PREPARATION FOR THE ENTRY INTO FORCE OF THE 1996 PROTOCOL

Report by the Compliance Correspondence Group

SUMMARY

Executive summary: This document contains the draft initial text for the compliance procedures and mechanisms under Article 11 of the 1996 Protocol to the London Convention 1972, as reported by the Compliance Correspondence Group.

Action to be taken: Paragraph 5

Related documents: LC 25/16, paragraphs 3.1 to 3.37; LC 26/3/1.

Introduction

1 In 2003, the Twenty-fifth Consultative Meeting established the Compliance Correspondence Group under the co-leadership of the Netherlands and the United States. Its task was to develop an initial text, including options for the compliance procedures and mechanisms under Article 11 of the 1996 Protocol for consideration at this session (LC 25/16, paragraph 3.34.3).

2 In January 2004, a first draft initial text prepared by the co-leads was distributed to the Compliance Correspondence Group. Comments were received from Brazil, Canada, Germany, Netherlands, Spain, United States, Vanuatu and IAPH. These comments on key features of a compliance body are reproduced in document LC 26/3/1.

3 The report of the Compliance Correspondence Group is attached hereto in annex.

Note by the co-leads

4 The co-leads for this exercise, Ms. Katy Youel Page (United States) and Mr. Nout van Woudenberg (Netherlands) prepared the following accompanying note:

“We greatly appreciate all comments received from members of the Compliance Correspondence Group. The comments received were detailed and thorough and were the result of obvious effort on the part of the members.
Based on your input, we created a revised text as shown in the annex, and a matrix outlining the comments received (LC 26/3/1). We have tried to reflect as many of the comments as possible in these documents. As is always the case in these types of exercises it was unfortunately not possible to take all comments received into account given the limited mandate of the Correspondence Group, the occurrence of contradictory comments and a general desire to keep the document readable by not adding in more brackets in the text with different wordings of more or less the same content. Further, some comments received regarded new items that seem most appropriately handled at the Consultative Meeting.

The purpose behind these texts is to focus our discussions on compliance at this Consultative Meeting. We have tried to remove brackets where possible, but obviously at this initial stage of discussion, all aspects of this mechanism are still fully open for discussion. Members should of course feel free to raise any comments that may not have been included here. Thank you once again for your participation and we look forward to a good discussion.”

**Action requested of the Consultative Meeting**

5 The Consultative Meeting is invited to review the report of the Compliance Correspondence Group and comment on it, as it deems appropriate.

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ANNEX

DRAFT INITIAL TEXT OF THE
LONDON PROTOCOL COMPLIANCE MECHANISM

Introductory comments

1 The Twenty-fifth Consultative Meeting recognized the need to develop an appropriate text for compliance procedures and mechanisms, under the London Protocol, and established a Compliance Correspondence Group under the co-lead ership of the Netherlands and the United States to develop an initial text, including options for the compliance procedures and mechanisms. This document reflects the work of the Compliance Correspondence Group. It is not meant to be exhaustive of all the provisions, but instead is an “initial text” of key elements for review by this Meeting and a building block for further development of Article 11 procedures and mechanisms.

2 This initial text focuses on the key substantive issues that governments will have to address as they develop a compliance mechanism. As the mechanism evolves, governments may choose to make modifications to the format along the lines of compliance mechanisms in other multilateral environment agreements, e.g. Basel Convention, PIC (Rotterdam Convention)\(^1\), LRTAP\(^2\), Montreal Protocol, CITES\(^3\).

3 Governments may want to consider two models that emerge as a frame of reference for reviewing the options below. Under either model the Meeting of Contracting Parties would retain the option of reviewing the mechanism. Also under either model, the compliance group would make recommendations on compliance to the Meeting of Contracting Parties for its ultimate resolution:

1.1 The mechanisms and procedures should be based on the assumption that compliance matters should be handled by a compliance group, (matters that are scientific or technical in nature would be handled in coordination with the Scientific Group [, or exclusively by the Scientific Group, as appropriate]. This means that the Meeting would not first refer compliance matters to the compliance group and instead the compliance group would consider compliance matters directly. This group would be similar in nature to that established under other multilateral environmental agreements, (e.g. Montreal Protocol, Basel Convention and others), whereby a small group of appointed members would make recommendations to the Meeting of Contracting Parties regarding individual cases of possible non-compliance referred to it or possibly systemic compliance issues that have come to its attention.

1.2 The mechanisms and procedures should be based on the assumption that compliance matters should be handled initially by the Meeting of Contracting Parties, which may choose to refer issues to a compliance group on an as needed basis, or refer matters to the Scientific Group or some other subsidiary body as appropriate. For example, should an issue regarding a Party’s possible

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\(^2\) UN-ECE Convention on Long-Range Transboundary Air Pollution, 1979

\(^3\) Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973
non-compliance come to the attention of the Meeting of Contracting Parties, the Meeting could convene the compliance group to review it and report back its conclusions. This model is based on that currently used under the London Convention (see roles and responsibilities with regard to situations of non-compliance, LC 21/13, paragraph 4.12). This model would be without prejudice to switching to the first model, if it turned out, over time, that the nature and quantity of compliance issues made the first model more appropriate. The compliance group could be either open-ended or limited in size.

4 For help in considering how to handle the reporting and recording requirements under the Protocol, Parties may want to understand what the reporting requirements are and consider how similar reports have been handled under the Convention so far:

1 **Article 9.4.1 records**: Like Convention article VI.1(c), Parties are required to keep records of all wastes and other matter for which dumping permits have been issued, including where practicable the quantities actually dumped and the location, time and method of dumping. Under longstanding practice with the Convention, these records are kept by the Party and submitted to the Secretariat, who then refers them to the Scientific Group for technical review as needed.

2 **Article 9.4.2 and 9.4.3**: These are new reporting requirements. Pursuant to article 9.4.5, the Meeting of Contracting Parties is to determine the appropriate subsidiary body to evaluate the reports submitted under article 9.4.2 and 9.4.3. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

3 **Article 10.3 reports**. Article VII(3) of the Convention regarding reporting observed dumping in contravention of the Convention is substantively similar to Protocol article 10.3. The Consultative Meeting developed “Reporting Procedures of observed dumping incidents which may be in violation of international ocean dumping treaties (London Convention 1972 and the 1996 Protocol thereto).” Pursuant to LC.2/Circ.430, it was agreed that the Secretariat should file the “Incident Information Forms” it received and present a compilation of them to each Consultative Meeting for appropriate consideration; and that this process would be for a trial period of no more than three years. Currently the Scientific Group is charged to review these reports under the Convention.

4 **Article 26.5 reports**. This is a new reporting requirement. Pursuant to article 26, any State that was not a Contracting Party to the Convention before 31 December 1996 and that expresses its consent to be bound by the Protocol prior to its entry into force or within five years after its entry into force, may notify the Secretary-General that it will not be able to comply with specific provisions of the Protocol for a transitional period that shall not exceed five years. Such Party shall report on progress toward compliance to each Meeting of Contracting Parties held during their transitional period for appropriate action.

5 One should keep in mind, that once the content of the procedures and mechanisms has been agreed, a cover decision for the Meeting of Contracting Parties should be developed as well.
6 Certain text is included without options defined in brackets. Should any objections to the language be made, however, options for the text could be developed or the text could be bracketed.

7 The initial text for compliance procedures and mechanisms consists of two parts. One part (annex 1) with different options for the key elements of the mechanism, which has been discussed during the Twenty-fifth Consultative Meeting. The second part (annex 2) should be seen as “food for thought” for examples of issues that may be added to the mechanism, but have not yet been discussed.

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Annex 1

INITIAL TEXT FOR COMPLIANCE PROCEDURES AND MECHANISMS,
PURSUANT TO ARTICLE 11 OF
THE 1996 PROTOCOL TO THE LONDON CONVENTION 1972

This initial text includes various options on the roles and functions of the bodies associated with compliance matters.

1 General Guidance

1.1 The objective of the compliance procedures and mechanisms is to assess and promote compliance with the 1996 Protocol to the London Convention 1972 (the Protocol) with a view to allowing for the full and open exchange of information, in a constructive manner.

1.2 The procedures and mechanisms shall be non-confrontational, [primarily] facilitative, transparent, cost-effective and preventive in nature, simple, flexible, [non-binding] and oriented towards [helping Parties implement the provisions of the Protocol] [assisting Parties to meet their obligations under the Protocol.]

1.3 The Meeting of Contracting Parties shall retain overall responsibility for compliance matters, as well as overall interpretation of the Protocol.

1.4 A Protocol body making recommendations to the Meeting of Contracting Parties on compliance matters shall make every effort to reach consensus among the body members. Where consensus cannot be reached, the report shall reflect the views of all members of the body.

1.5 [Any work on compliance shall be limited to those specifically provided for in these procedures or otherwise authorized by the Meeting of Contracting Parties.]

1.6 [A Compliance Group is hereby established by the Meeting of Contracting Parties] [The Meeting of Contracting Parties may establish a Compliance Group on an as needed basis].

2 Functions of bodies related to compliance

2.1 The Meeting of Contracting Parties may:

.1 Refer compliance matters (individual situations of possible non-compliance, systemic issues and other matters) to compliance group or scientific group.

.2 Offer advice, assistance or cooperation to Contracting Parties and non-Contracting Parties, after full consideration of any information submitted pursuant to this Protocol and any recommendations made through these procedures and mechanisms.

.3 [Decide on appropriate actions based on the recommendations of the compliance group or the scientific group with respect to compliance matters.]
.4 Review the effectiveness of the compliance mechanism, including the roles of the compliance group, the scientific group and itself.

.5 Review reports under articles 9.4.1, 9.4.2, 9.4.3, 10.3 and 26.5 pursuant to section 6 below.

.6 Undertake compliance promotion activities.

2.2 The Compliance Group may, [upon request of the Meeting of Contracting Parties,]

.1 [Consider/ Assess] an individual situation of a Party’s possible non-compliance referred to it with a view to identifying the facts, possible causes and specific circumstances, [including where, appropriate the capacity of the Party concerned.]

.2 Make recommendations to the Meeting of Contracting Parties on systemic compliance issues referred to it or that have arisen in the course of its work.

.3 Make recommendations to the Meeting of Contracting Parties on individual situations of possible non-compliance as described in section 5 on “Measures.”

.4 [Undertake compliance promotion activities, including advice, and recommendations for [technical] co-operation and assistance, taking into account advice from other subsidiary bodies or Parties, as appropriate.]

.5 [Upon request] monitor the implementation of Meeting of Contracting Parties recommendations [and decisions] on compliance.

.6 Review and provide advice to the Meeting of Contracting Parties on reports and records submitted as described in section 6 below.

.7 [With a view to addressing compliance issues without delay provide advice and guidance to a Party [or non-Party] pending consideration by the Meeting of Contracting Parties.]

2.3 The Scientific Group may, [upon a request of the Meeting of Contracting Parties]:

.1 Make recommendations to the Meeting of Contracting Parties on systemic compliance issues referred to it or that have arisen in the course of its work.

.2 Undertake compliance promotion activities on scientific and technical issues, including training and guidance documents.

.3 Provide advice and guidance to a party [or non-party] on scientific and technical issues.

.4 Review and provide scientific and technical advice to the Meeting of Contracting Parties on reports and records submitted to the Secretariat as described in section 6 below.
3 Characteristics of compliance group

3.1 Type of individual:

.1 The compliance group shall be composed of individuals selected on the basis of their scientific, technical [socio-economic] or legal expertise.

.2 Members shall serve [in their personal capacity] [as representatives of governments] [objectively and in the best interests of the Protocol].

.3 [Members shall be appointed by the government they represent] [Members shall be nominated by governments, and elected by the Meeting of Contracting Parties.]

3.2 Size of group:

The compliance group will be [limited in size to xx members.] [open-ended.] [and may include representatives from relevant international organizations or bodies.] [Should a limited group be chosen, consideration will have to be given to ensuring equitable geographic distribution of members, as well as other factors.]

3.3 Frequency of meeting:

The compliance group shall meet as necessary [when specifically requested to do so by the Meeting of Contracting Parties] [as determined by the compliance group] [at least once a year in conjunction with the Meeting of Contracting Parties].

3.4 Timing of meeting:

The compliance group shall meet [in conjunction with/ during the Meeting of Contracting Parties] [in conjunction with/ during a meeting of the Scientific Group] [on an independent schedule]. [In determining the dates of the meetings, due consideration should be given to the meeting schedules of [Meeting of Contracting Parties and other] relevant bodies under the Protocol.]

3.5 Type of group:

The compliance group shall meet as [a standing body of the Meeting of Contracting Parties.] [a working group of the Meeting of Contracting Parties.]

4 Submissions

4.1 An issue regarding individual situations of possible non-compliance may be raised by:

.1 the Meeting of Contracting Parties [and its subsidiary bodies where so mandated by it];

.2 [a Party regarding its own activities] [a Party that concludes that, despite its best efforts, it is or will be unable to fully comply with its obligations under the Protocol];
3 A Party that has reservations about another Party's compliance with the obligations under the Protocol [with which it is directly involved]; [when it is affected by the non-compliance] [a Party intending to make a submission under this subparagraph shall [preferably] inform the Party whose compliance is in question, and both Parties should then try to resolve the matter through consultations;]

.4 [individuals or organizations that have reservations about a Party's compliance with the obligations under the Convention;]

4.2 An issue regarding individual situations of possible non-compliance shall be raised [with the Meeting of Contracting Parties, which will decide how it should be handled.] [directly with the compliance group.]

5 Measures

5.1 Following [consideration/ an assessment] of an issue regarding a Party’s possible non-compliance [and taking into account the facts, cause, type, degree and frequency of any non-compliance,] the compliance group may recommend to the Meeting of Contracting Parties that one or more of the following measures be taken:

.1 The provision of advice and recommendations, with a view to assisting the Party concerned to implement the Protocol;

.2 The facilitation of [technical] cooperation and assistance;

.3 The elaboration, with the cooperation of the Party or Parties concerned, of compliance action plans, including targets and timelines;

.4 [The issuing of a formal statement of concern regarding a Party’s compliance situation];

.5 [The invitation of the non-compliant Party to appear before the Meeting of the Contracting Parties and outline the action it will take to bring itself into compliance and report back to the next Meeting on its progress.]

5.2 Prior to submitting recommendations to the Meeting of Contracting Parties, the compliance group shall share its draft conclusions and recommendations with the Party concerned for consideration and an opportunity to comment within X months/weeks upon receipt of the draft by the Party concerned. Any such comments shall be included in the report of the compliance group to the Meeting of Contracting Parties.

5.3 The Meeting of Contracting Parties shall make the final decision regarding any measures to be taken in response to a Party’s possible non-compliance. [On the basis of the recommendation by the compliance group, the Meeting of Contracting Parties may consider, in case of repeated or continued non-compliance, additional more stringent measures in accordance with international law and [Vienna Convention on Law of Treaties Article 60.]]
6 Reports and Records

6.1 Reports and Records made pursuant to articles 9.4.1, 9.4.2 and 9.4.3, 10.3 and 26.5 shall be handled as follows:

.1 Parties shall maintain their own records under Article 9.4.1 regarding the issuance of dumping permits as well as the condition of the sea and submit these records to the Secretariat, which then [refers them to the Scientific Group][refers them to the compliance group] [refers them to the Scientific Group which then may refer them to the compliance group] for review and reporting back to the Meeting of Contracting Parties.

.2 Once Parties reports under Articles 9.4.2 and 9.4.3, (regarding administrative and legislative measures taken to implement the provisions of the Protocol, including a summary of enforcement measures, the effectiveness of such measures and any other problems) are submitted to the Secretariat, the Meeting of Contracting Parties shall [refer them to the compliance group][refer them to a subsidiary body][refer them to the Scientific Group] for evaluation. The group will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

.3 The Secretariat shall compile the “incident information forms” it receives under Article 10.3 [and present a compilation of them to each Meeting of Contracting Parties for appropriate consideration.][and refer them to the compliance group to review and report back to the Meeting of Contracting Parties.][and refer them to the Scientific Group to review and report back to the Meeting of Contracting Parties.]

.4 Parties that have made a notification under Article 26.1 regarding the need for a transitional period shall submit reports pursuant to Article 26.5 to the Secretariat prior to each Meeting of Contracting Parties held during their transitional period. [The Meeting of Contracting Parties shall take appropriate action on the reports.][The Meeting of Contracting Parties shall refer these reports to the compliance group for review.] [The Meeting of Contracting Parties shall refer these reports to the Scientific Group for review.]

7 Relationship with other provisions of the Protocol and other bodies

7.1 This mechanism shall be without prejudice to the provisions of Article 16 of the Protocol on settlement of disputes.

7.2 In the case of issues that overlap with the responsibilities of other bodies under the Protocol, the Meeting of Contracting Parties may direct the [compliance group/Scientific Group] to work in conjunction with such bodies and take action as it deems appropriate.
Annex 2

EXAMPLES OF ELEMENTS THAT SHOULD SERVE AS “FOOD FOR THOUGHT” FOR ON-GOING DISCUSSIONS

1 Reporting to Meeting of Contracting Parties:

The Committee shall submit a report to each ordinary meeting of the Meeting of Contracting Parties presenting:

.1 The work that the Committee has undertaken in fulfilling its functions concerning the compliance of individual Parties, including any recommendation, for the information of and/or consideration and necessary action by the Meeting of Contracting Parties;

.2 The work that the Committee has undertaken in fulfilling its functions concerning general compliance issues, including recommendations, for the information of and/or consideration and necessary action by the Meeting of Contracting Parties; and

.3 The Committee's future work program, including its schedule of expected meetings which it considers necessary for the fulfilment of the work program, for the consideration and approval by the Meeting of Contracting Parties.

2 Terms of service

At the meeting at which this decision is adopted, the Meeting of Contracting Parties shall appoint X of the members for one term, and X members for two terms. The Meeting of the Contracting Parties shall, at each ordinary meeting thereafter, appoint for two full terms X 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 this decision, "term" means the period that begins at the end of one ordinary Meeting of Contracting Parties and ends at the next ordinary meeting of the Meeting of Contracting Parties.

3 Appointment of officers

The Committee shall elect its own Chairperson and Vice-Chairperson.

4 Right to participate

A Party whose compliance is in question has the right to participate in the consideration of the submission by the Committee. Only the members of the Committee may participate in the elaboration and adoption of a recommendation or decision of the Committee. The Party whose compliance is in question shall not be present during the elaboration and adoption of conclusions and recommendations by the Committee.
5 **Decisions by the Committee**

5.1 The members of the Committee shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a [two-thirds] [three-quarter] majority vote of the members present and voting. Decisions on matters of procedure shall be taken by a majority vote of the members present and voting. If the question arises whether a matter is one of procedural or substantive nature, the Chairperson shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the Chairperson's ruling shall stand unless overruled by a majority of the members present and voting. 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.

5.2 Two-thirds of the members of the Committee shall constitute a quorum.

6 **Confidentiality**

6.1 Subject to Article .... of the Protocol, confidential information shall be treated as such throughout and after the process.

6.2 The reports of the meetings of the Committee, which shall not contain any confidential information, shall be available to the public.

6.3 All information exchanged by or with the Committee that is related to any decision or recommendation by the Committee shall be made available by the Secretariat to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

7 **Relationship with other multilateral instruments**

Where there is an overlap with the obligations and responsibilities under other multilateral instruments the Meeting of Contracting Parties may request the Committee / Scientific Group to communicate with relevant bodies of the respective instruments, with a view to pursuing possibilities for synergies and linkages, including through organizational and practical cooperation, and report back to the Meeting of Contracting Parties.

8 **Procedure of initiating submissions on non-compliance**

8.1 A submission shall be addressed in writing to the secretariat, and shall set out:

.1 the matter of concern;
.2 the relevant provisions of the Convention; and
.3 information substantiating the submission.

8.2 The Secretariat shall forward all submissions within two weeks upon their receipt to the Committee for consideration at its next meeting. In cases of submissions other than by a Party with respect to its own compliance, the Secretariat shall send within two weeks upon their receipt a copy to the Party whose compliance is in question.
8.3 The Party whose compliance is in question will be given every opportunity to present within X months after the receipt of the copy of the submission responses and/or comments on this submission.

8.4 Additional information provided in response by the Party whose compliance is in question should be forwarded to the Secretariat within X months upon receipt of the submission by the Party in question, unless the circumstances of a particular case require an extended period of time. Such information shall immediately be forwarded by the Secretariat to the Committee for consideration at its next meeting.

9 Consideration of submissions

9.1 The Committee shall consider any submission made to it in accordance with paragraph 17 with a view to determining the facts and possible root causes of the matter of concern and the resolution of it.

9.2 The Committee may reject submissions which it considers are de minimis, manifestly ill-founded or anonymous.

9.3 In carrying out its functions, the Committee may:

   .1 Request further information from the Party whose compliance is in question or from any other Party or all Parties on matters under its consideration;
   .2 Consult with other bodies under the Protocol;
   .3 Draw upon outside expertise;
   .4 Undertake, with the agreement of the Party [or Parties] concerned, information gathering in the territory of that Party [or Parties];
   .5 Review the national reports of Parties provided under the Protocol; and
   .6 use any source of information it considers appropriate.

OR:

In carrying out its functions, the Committee may seek or receive and consider relevant information from any source it deems relevant.

10 Monitoring

   The Committee shall continuously review the consequences that follow out of or are a result of this mechanism.

OR:

The Meeting of Contracting Parties shall regularly review the implementation of the procedures and mechanism set forth in the present decision.

11 Observers

   Non-Parties and representatives of relevant international organizations may act as observers to the compliance group.
12 Compliance issues involving radioactive matter

"The International Atomic Energy Agency is the competent international body for all issues involving radioactive matter and radiation protection of humans and the ocean environment. Therefore, for compliance matters involving radioactive materials, the compliance group shall refer the matter to the IAEA for technical evaluation and review. The compliance group shall [abide by] [take into account] the IAEA's evaluation or refer the matter to the meeting of contracting parties."

13 Language

Meetings of the Compliance Group shall be held in English only. A Party whose compliance is in question and which attends a meeting of the Compliance Group shall be entitled to request interpretation into another official language of the Protocol. Such request needs to be made at least [6] weeks in advance of the meeting of the Compliance Group.