Chapter Fourteen

Procedures and Mechanisms for Review of Compliance under the 1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

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1. Brief Introduction to the Protocol on Water and Health

The Protocol on Water and Health[1] is a peculiar instrument of international law in the field of the environment. It establishes a normative link between a sound management of water resources and the protection and promotion of human health, thus contributing to the realisation of the human rights to health and water. The main obligation upon Parties to the Protocol is to secure the prevention, control and reduction of water-related disease, in a framework of integrated water-management systems aimed at sustainable use of water resources, through an ambient water quality which does not endanger human health (Article 4.1). The peculiarity of the Protocol as an instrument regulating the use of freshwater resources lies in the fact that it does not aim at regulating the use of transboundary waters, but it sets out obligations relating to water management at the purely domestic level.

The normative mechanism of the Protocol is also peculiar. The Protocol does not set a common minimum standard through the fixation of specific obligations or targets relating to water management and water-related diseases, nor does it provide for the elaboration of such obligations or targets through future protocols or other binding international processes. Rather it identifies critical areas in which action by Parties is required, it sets a general duty of due diligence for action taken in those areas and it establishes a process whereby Parties are to set, individually and where appropriate jointly, their own targets and target dates and to maintain those targets under constant review, within an institutional and administrative framework whose implementation

[1] Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, United Kingdom, 17 June 1999), entered into force on 4 August 2005. Up-to-date figures on the status of ratification may be found at <http://www.unece.org/env/water/status/lega_wh.htm> (visited 22 January 2008).

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is deemed to be instrumental to the creation of a framework of governance enabling the attainment of substantive targets.

More specifically the Protocol requires Parties to fix, publish and periodically revise targets and target-dates covering the items listed in Article 6.2. Targets are to be fixed and published within two years after the Protocol's entry into force, together with timeframes (deadlines and phases) for achieving them. The aspects to be covered by the targets are quite heterogeneous. Some of them concern directly the control and improvement of water quality, others request the fixation of quantitative targets for the water supply and sanitation, some relate to the administrative process and its effectiveness, as well as to the control of water related diseases. After setting the required targets, Parties are under an obligation to collect and evaluate data on progress towards their achievement and on indicators designed to show how far that progress has contributed towards preventing, controlling or reducing water-related diseases (Article 7.1). The results of this collection and evaluation shall be published at the intervals to be established by the MOP, provided that data relating to water sampling are made available to the public.

The institutional and administrative arrangement needed to promote the effective attainment of the standards and targets under the Protocol are sketched in Article 6.5. This requires the establishment of national or local arrangements to coordinate the Protocol-related activities of competent authorities (lett. a), the development of water management plans at the transboundary, national or local level, on the basis of catchment areas or groundwater aquifers (lett. b), as well as the establishment of a legal and institutional framework to monitor and enforce standards relating to drinking water and, where appropriate, the other standards and levels of performance for which the Protocol requires the fixation of targets.

In addition, Article 8 requires the establishment, maintenance and improvement of comprehensive national or local surveillance and early warning systems, as well as contingency plans for responses, in the case of outbreaks or incidents of water-related disease or significant threats of such outbreaks or incidents, including those resulting from water-pollution incidents or extreme weather events. Such systems and plans must be established within three years after the Protocol's entry into force.

An important part of the Protocol is devoted to provisions relating to international cooperation (Article 11). Article 12 requires Parties to take coordinated action at the international level in certain areas relating to the Protocol's implementation, including the fixation of targets, the development of indicators, surveillance, early warning and response systems and the exchange of information. Article 14, on the other hand, covers cooperation in implementation at the national and local level of the Protocol and lists, as areas of action, the preparation of plans and schemes, the formulation and execution of projects, the establishment of surveillance and early-warning systems, contingency plans and response capacities, the preparation of implementing legislation, education, monitoring and assessment techniques. Additional efforts in international cooperation are required by Article 13, in relation to transboundary waters shared by two or more Parties. In particular lett. (b) requires Parties to establish joint or coordinated water-management plans and surveillance and early-warning systems and contingency plans and lett. (c) to adapt their existing agreements to the Protocol's requirements.

The Protocol sets out an institutional structure composed of the Meeting of the Parties (MOP), which may create subsidiary bodies (Article 16), and of a Secretariat, whose functions are performed jointly by the Executive Secretary of the Economic Commission for Europe and the Regional Director of the Regional Office for Europe of the World Health Organization (Article 17).

2. Legal Basis of the Mechanism and Negotiating History

The adoption of "compliance arrangements" under the Protocol is required by its Article 15, which calls for the establishment by the first MOP of "(m)ultilateral arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance" and further specifies that "these arrangements shall allow for appropriate public involvement". Compared to the corresponding provision of the Aarhus Convention, which evidently inspired the drafters of the Protocol, the possibility of recognising a trigger by non-state actors is not mentioned.

The task of drafting the legal documents regulating the procedure envisaged in Article 15 was entrusted by the Working Group on Water and Health of the Convention to the Legal Board established by the Parties to the Convention at their third meeting.[2] The Legal Board managed to reach an agreement on a text that, after being endorsed by the Working Group on Water and Health, was submitted to the first MOP[3] and adopted as Decision I/2.

3. The Text Establishing the Mechanism

Decision I/2 establishes a Compliance Committee (the Committee) and decides its structure, functions and procedure, in accordance with the Annex thereto.[4] It also stipulates that the Parties, at their third meeting, shall review the procedure, with special regard to the provisions on communications from the public, on the basis of the experience gained by the Compliance Committee. This paragraph was introduced as an element of the negotiating package that led to the acceptance of the provisions on communications from the public.

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[2] *Decision III/3 on Work under the Convention in the Period 2004–2006*, doc. ECE/MP.WAT/15/Add.1 (8 April 2004), Annex III, para. 3. The text was negotiated on the basis of a background paper and a draft procedure presented by a consultant, see doc. MP.WAT/WG.4/2004/2 – EUR/5047016/2004/2 (19 February 2004).

[3] See *Establishing a Compliance Procedure under the Protocol on Water and Health*, doc. MP.WAT/WG.4/2005/3-EUR/05/5047554/3 (11 July 2005). The document contains a Draft Decision and, in the Annex, a Draft Compliance procedure, to be presented to the MOP.

[4] *Decision I/2 on Review of Compliance*, doc. ECE/MP.WH/2/Add.3 – EUR/06/5069385/1/Add.3 (3 July 2007). The Annex is divided into thirteen sections and 38 paragraphs. In the following text, references to Decision I/2 and the related numbering of paragraphs must be understood as referring to the Annex.

4. The Principles Governing the Mechanism and the Procedure

Article 15 of the Protocol clearly indicates that the procedure shall be non-confrontational, non-judicial and consultative and shall allow for the involvement of the public. Decision I/2 elaborates on these issues by introducing further objectives and principles. The objective of the procedure is to "facilitate, promote and aim to secure compliance, (…) with a view to preventing disputes" (para. 1). The procedure "shall be simple, facilitative, non-adversarial and cooperative in nature and its operation shall be guided by the principles of transparency, fairness, expedition and predictability" (para. 2). The interests to be taken into consideration by the Committee in the exercise of its functions are that of the Party facing problems in complying with the Protocol, of the Parties as a whole and, quite interestingly, of the populations potentially or actually adversely affected by non-compliance (para. 3). The existing link between Protocol obligation and the interests and rights of individuals is thus underlined.

5. Institutional Aspects

5.1 **The Compliance Committee**

a) Composition

The Committee is composed of nine members (para. 4), elected by the MOP in accordance with its Rules of Procedure. Candidatures are proposed only by Parties, "taking into consideration any proposal for candidates made by Signatories or Non-Governmental Organizations (NGOs) qualified or having an interest in the fields to which the Protocol relates" (para. 5). This wording mediates between the full recognition of the right of NGOs to propose candidatures and their total exclusion from the process. This enabled some NGO-proposed candidates to be actually elected as Committee Members at the first MOP. Candidates "must be persons of high moral character and have recognized expertise in the fields to which the Protocol relates, including persons having legal and/or technical expertise" (para. 5). No nationality requirements are set,[5] but geographical balance is to be respected and diversity of experience encouraged in the composition (para. 7). The Committee elects its own Chairperson and vice-chairperson (para. 8) and meets at least once a year (para. 9). The Committee held its first meeting on 12 March 2008.[6]

b) Status of Members

The Committee's Members "shall serve in their personal capacity and objectively in the best interests of the Protocol" (para. 4). Thus, as already happened for the

[5] See also *Report of the Third Meeting of the Legal Board*, doc. MP.WAT/AC.4/2005/2 (11 July 2005), para. 10.

[6] See *Report on the First Meeting of the Compliance Committee*, doc. ECE/MP.WH/C.1/2008/2-EUR/08/5069385/6 (21 April 2008).

Committees established under the Kyoto Protocol, the Aarhus Convention and the Cartagena Protocol, the option of a committee composed of independent experts prevailed over that of a committee composed of a restricted number of Parties. However, in line with the prevailing view and in contrast with the practice under the Aarhus Convention, this has not prevented individuals from sitting as government delegates in other bodies to be elected as Committee members. To enhance the independence of its members and avoid conflict of interest, the Committee has agreed that they cannot represent Governments or organizations in meetings of other bodies of the Protocol.[7]

At their first meeting the Parties elected five members for a full term of office and four members for a half term of office. Subsequently, the MOP shall elect for a full term new members to replace those whose term has expired (para. 7). A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter, meaning that the normal term of office is six years. The same person shall not sit for more than two consecutive terms (para. 7). As already happens in the Aarhus Committee, if a member is unable to complete its term, a substitute for the remainder shall be appointed by the Bureau, subject to the approval of the Committee (para. 7).

c) Observers

Decision I/2 does not envisage explicitly the admission of observers. Proposals to the effect of recognising such status to a fixed number of NGOs have been rejected out of the consideration that this would have afforded non-state actors greater entitlement than States (Parties and signatories, for instance) and that the presence of "institutional" observers made a little sense in a body composed of independent experts. However, it was also noted that other provisions, such as those on the openness of meetings and powers of the Committee to invite and accept the presence of any person deemed useful for the performance of its tasks, constitute a basis for NGOs or other actors to participate at the Committee's meetings.[8]

At its first meeting the Committee decided to recognise automatically observer *status* to NGOs enjoying the same *status* within the MOP. As to other NGOs, observer *status* will be granted on a case-by-case basis.[9] The Committee also noted that the *status* of the attending public is different from the one of observers. However, this does not prevent the Committee to give the floor to the public, whenever it deems it useful.[10]

5.2 The Secretariat

The Secretariat acts as the administrative body of the mechanism. It receives candidatures for the Committee (para. 6(a)), arranges for and services its meetings (para. 9) and acts as a liaison between Parties and the public and the Committee in the handling

[7] See *Report on the First Meeting of the Compliance Committee*, *supra* n. 6, para. 37.
[8] See *Report of the Third Meeting of the Legal Board*, *supra* n. 5, para. 13.
[9] See *Report on the First Meeting of the Compliance Committee*, *supra* n. 6, para. 18.
[10] Ibid., para. 19.

of non-compliance cases (paras. 13–17). In addition, it has its own triggering function (para. 15).[11]

5.3 The Meeting of the Parties

The main role of the MOP in the non-compliance procedure is to decide, upon recommendation by the Committee, on compliance matters, including the response measures to be taken (para. 35).[12] It may also request the Committee to prepare reports on general issues of compliance (para. 11(b)).

6. Functions of the Committee

The Committee performs general tasks in relation to the monitoring of compliance and considers individual cases of non-compliance. More generally, the Committee has a very broad power to examine compliance issues and make recommendations if and as appropriate (para. 12). It reports on its work at each ordinary MOP (para. 33).

The Committee shall monitor, assess and facilitate the implementation of and compliance with the Protocol reporting requirements (para. 11(c)) and prepare, at the request of the MOP, a report on compliance with or implementation of the provisions of the Convention (para. 11(b)).

The main function of the Committee is to consider issues of non-compliance by a Party with any conventional provision that has been brought to its attention in conformity with Decision I/2 (para. 11(a)), to decide upon certain facilitative response measures (para. 34) and to make recommendations to the MOP on response measures (para. 35).

7. Trigger Mechanism

7.1 Submission by a Party (Party-to-Party Trigger and Self Trigger)

"Submission" refers to an issue of compliance brought before the Committee by a Party having reservations on another Party's compliance (Party-to-Party trigger) (para. 13) or concluding that, despite its efforts, is itself unable to comply with the Protocol (self-trigger) (para. 14). Submissions must be made in writing to the Secretariat and be supported by corroborating information or, in self-triggering cases, by the specific circumstances that the Party considers to be the causes of its non-compliance.

[11] See *infra* paragraph 7.2.

[12] See *infra* paragraph 11.

7.2 Referrals by the Secretariat

"Referral" refers to the issue of compliance brought to the Committee's attention by the Secretariat when it becomes aware of possible non-compliance by a Party, when the matter is not settled through consultation with the Party concerned, but only upon consideration of the Reports submitted by the Parties in accordance with the Protocol (para. 15).

7.3 Communications from the Public

"Communication" refers to the trigger by "members of the public", e.g. individuals or organizations, without a particular interest to be stated. The mechanism is broadly similar to that provided for by Decision I/7 under the Aarhus Convention. It provides for a one-year "grace" period for any Party and for the possibility of opting-out for no more than four years (para. 16). To be admissible, communications must not be (a) anonymous, (b) an abuse of the right to make such communications, (c) manifestly unreasonable, and (d) incompatible with the provisions of the compliance procedure or with the Protocol (para. 18). A soft requirement of exhaustion of domestic remedies is also set (para. 19).

7.4 Initiation *Proprio Motu*

The broad provision on the Committee's power "to examine compliance issues and make recommendations if and as appropriate" suggests that, as happens under the Aarhus Convention, the Committee may also act *proprio motu*.

8. The Procedure before the Compliance Committee and Procedural Safeguards

8.1 Sources of Procedural Rules and General Remarks

Decision I/2 is not exhaustive in regulating the procedural aspects of the mechanism and it is completed by the application of the Rules of Procedure of the MOP.[13] In accordance with Rule 21 of the Rules of Procedure of the MOP, the latter are applicable *mutatis mutandis* to the Compliance Committee (and other bodies established by the MOP), with the exclusion of those on representation and credentials, on the establishment of the bureau and on official languages. Special rules are provided on the distribution of documents (Rule 21(5)), *quorum* (Rule 21(6)) and the voting rights of the Chairperson (Rule 21(7)). Rules on dates of meeting and working languages are left to the Committee itself, whereas those on attendance by the public and participation without the right to vote are to be found either in Decision I/2 or, failing regulation, in subsequent decisions or practice of the Committee.

[13] *Decision I/1 on Rules of Procedure for the Meetings of the Parties to the Protocol*, doc. ECE/MP.WH/2/Add.1-EUR/06/5069385/1/Add.1 (3 July 2007).

At its first meeting the Committee held a preliminary discussion on Rules of Procedure and on procedures for the handling of submissions, referrals and communications. The view prevailed that the precedent under the Aarhus Convention could be an important guidance, both as to the format and to the content of the procedural rules to be elaborated by the Committee.

8.2 **Procedural Safeguards**

As generally stated in the section on objective, nature and principles, the compliance procedure "shall be guided by the principles of transparency, fairness, expedition and predictability" (para. 2). This statement is reflected in several provisions throughout the procedure. First of all, the Party whose compliance is at issue has the *right to be promptly informed* of any referral, submission or communication made in its respect. Arguably, this includes the right to receive all the relevant information and documents available to the Committee and to respond to it in a set time framework (paras. 14, 15, 20 and 21). Secondly, together with the submitting Party or with the member of the public making the communication, it has the *right to take part in the discussion* of the submission, referral or communication (para. 30), except for the part in which findings, measures or recommendations are prepared and adopted (para. 31). However, the Party concerned and the submitting party or the communicant, as applicable, are entitled to receive a draft of the findings, measures and/or recommendations for comments. These comments are to be taken into account by the Committee (para. 32).

Another set of safeguards relates to the *confidentiality of proceedings*. Decision I/2 contains a general rule of "non-confidentiality" of the information held by the Committee, with an exception for information provided in confidence by a Party making a self-submission (para. 26) and for information falling within the scope of exceptions referred to in Articles 10.4(c) and 10.5 of the Protocol and that have been provided in confidence (para. 24). In these cases the Committee's members and any other person involved in the procedure are bound to a duty of confidentiality. An additional ground for confidentiality was set, after a long debate, in order to preserve the security of those submitting information to the Committee, when they risk being penalised, prosecuted or harassed because of the communication. Thus a request not to disclose their identity may be made to the Committee, which could deny it when there are no reasonable grounds to believe that the risk may be real (para. 27).

As already mentioned, "*attendance by members of the public*" is one of the issues that the Rules of Procedures of the MOP exclude from application *mutatis mutandis* to bodies with a limited membership created under the Protocol. The regulation of this aspect of the procedure is thus left to a case-by-case decision by the MOP or by the body concerned (Rule 21(9)). "Transparency" is one of the guiding principles of the whole procedure (para. 2). It is reflected in the general rule that meetings shall be held in public (para. 28). Apart from holding close meetings when findings and recommendations are prepared, in accordance with para. 31, the Committee may also decide to close meetings on a case-by-case basis, but only if this is necessary to ensure the confidentiality of information in accordance with the rules set out above (para. 28).

An innovative provision of Decision I/2 contained in para. 33 requires the Committee to list the sources of information used and to give a *reasoning for its decisions* and recommendations. The rule is contained in the paragraph dealing with the Committee's report to the MOP, but should be deemed to be applicable to any decision of the Committee and in particular on decisions on response measures in accordance with para. 34.

9. Sources of Information

Decision I/2 affords the Committee with broad powers to seek, receive and consider information, through written proceedings, oral hearings and, with the consent of the Party concerned, on-site activities (para. 22). The Legal Board opted for a general provision, not listing specific sources of information, except for experts and advisers, including from NGOs or the public. However, this should not be interpreted as excluding non-governmental sources in the other information gathering activities.

10. Decision-Making

Decision I/2 contains a general rule on decision-making (para. 10), stating that the Committee shall make every effort to adopt its decisions and recommendations by consensus and that when consensus cannot be reached, a two-thirds majority of the members present and voting or five positive votes, whichever is the greater, are necessary. This provision codifies the practice already adopted by the Aarhus Committee.

11. Outcomes

As usually found in compliance mechanisms, Decision I/2 provides for both facilitative and stronger measures as outcomes of the procedure. Those of a facilitative nature are directly entrusted to the Committee (para. 33), who can address itself to the Party concerned to provide advice and facilitate assistance on compliance, to invite it to develop an action plan to restore compliance, to request the submission of progressive reports on the action taken and to make specific recommendations in relation to communications from the public. The Committee is also afforded with the unusual power to issue cautions to a Party aimed at inducing compliance with the Protocol. In addition to these measures, and other facilitative ones relating to financial and technical assistance, capacity building and technology transfer, the MOP is empowered to take stronger measures (para. 34) including the issuance of declarations of non-compliance, the decision of special forms of publicity for a given case and the suspension of rights and privileges according to general international law.

This division of competence between the two bodies is justified by the necessity to ensure a prompt collective response to non-compliance, which would have proved difficult if left within the exclusive competence of a body, the MOP, which ordinarily meets only every three years. However, the powers afforded to the Committee are

unusually broad. It has the power to address recommendations directly to the Party concerned and this power is not "provisional", nor subject to the Party cooperation or consent, as happens in the Aarhus procedure. Moreover, in addition to recommending facilitative measures, the Committee may also "issue cautions". For political and legal reasons, the MOP is left with the power to decide, upon the Committee's recommendation, those measures possibly requiring additional financial efforts by the Parties as well as those more oriented towards enforcement and sanctions.

Although the measures indicated in Decision I/2 are not to be considered as requiring a specific sequence, in practice it is foreseeable that in normal situations the Committee, after finding a Party to be in non-compliance, will request that Party to submit a plan to achieve compliance and to report on its implementation. In the case of lack of cooperation by the Party, it may issue a caution that it will recommend more stringent measures to be adopted by the MOP.

A last issue concerns the use, in para. 34, of the expression "the Committee decides upon one or more of the following measures", which should not be interpreted as suggesting that the Committee's determinations are binding upon the Party concerned. First, this paragraph is to be read in the context of the kinds of measures it may "decide upon", which are facilitative and cooperative. Certainly, the refusal to submit a plan for achieving compliance seems to carry with it legal consequences, but these may be derived from the general duty of implementing the treaty in good faith. Moreover, the object and purpose of the mechanism, as clearly envisaged in Article 15, excludes the adoption of binding decisions by the Committee. Finally, one may wonder whether it would be consistent with international law to entrust with the power of issuing acts creating obligations upon Parties a body created by a decision of the MOP, without each Party expressing its consent to it in accordance with the law of treaty.

12. Coordination with Dispute Settlement Procedures and Other Non-Compliance Procedures

As usually found in this kind of mechanism, Decision I/2 specifies that the compliance procedure shall be "without prejudice" to the dispute settlement clause of the Protocol (Article 20).

The multiplication of compliance procedures within MEAs is likely to raise issues of duplication of proceedings, due to the existing overlaps in substantive provisions. By way of example, the Protocol's provisions on access to information, public participation and environmental impact assessment may overlap with provisions of the Aarhus and Espoo conventions. In order to promote the efficiency and consistency of the various mechanisms, Decision I/2 takes an innovative approach by enabling the Committee to communicate, upon specific directions by the MOP, with other compliance bodies (para. 36), to transmit information to the secretariats of other MEAs and invite members of other committees dealing with issues related to those pending before it (para. 37).

13. Participation of the European Community

The Protocol on Water and Health is open to ratification, acceptance, approval or accession

> "by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe or members of the Regional Committee for Europe of the World Health Organization to which their member States have transferred competence over matters governed by this Protocol, including the competence to enter into treaties in respect of these matters" (Article 21),

while Article 22 specifies that the Organization and its Member States that are a Party to it "shall decide on their respective responsibilities for the performance of their obligations under this Protocol" and "shall not be entitled to exercise rights under this Protocol concurrently". Thus the instrument of ratification, acceptance, approval or accession by the Organization in point shall contain a declaration of "the extent of their competence with respect to the matters governed by this Protocol".

Those provisions clearly envisage the participation in the Protocol of the European Community (EC). It may be recalled that the EC has not signed the Protocol yet, while setting in motion the process for ratification. A Proposal for a Decision on the conclusion of the Protocol by the EC was submitted by the Commission to the Council on 17 August 2001,[14] and the European Parliament, consulted by the Council, has also taken a favourable stand,[15] but the Council has not yet made a final decision. In the Draft Declaration annexed to the Draft Decision it is stated that, besides having competence under Article 174.4 of the Treaty establishing the European Community (EC Treaty), legal instruments, binding on the Member States, covering all matters governed by the Protocol have already been adopted at the Community level. One may also recall that the Explanatory Statement accompanying the Draft Legislative resolution of the European Parliament on the point at issue states that "[t]he Protocol does not create new legal obligations for the Community in the field of water policy." Notwithstanding the fact that this assertion may be disputed, the Commission has decided to withdraw its proposal[16] and the process of accession has been consequently stopped.

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[14] *Proposal for a Council Decision relating to the conclusion, on behalf of the Community, of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, 2001/C 332 E/03), COM(2001) 483 final – 2001/0188(CNS), OJ (2001) C 332 E/237.

[15] *Report on the proposal for a Council Decision relating to the conclusion, on behalf of the Community, of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, COM(2001) 483 – C5-0644/2001 – 2001/0188(CNS)), Committee on the Environment, Public Health and Consumer Policy, A5-0462/2001 of 19 December 2001.

[16] See *Communication from the Commission to the Council and the European Parliament, Outcome of the screening of legislative proposals pending before the Legislator*, COM(2005) 462 final and 2006/C 64/03, OJ (2006) C 64/3.

14. Financial Aspects

The Committee's members are not paid for their services, but they will receive financial support for travel and subsistence. The estimated cost of the compliance procedure for the triennium 2007–2009 is between $214,000 and $256,000 (US dollars).[17] The costs will be borne in part by the UN ordinary budget, to the extent that this covers the Secretariat's services, translation of certain documents and other general expenses, and in part by the Protocol's trust and voluntary funds constituted respectively with the UNECE and the WHO-EURO,[18] for other items.

The Protocol does not have a financial mechanism to support compliance-related activities.

15. Survey of practice

There is not yet any relevant practice, since the Committee has met only once and it exclusively dealt with organizational matters.

16. Conclusions

Decision I/2 designs a particularly advanced compliance mechanism, building on the precedent of the Aarhus NCP. The most qualifying aspects are the broad powers conferred on the Committee, composed of independent experts, which may take a vast array of action directly *vis-à-vis* Parties. The provision on communications from the public are also very relevant, although they may be revised at the third MOP. Being largely inspired by the precedent set by Decision I/7 under the Aarhus Convention, it will be interesting to see to what extent this will provide a model also in the practical functioning and in the *modus operandi* of the Committee.

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[17] See *Programme of Work for 2007–2009 adopted by the Meeting of the Parties*, doc. ECE/MP.WH/2/Add.5-EUR/06/5069385/1/Add.5 (3 July 2007), para. 54.

[18] *Decision I/5 on Financial Arrangements to Support the Implementation of the Protocol*, doc. ECE/MP.WH/2/Add.2-EUR/06/5069385/1/Add.2 (3 July 2007).