomed participants and noted that the report of the Working Group on the work of its current meeting would be forwarded to the Conference of the Parties at its second meeting, to be held in Rome from 27 to 30 September 2005, which, on the basis of the progress made by the Working Group, would decide how to proceed further.

4. Following that introduction, Mr. John Whitelaw of the United Nations Environment Programme (UNEP), acting joint Executive Secretary of the Convention, also welcomed participants.

## **II. Organizational matters**

### **A. Election of officers**

5. The representative of the secretariat recalled that, according to rule 26 of the rules of procedure for the Conference of the Parties, the rules of procedure applied *mutatis mutandis* to the proceedings of its subsidiary bodies. As the Working Group had been convened by the Conference of the Parties, those rules applied to the Working Group. He drew attention to rule 30 on the election of officers for subsidiary bodies, which stated that, unless decided otherwise by the Conference of the Parties, each subsidiary body would elect its own officers other than the Chair, with due regard to the principle of equitable geographical representation. As the Conference of the Parties had not elected the chair of the Working Group, it was implicit that that responsibility now devolved upon the Working Group itself.

6. The Open-ended Ad Hoc Working Group elected Mr. Denis Langlois (Canada) Chair by acclamation.

### **B. Adoption of the agenda**

7. The Open-ended Ad Hoc Working Group adopted the following agenda, on the basis of the provisional agenda contained in document UNEP/FAO/RC/OEWG.1/1:

1. Opening of the meeting.
2. Organizational matters:
  - (a) Election of officers;
  - (b) Adoption of the agenda;
  - (c) Organization of work.
3. 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.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

### **C. Organization of work**

8. The Working Group decided that it should meet on Monday, 26 September 2005, from 10 a.m. to 1 p.m., from 3 p.m. to 6 p.m. and from 7.30 p.m. to 10.30 p.m., and on Tuesday, 27 September 2005, from 10 a.m. to 1 p.m., subject to adjustments as necessary. In addition, the Working Group agreed that it would recommend to the Conference of the Parties that it be allowed to reconvene during the second meeting of the Conference in order to adopt its report.

9. The representative of the secretariat pointed out that participation in the debate during the meeting would be governed by the rules of procedure for the Conference of the Parties, according to which the role of observers was limited to the presentation of information, views or observations of direct concern to the Working Group. Only Parties could participate in negotiations through the submission of proposals.

### **D. Attendance**

10. Representatives of the following Parties participated in the meeting: Argentina, Australia, Austria, Belize, Benin, Brazil, Burundi, Canada, Chad, Chile, China, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, Eritrea, Ethiopia, European Community, Finland, France, Gambia, Germany, Guinea, India, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Malaysia, Mali, Mexico, Namibia, Netherlands, New Zealand, Nigeria, Norway, Oman, Portugal, Qatar, Republic of Korea, Senegal, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian

Arab Republic, Thailand, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay.

11. In addition, representatives of the following non-Parties attended the meeting as observers: Angola, Congo, Costa Rica, Cuba, Indonesia, Israel, Lebanon, Maldives, Morocco, Pakistan, Peru, Philippines, Russian Federation, Seychelles, Slovakia, Sri Lanka, Turkey, United States of America, Zimbabwe.
12. The following intergovernmental bodies were represented: Secretariat of the Multilateral Fund for Implementation of the Montreal Protocol, Organization for the Prohibition of Chemical Weapons, Secretariat of the Stockholm Convention on Persistent Organic Pollutants.
13. The following non-governmental organizations were represented: CropLife International, Indian Chemical Manufacturers Association, Legambiente.

### **III. 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**

14. In considering the item, the Open-ended Ad Hoc Working Group had before it a note by the secretariat on 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, prepared at the request of the Intergovernmental Negotiating Committee for the first meeting of the Conference of the Parties (UNEP/FAO/RC/COP.1/20), and available to the current meeting in document UNEP/FAO/RC/OEWG.1/2. The annex to that note contained a draft document outlining the establishment of a compliance committee and setting out the procedure for its operation. Those elements of the document on which agreement had not been reached were enclosed in square brackets in the draft text. The Working Group agreed to use the document as the basis of its work.
15. The Working Group commenced its consideration of the item with general statements from Parties on the further development of a compliance mechanism for the Convention.
16. There was consensus that attainment of the objectives of the Convention would require its full implementation by all Parties. An effective compliance mechanism, which would allow for the early identification of problems facing Parties and provide a framework for resolving them, was therefore essential.
17. There was general agreement among all who spoke that the compliance mechanism should cover facilitation of compliance by Parties. Such an approach was of particular importance to developing countries, whose relative lack of financial and technical resources could be expected to make it more difficult for them to comply with the provisions of the Convention. Several representatives were of the view that, while they agreed with the emphasis on compliance rather than non-compliance, some set of measures to address a wide range of situations should be developed.
18. Many representatives argued that the mechanism should provide advice and assistance to Parties, including through the exchange of experience. Several representatives favoured the notion that the mechanism should be capable of being triggered by a wide range of actors and events, as that would enable the provision of assistance and facilitation in a wide range of circumstances. Several other representatives expressed opposition to party-to-party triggering, which they viewed as confrontational.
19. Several representatives believed the mechanism established should be open and transparent, as well as forward-looking, and that meetings of the compliance committee should be open both to Parties and observers. Several others expressed caution in that regard, particularly with respect to public participation.
20. Different opinions were voiced regarding when the mechanism should be put into place. Many believed that it should be established as soon as possible, while some others advocated waiting some period of time in order to reap the benefit of experience, both as to the kind of non-compliance problems that might arise and in the operation of the Convention itself.
21. The Working Group also heard general statements from non-Party observer States, which were in line with the views of Parties described above.
22. Following the general comments, the Working Group considered the specific provisions of document UNEP/FAO/RC/OEWG.1/2. During that discussion, one representative, stating that previous

negotiations on the mechanism had been difficult and had not resulted in a great deal of progress, and noting the importance of the mechanism to the success of the Convention, said that her delegation wished to reserve the right to comment on all sections of the draft text on the mechanism that was before the Working Group, and would not limit itself to commenting on those sections of the text enclosed in square brackets. Another representative, speaking on behalf of a regional economic integration organization and its member States that were Parties to the Convention, expressed her opposition to that view. Unbracketed text, she said, had been agreed during previous negotiations and her delegation had made important concessions in the process of reaching that agreement. Revisiting unbracketed text, she cautioned, could result in the unravelling of the progress that had previously been made.

23. The Working Group decided to establish a drafting group to consider issues on which agreement could not be reached in its plenary, chaired by Mr. Naresh Dayal (India) and Mr. Nicholas Kiddle (New Zealand). The outcome was reported to the Working Group.

24. The draft text as agreed by the Working Group is contained in the annex to the present report. The Working Group also agreed to recommend to the Conference of the Parties that it be reconstituted as a contact group during the second meeting of the Conference to continue working on the draft text set out in its report. It further agreed that it would recommend that it be permitted to work outside the hours during which plenary would sit and to work without interpretation.

#### **IV. Other matters**

25. No other matters were raised.

#### **V. Adoption of the report**

26. The Working Group adopted its report on the basis of the draft report contained in document UNEP/FAO/RC/OEWG.1/L.1, on the understanding that the secretariat would be entrusted with its finalization. The Working Group agreed to recommend to the Conference of the Parties that the Chair be invited to present an oral report to the Conference at its second meeting on the outcome of its work.

#### **VI. Closure of the meeting**

27. The meeting was closed by the Chair at 6.05 p.m. on 28 September 2005.

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## Annex

### Decision RC/[...]

#### **Non-compliance: approval 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**

*The Conference of the Parties,*

*Bearing in mind* the provisions of articles 17 and 18, paragraph 5 (a), of the Convention,

*Decides* to adopt the 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 set forth in the annex to the present decision.

## Annex

### Establishment of a compliance committee

1. A compliance committee (hereinafter referred to as “the Committee”) is hereby established.

#### *Members*

2. The Committee shall consist of [XX] members. Members shall be 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] [the PIC regions].

[2alt. The Committee shall consist of [17][19] members. Members shall be nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties, drawn from the following regions:

African States: [4][5]

Asian and Pacific States [4][5]

Central and Eastern European States 2

Latin American and Caribbean States 3

Western European and other States 4]

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

#### *Election of members*

4. 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 decision, “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.

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

#### *Officers*

6. 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*

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

8. Subject to paragraph 9 below, the meetings of the Committee shall be open to Parties [and [open] [closed] to the public] unless the Committee and the Party whose compliance is in question agree otherwise.

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.

9. Where a submission is made with respect to the possible non-compliance of a Party, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.

10/11. The Committee shall make every effort to reach agreement on all matters of substance by consensus. [Where this is not possible the report [and recommendations] shall reflect the views of all the Committee members. 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 majority of the members present and voting or by [XX] members, whichever is greater.]

[[X] members of the Committee shall constitute a quorum.]

12. Submissions may be made in writing, through the secretariat where subparagraph[s] (a) [and (b)] appl[y][ies], by:

(a) A Party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a submission 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, may be provided. The submission may include suggestions for solutions which the Party considers may be most appropriate to its particular needs;

(b) A Party that has concerns or is affected by a failure to comply with the Convention's obligations by another Party [with which it is directly involved under the Convention]. A Party intending to make a submission under this subparagraph should before so doing undertake consultations with the Party whose compliance is in question. The submission should 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 [articles [4, 5, 10 [and][,] 11[and 12]] of] the Convention, it becomes aware of possible difficulties for any Party in complying with its obligations under [articles [4, 5, 10 [and][,] 11 [and 12]] of] the Convention [or when it receives submissions from individuals or organizations having reservations about a Party's compliance with its obligations under the Convention]].

13. The secretariat shall forward submissions made under subparagraph 12 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.

14. [The secretariat shall, within two weeks of its receiving any submission made under subparagraph 12 (b) or making a submission under subparagraph 12 (c) 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.]

15. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.

16. Without prejudice to paragraph 15 above, additional information, provided by a Party whose compliance is in question in response to a submission, should be forwarded to the secretariat within three months of the date of receipt of the submission by that Party, unless the circumstances of a particular case require an extended period of time. 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 12 (b) above, the information shall be forwarded by the secretariat also to the Party that made the submission.]

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

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

#### *Facilitation*

18. The Committee shall consider any submission made to it in accordance with paragraph 12 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 provide a Party with:

- (a) Advice;
- (b) Non-binding recommendations;
- (c) Any further information required to assist the Party in developing a compliance plan, including timelines and targets.

*Additional measures*

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, [as well as the capacities of the Parties whose compliance is in question] the Committee considers it necessary to propose further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider [appropriate] [the following] measures, to be taken in accordance with international law, to attain compliance[, including]:

(a) Further support under the Convention for the Party concerned, including 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) Statement of concern regarding possible future non-compliance;

[(cbis) Statement on non-compliance [or] [and] regarding possible future non-compliance]

[(d) Statement on the determination of non-compliance;]

[(e) Issuing a caution;]

[(f) Suspending rights and privileges under the Convention;]

[(g) Arranging for the re-export of chemicals imported in violation of the Convention.]

[(g alt) Acknowledging non-compliance in the case of chemical exports and advising the offending party to re-import.]

[g alt bis [advising] [requiring] the exporting/importing [offending] party to re-export/re-import]

[20. It is understood that, as far as developing countries and countries with economies in transition are concerned, additional measures referred to in paragraph 19 should not be undertaken towards these countries, if the reasons for non-compliance are lack of technical assistance[, financial resources] or inadequate capacity to fulfil their obligations.]

*Handling of information*

21. [The Committee may receive relevant information, through the secretariat, from the Parties [and from other [relevant] sources.]]

[21 alt: As regards paragraph 12 submissions, the Committee may only receive information:

(a) Submitted by the secretariat from Parties pursuant to paragraphs 12 and 16;

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

(c) With the consent of the Party concerned, as requested by the Committee from any source.]

22: For the purposes of examining systemic issues of general compliance under paragraph 25, the Committee may:

(a) Request information from all Parties;

[(b) [As directed by the Conference of the Parties] Request relevant information from any reliable sources and outside experts; and

(c) Consult with the secretariat and draw upon its experience and knowledge base.]

23. Subject to article 14 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.

*Monitoring*

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.



*General compliance issues*

25. The Compliance Committee may examine systemic issues of general compliance of interest to all Parties where:

(a) The Conference of the Parties so requests;

(b) The Committee, on the basis of information obtained by the secretariat, while acting pursuant to its functions under the convention, from Parties and submitted to the Committee by the secretariat, decides that there is a need for an issue of general non-compliance to be examined and for a report on it to be made to the Conference of the Parties.

*Reports to the Conference of the Parties*

26. 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 or 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*

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

*Other multilateral environmental agreements*

[28. Where there is an overlap with obligations and responsibilities under other multilateral environmental agreements, the Conference of the Parties may request the Committee to 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*

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

*Relationship with settlement of disputes*

30. These procedures and mechanisms shall be without prejudice to article 20 of the Convention.