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1996 PROTOCOL TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY THE DUMPING OF WASTES AND OTHER MATTER

SEPTEMBER 11, 2008.—Ordered to be printed

Mr. DODD, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 110–5]

The Committee on Foreign Relations, to which was referred the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done in London on November 7, 1996 and signed by the United States on March 31, 1998 (the "Protocol") (Treaty Doc. 110–5), having considered the same, reports favorably thereon with one understanding and two declarations, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

The purpose of this Protocol is to update and strengthen the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (The "London Convention" or the "Convention") (Treaty Doc. 93–3) in an effort to protect the marine environment more effectively.

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II. Background

The London Convention, which was opened for signature on December 29, 1972 and entered into force for the United States on August 30, 1975, currently governs ocean dumping and the incineration at sea of wastes and other matter. The Convention was a significant early step in international protection of the marine environment, first proposed in the Council on Environmental Quality's 1970 report on ocean dumping and designed to promote the establishment of a national system in each State Party for regulating the ocean disposal of wastes. In the United States, such a system had been established through the Marine Protection, Research and Sanctuaries Act of 1972 (Title I of P.L. 92–532), which implements the 1972 London Convention.

The 1996 London Dumping Protocol, which entered into force on March 24, 2006, is intended eventually to replace the 1972 London Convention. The Protocol, much like the London Convention, is intended to effectively regulate the deliberate disposal at sea of wastes or other matter from vessels, aircraft, or man-made structures, and ban the incineration at sea of certain wastes or other matter. Parties are required to employ a permit process to regulate such activities within areas subject to national jurisdiction, on vessels loaded in their territories, or on flag-state vessels. But, unlike the London Convention, which uses a so-called "negative" approach and thus lists substances that *may not* be dumped, as well as a list of substances that may only be dumped with a special permit, the Protocol uses a so-called "reverse-list" or "positive" approach and prohibits ocean dumping of all wastes except those specifically listed in Annex 1, which *may* be dumped. In general, the Protocol provides a more effective framework than the London Convention under which Parties would regulate the ocean disposal of wastes, including updated provisions on waste assessment for Parties to follow when evaluating material for ocean disposal, as well as potential dumping sites.

In testimony before the committee regarding the Protocol, it was noted that the American Association of Ports and Harbors was involved in the negotiations of the Protocol and regularly attends meetings of both the London Convention and the Protocol. In addition, administration officials testified that the Dredging Contractors of America supports the Protocol's objectives.

III. Major Provisions

A detailed article-by-article analysis of the Convention may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 110–1. A summary of key provisions is set forth below.

What Can Be Dumped and the Ban on Incineration

Article 1 sets forth key definitions for the Protocol, including a definition of "dumping," and "incineration at sea." Article 4 states that Parties "shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1. There are currently eight types of wastes or other matter listed in Annex 1 that may be considered for dumping, as follows:

1. Dredged material

2. Sewage sludge

3. Fish waste, or material resulting from industrial fish processing operations

4. Vessels and platforms or other man-made structures at sea

5. Inert, inorganic geological material

6. Organic material of natural origin

7. Bulky items primarily comprising iron, steel, concrete and similar harmless materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping

8. Carbon dioxide streams from carbon dioxide capture processes for sequestration.

The final item regarding carbon sequestration was only recently added to Annex 1 and entered into force in February 2007. The International Maritime Organization (IMO) has stated that the 2007 amendment provides Parties with a means "to regulate carbon capture and storage (CCS) in sub-seabed geological formations, for permanent isolation, as part of a suite of measures to tackle the challenge of climate change and ocean acidification, including, first and foremost, the need to further develop low carbon forms of energy."[1] The IMO further noted that this waste disposal option would apply to large point sources of CO_2 emissions, including power plants, steel, and cement works.

Article 5 of the Protocol requires Parties to prohibit the incineration at sea of wastes or other matter. This would expand the current ban on incineration at sea in the London Convention, as amended in 1993, which only bans the incineration at sea of industrial waste and sewage sludge.[2] The Protocol's definition of "incineration at sea," however, excludes incineration at sea of wastes or other matter generated during the normal operation of a vessel, platform, or other man-made structure on which they are being incinerated, which is covered by another international agreement, MARPOL 73/78, Annex VI.

Article 8 of the Protocol specifies certain exceptions to the prohibitions on dumping and incineration at sea contained in Articles 4 and 5. Paragraph 1 provides an exception for situations of "force majeure" caused by stress of weather, as in the case of a severe hurricane, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea. In these situations, dumping or incineration at sea is permissible and does not require a permit if it appears to be the only way of averting the threat and it is probable that the dumping or incineration will result in less damage than would otherwise occur. Such dumping or incineration is to be conducted so as to minimize the likelihood of damage to human or marine life and it is to be reported to the IMO. Paragraph 2 applies to emer-

[1] IMO Press Briefing No. 43, November 8, 2006, available at http://www.imo.org/Newsroom/mainframe.asp?topic_id=1320&doc_id=7301.

[2] In 1993, an amendment to Annexes I and II of the London Convention was adopted that, among other things, banned the incineration at sea of industrial wastes. This amendment entered into force on February 20, 1994.

gencies "posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution." In response to questions from the committee, administration officials testified as follows regarding the exceptions in Article 8:

> Article 8 of the Protocol is a good example of the sophistication of this treaty in providing flexibility. There are two different situations it allows for. First, it allows for a party to issue a permit and thus create an exception to the Protocol's general rules on dumping in situations of emergencies posing an unacceptable threat to human health, safety, or the marine environment when there is no other feasible alternative. This provision, the emergency permit, is actually broader than the one of the original convention to which we are now bound. And there is the second provision as well, which [closely parallels a similar provision in] the original convention. It contains a provision for situations of force majeure caused by weather or other immediate threats to human life or the marine environment where there is no other alternative. In these situations, dumping or incineration at sea may proceed even without the permit, although a party should conduct these things in a manner so as to minimize harm to human or marine life.

Article 8 was strongly supported by the United States and provides Parties with the authority to address threats to humans and the marine environment, when necessary.

Preventative Measures

Article 3(1) of the Protocol makes clear that "appropriate" preventative measures are to be taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm, even when there is no "conclusive evidence to prove a causal relation between inputs and their effects." Article 3(3) states that in implementing the Convention, Parties "shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another."

Permits, Reporting, Enforcement: Mechanisms for Compliance

Article 9 of the Protocol sets forth regulatory and record-keeping requirements that Contracting Parties are required to have in place in order to administer the dumping and incineration at sea regime established by Articles 4, 5, and 8. The United States would implement these requirements through the Army Corps of Engineers and the EPA, which share permitting authority and reporting responsibility under Sections 102 and 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA).[3]

Article 10 specifies the vessels, aircraft, and platforms or other man-made structures to which each Party is obliged to apply certain measures and clarifies the extent of each Party's responsibility to prevent and, if necessary, punish acts contrary to the Protocol. Article 10(4) of the Protocol repeats verbatim Article VII(4) of the London Convention and exempts vessels and aircraft entitled to sovereign immunity under international law from coverage of the Protocol and require that Parties take "appropriate measures" that such vessels and aircraft act in a manner consistent with the object and purpose of the Protocol.

Article 11 provides for the establishment of procedures and mechanisms necessary to assess and promote compliance with the

[3] 33 U.S.C. § 1401 *et seq.*

Protocol. Article 11 further specifies that the "Meeting of Contracting Parties" to the Protocol may offer advice, assistance, or cooperation to Parties and non-Parties after full consideration of any information submitted pursuant to the Protocol and any recommendations made through compliance procedures and mechanisms once they are established. In response to questions from the committee regarding the status of these procedures and mechanisms, administration officials testified that the "rules and procedures on compliance mandated by Article 11 of the London Protocol were adopted at the 2nd Meeting of Contracting Parties in November 2007. They were adopted by consensus. The compliance procedures create a facilitative process that will not lead to binding consequences for Parties." The rules and procedures on compliance adopted in November 2007 can be found in the Annex of this report.

Cooperation, Assistance and Research

Article 12 of the Protocol encourages Parties with common interests to enhance cooperation in protecting the marine environment in a given geographical area. Article 13 calls on Parties to the Protocol to collaborate within the IMO and coordinate with other competent international organizations in order to promote support for technical cooperation and assistance to Parties that request it when implementing the Protocol. This article reflects an awareness that technical cooperation and assistance are important in encouraging developing nations to adhere to and implement fully the Protocol's obligations. Article 14 recognizes the importance of scientific and technical research in preventing and controlling marine pollution and facilitates an exchange of information relevant to such matters. Article 17 requires Parties to promote the Protocol's objectives within "competent international organizations."

Administration officials testified to the committee regarding cooperative efforts consistent with the Protocol that are intended to reduce and, where practicable, eliminate pollution caused by dumping or the incineration at sea of wastes or other matter as follows:

> For more than thirty years, the U.S. has been a leader in the control of marine pollution from ocean disposal, and our technical experts are in high demand for advising other nations on managing their dredging programs and other ocean disposal activities. The United States has been an active participant in regional cooperation activities to improve management of ocean dumping, especially within the Western Hemisphere. In recent years, U.S. technical experts from EPA and the Army Corps have participated in regional workshops on ocean disposal in Ecuador, China, and Bahrain. We engaged with countries in the wider Caribbean to encourage them to join the London Convention and Protocol through UNEP's Caribbean Environment Programme. We are also an active member of the South Pacific Regional Environment Programme, and leader within that organization on preventing marine pollution from ocean dumping in the Pacific.
>
> U.S. technical experts played a leading role in the London Convention/Protocol Scientific Group in developing "Waste Assessment Guidance" for evaluating various types of material for ocean disposal. This year EPA is providing the London Convention/Protocol Secretariat at the IMO with $80,000 to develop guidance for developing countries on dredged material management, and to promote training and capacity building in ocean dumping regulation. Over the next two years, we plan to contribute additional funds to this effort with a focus on Latin America and the Caribbean. Should we become Party to the London Protocol, we would expect to continue our leadership role in promoting cooperation and providing assistance on ocean dumping.

Dispute Resolution

Article 16 of the Protocol provides a dispute settlement procedure for disputes regarding the interpretation or application of the Protocol, which includes binding arbitral procedures in Annex 3 that are identical to the dispute resolution procedures provided for in a 1978 amendment to the 1972 London Convention, to which the United States is a Contracting State.[4] The administration has recommended that a declaration and an understanding be included in the U.S. instrument of ratification regarding the dispute resolution procedures, when ratifying the Protocol. These statements are described below.

IV. Entry Into Force

The Protocol entered into force on March 24, 2006 and to date, has 35 Parties. In accordance with Article 25, the Protocol will enter into force for the United States on the thirtieth day following the date of deposit of its instrument of ratification.

V. Implementing Legislation

Existing law, including the Clean Water Act,[5] the Clean Air Act,[6] and the Resource Conservation and Recovery Act[7] would be relied upon to implement aspects of this Protocol; however, further legislation would be needed to fully comply with the Protocol's requirements. On November 7, 2007, the executive branch submitted to Congress proposed legislation in the form of amendments to the MPRSA[8] that would fully implement the Protocol. The President's Letter of Transmittal notes, however, that although new legislation is needed "[t]here will not be any substantive changes to existing practices in the United States, and no economic impact is expected from implementation of the Protocol."[9] The committee understands that the United States will not deposit its instrument of ratification until the legislation necessary to allow the United States to fully implement the Protocol has been enacted.

VI. Committee Action

The committee held a public hearing on the Protocol on July 10, 2008. Testimony was received from Ambassador David A. Balton, Deputy Assistant Secretary of State for Oceans and Fisheries. A transcript of this hearing is annexed to Executive Report 110–15.

On July 29, 2008, the committee considered the Protocol and ordered it favorably reported by voice vote, with a quorum present and without objection.

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[4] 1978 Amendment to the Convention on the Prevention of Marine Pollution by Dumping Wastes and other Matter (Treaty Doc. 96–9; Ex. I, 96th Congress, 1st Session). The United States deposited its instrument of acceptance on October 24, 1980, but the Amendment has not entered into force because it has not been ratified by a sufficient number of parties. The Amendment will not enter into force until two-thirds of the Parties to the London Convention ratify the Amendment and, according to the IMO website, less than half the number needed (54) have ratified the Amendment (only 20).

[5] 33 U.S.C. § 1251 *et seq.*

[6] 42 U.S.C. § 7401 *et seq.*

[7] 42 U.S.C. § 6901 *et seq.*

[8] 33 U.S.C. § 1401 *et seq.*

[9] President's Letter of Transmittal, Treaty Doc. 110–5 at III.

VII. Committee Recommendation and Comments

The Committee on Foreign Relations believes that the Protocol would serve to protect the U.S. marine environment more effectively from the harmful effects of wastes and other matter disposed of or incinerated at sea. Moreover, the international regime for addressing ocean dumping and the incineration of wastes and other matter at sea established by the Protocol is beginning to replace the framework established by the London Convention as more and more countries ratify the Protocol. As a result, it is increasingly important that the United States be able to fully participate in the development and implementation of the Protocol in international fora, so that the United States is able to advance and protect key U.S. interests in the protection of the marine environment. Accordingly, the committee urges the Senate to act promptly to give advice and consent to ratification of the Convention, as set forth in this report and the accompanying resolution of advice and consent.

A. AMENDMENTS TO THE ANNEXES

Articles 21 and 22 set forth procedures for amending the text of, and the annexes to, the Protocol. There are three annexes to the Protocol: Annex 1—*Wastes or Other Matter that may be Considered for Dumping;* Annex 2—*Assessment of Wastes or Other Matter that May be Considered for Dumping;* and Annex 3—*Arbitral Procedure.* Amendments to the annexes must be adopted by a two-thirds majority vote of the Contracting Parties to the Protocol present and voting at a Meeting of Contracting Parties. If adopted, amendments to Annex 1 and 2 of the Protocol will enter into force for a Party to the Protocol 100 days after the date of the adoption of such an amendment, if that Party has not objected to the amendment. If a Party has objected to a Protocol, that Party can at any time substitute an acceptance for its objection and the relevant amendment would enter into force for that Party either upon notification of the acceptance or 100 days after the date of the adoption of the amendment, whichever date is later in time. Amendments to Annex 3 and proposals to add new Annexes to the Protocol would be treated as any other amendment to the text of the Protocol under Article 21 and would therefore only enter into force for a Party to the Protocol if formally accepted by that Party.

The Committee on Foreign Relations recognizes that the tacit amendment procedure provided for amending Annexes 1 and 2 makes it possible for the implementation of the Protocol to evolve without going through a standard amendment process, which can take years to complete. The first two annexes currently attached to the Convention are largely technical and procedural in nature. Nevertheless, the committee expects the executive branch to consult with the committee in a timely manner regarding proposed amendments to either Annex 1 or 2 in order to determine whether the advice and consent of the Senate is necessary. Moreover, the committee expects that under such circumstances, the executive branch will make appropriate use of the objection procedure described above to prevent an amendment from entering into force for the United States before the conclusion of consultations on whether Senate advice and consent is necessary. Finally, the committee believes that any amendment to Annex 3, or proposals to add an ad-

ditional annex to the Protocol, would likely require the advice and consent of the Senate.

B. RESOLUTION

The committee has included in the resolution of advice and consent one proposed understanding and two proposed declarations. All three are discussed briefly below.

First Declaration

Paragraph 1 of Article 3 of the Protocol emphasizes the utility of precaution in protecting and preserving the marine environment from pollution caused by ocean dumping, whereby appropriate preventative measures are taken if there is reason to believe that wastes or other matter are likely to cause harm to the marine environment. Paragraph 2 of Article 3 underlines the importance of promoting practices whereby those authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for such activities. These provisions describe general concepts that in the administration's and the committee's view would not normally be an appropriate subject for dispute settlement.[10] This proposed declaration, which is recommended by the executive branch and contemplated in Article 16(5) of the Convention, would exempt paragraphs 1 and 2 of Article 3 from the Protocol's dispute settlement procedures, unless the United States gives its consent in a particular dispute.

Understanding

Article 10(4) of the Protocol repeats verbatim Article VII(4) of the London Convention and exempts vessels and aircraft entitled to sovereign immunity under international law from coverage of the Protocol, but nevertheless provides that each Party take "appropriate measures that such vessels and aircraft owned or operated [by that Party] act in a manner consistent with the object and purpose of this Protocol . . . ." The proposed understanding would make clear that the United States does not view the Protocol's dispute settlement procedures as applicable to disputes in relation to sovereign immune vessels and aircraft, including any disputes in relation to the statement in Article 10 that each Party take appropriate measures to ensure that sovereign immune vessels and aircraft act in a manner consistent with the object and purpose of this Protocol.

Second Declaration

This second proposed declaration states that the Protocol is not self-executing. The Senate has rarely included statements regarding the self-executing nature of treaties in resolutions of advice and consent, but in light of the recent Supreme Court decision, *Medellín* v. *Texas,* 128 S.Ct. 1346 (2008), the committee has determined that a clear statement in the resolution is warranted. A further discussion of the committee's view on this matter can be found in Section VIII of Executive Report 110–12.

[10] *See* the Article-by-Article Analysis attached to the Secretary of State's Letter of Submittal at p.5.

VIII. Resolution of Advice and Consent to Ratification

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARATIONS AND AN UNDERSTANDING

The Senate advises and consents to the ratification of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done in London on November 7, 1996 (Treaty Doc. 110–5), subject to the declaration of section 2, the understanding of section 3, and the declaration of section 4.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration, which shall be included in the instrument of ratification:

> The United States of America declares that, pursuant to Article 16(5), when it is a party to a dispute about the interpretation or application of Article 3(1) or 3(2) of this Protocol, its consent shall be required before the dispute may be settled by means of the Arbitral Procedure set forth in Annex 3 of the Protocol.

SECTION 3. UNDERSTANDING

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

> The United States of America understands that, in light of Article 10(4) of the Protocol, which provides that the Protocol "shall not apply to those vessels and aircraft entitled to sovereign immunity under international law," disputes regarding the interpretation or application of the Protocol in relation to such vessels and aircraft are not subject to Article 16 of the Protocol.

SECTION 4. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

> This Protocol is not self-executing.

ANNEX 7

COMPLIANCE PROCEDURES AND MECHANISMS PURSUANT TO ARTICLE 11 OF THE 1996 PROTOCOL TO THE LONDON CONVENTION 1972

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 Meeting of Contracting Parties shall retain overall responsibility for compliance matters.

1.3 Any work on compliance shall be in accordance with these procedures or as otherwise authorized by the Meeting of Contracting Parties.

1.4 A Compliance Group (CG) is hereby established by the Meeting of Contracting Parties.

2 FUNCTIONS OF BODIES RELATED TO COMPLIANCE

2.1 The Meeting of Contracting Parties may:

.1 refer, as appropriate, compliance matters (individual situations of possible non-compliance, systemic issues and other compliance matters) to the Compliance Group and/or the LP Scientific Group;

.2 offer advice, assistance or co-operation 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 periodically review the effectiveness of the compliance procedures and mechanisms, including the roles of the Compliance Group, the LP Scientific Group and itself;

.4 review reports under Articles 9.4.1, 9.4.2, 9.4.3, 10.3, 26.5 and 26.6 pursuant to section 6 below and consider advice on these reports from the Compliance Group and/or the LP Scientific Group, as appropriate; and

.5 undertake other activities, as appropriate, to promote compliance.

2.2 The Compliance Group may:

.1 consider and assess an individual situation of a Party's possible non-compliance referred to it in accordance with section 4, with a view to identifying the facts, possible causes and specific circumstances;

.2 make recommendations to the Meeting of Contracting Parties on systemic compliance issues referred to it or that it proposes to pursue;

.3 make recommendations to the Meeting of Contracting Parties on individual situations of possible non-compliance as described in section 5;

.4 make recommendations to the Meeting of Contracting Parties on other activities to promote compliance;

.5 review 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 pending consideration by the Meeting of Contracting Parties;

.8 upon request of a non-Party, provide advice and guidance to facilitate its becoming a Party to the Protocol; and

.9 request advice and information from the LP Scientific Group.

2.3 The LP Scientific Group may, within its terms of reference, contribute to the work of the Compliance Group.

3 CHARACTERISTICS AND OPERATIONS OF THE COMPLIANCE GROUP

3.1 The Compliance Group shall be limited in size to fifteen members.

3.2 The Compliance Group shall be composed of individuals selected on the basis of their scientific, technical or legal expertise.

3.3 Members shall serve objectively and in the interest of promoting compliance with the Protocol.

3.4 Members shall be nominated by Contracting Parties, based on equitable and balanced geographic representation of the five Regional Groups of the UN, and elected by the Meeting of Contracting Parties.

3.5 The Meeting of Contracting Parties shall elect five of the members for one term, five of the members for two terms, and five of the members for three terms. The Meeting of Contracting Parties shall, at each ordinary meeting thereafter, elect for three 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 three 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 session of the Meeting of Contracting Parties.

3.6 The Compliance Group shall elect its own Chairman and Vice-Chairman.

3.7 The Compliance Group shall meet as necessary at least once a year and when specifically requested to do so by the Meeting of Contracting Parties. In determining the dates of the meetings, due consideration should be given to the meeting schedules of the Meeting of Contracting Parties and other relevant bodies under the Protocol.

3.8 Any Party or any non-Party observer may attend meetings of the Compliance Group, except that when individual situations of compliance are under consideration by the Compliance Group, the meeting shall be closed if the Party whose compliance is in question so requests.

3.9 The members of the Compliance Group 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 Compliance Group shall act, as a last resort, by a three-quarters majority vote of the members present and voting. Where consensus cannot be reached, the report shall reflect the views of all members of the Compliance Group.

3.10 Two-thirds of the members of the Compliance Group shall constitute a quorum.

3.11 In carrying out its functions, the Compliance Group may seek, or receive, and consider relevant information from any source it considers to be reliable.

4 SUBMISSIONS AND PROCEDURES

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

.1 the Meeting of Contracting Parties. This includes where the Meeting of Contracting Parties considers that information provided by Parties, the Secretariat or observers raises important compliance issues;

.2 a Party regarding itself; and

.3 a Party that has reservations about another Party's compliance with the obligations under the Protocol when it has an interest that is affected or likely to be affected by the possible non-compliance. A Party intending to make a submission under this sub-paragraph should before so doing undertake consultations with the Party whose compliance is in question.

4.2 The Compliance Group may reject submissions which it considers are *de minimis*, manifestly ill-founded, or anonymous.

4.3 A submission pursuant to paragraph 4.1 shall be addressed in writing to the Secretariat, and shall set out:

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

4.4 The Secretariat shall forward all submissions within two weeks upon their receipt to the Compliance Group 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. Notice of all submissions shall be sent to all Parties for their information. A copy of any full submission would be available to any Party upon request.

4.5 Comments or information provided in response by the Party whose compliance is in question should be forwarded to the Secretariat within three months upon receipt of the submission by the Party in question, unless the party requests an extension. Such extension may be provided by the Chairman for a period of up to 90 days, with a reasonable justification. Such comments or information shall immediately be forwarded by the Secretariat to the Compliance Group for consideration at its next meeting.

4.6 The International Atomic Energy Agency (IAEA) is the competent international body for all issues involving radioactive wastes and other radioactive matter and radiation protection of humans and the marine environment. Where a submission raises compliance matters involving radioactive wastes and other radioactive matter, the Secretariat, on behalf of the Compliance Group, shall refer the matter to the IAEA for technical evaluation and review. The Compliance Group shall take into account the IAEA's evaluation in its consideration of the matter.

5 MEASURES

5.1 Following consideration and assessment of an issue regarding a Party's possible non-compliance, and taking into account the capacity of the Party concerned, and the comments or information provided under 4.5, and such factors as the 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 co-operation and assistance;

.3 the elaboration, with the co-operation of the Party or Parties concerned, of compliance action plans, including targets and timelines; and

.4 the issuing of a formal statement of concern regarding a Party's compliance situation.

5.2 Where the Meeting of Contracting Parties has agreed to measures referred to in sub-paragraphs 5.1.1, 5.1.2, 5.1.3, or 5.1.4 regarding a Party's compliance situation, that Party may make a statement to the Meeting of Contracting Parties on its situation.

5.3 Prior to submitting recommendations to the Meeting of Contracting Parties, the Compliance Group shall share its conclusions and recommendations with the Party concerned for consideration and an opportunity to comment by the Party concerned. The nature of the opportunity to comment and any comments provided by the Party shall be annexed to the report of the Compliance Group to the Meeting of Contracting Parties.

5.4 The Meeting of Contracting Parties shall make the final decision regarding any measures proposed by the Compliance Group to be taken in response to a Party's possible non-compliance. The Meeting of Contracting Parties may also consider additional measures within its mandate, as appropriate, to facilitate compliance by the Party concerned.

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, 26.5 and 26.6 shall be handled as described in the following paragraphs.

6.2 Parties shall maintain their own records under Article 9.4.1 and submit these to the Secretariat, which then transmits them to the LP Scientific Group and the Compliance Group. The LP Scientific Group will, in accordance with its terms of reference, evaluate this information and advise the Compliance Group, as appropriate, as well as the Meeting of Contracting Parties.

6.3 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 encountered in their application) are submitted to the Secretariat, it shall refer them to the Compliance Group for evaluation. The Compliance Group will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

6.4 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 consideration, and, if appropriate, referral to the Compliance Group or the LP Scientific Group.

6.5 Parties that have made a notification under Article 26.1 regarding the need for a transitional period shall submit reports pursuant to Articles 26.5 and 26.6 to the Secretariat prior to each Meeting of Contracting Parties held during their transitional period. The Meeting of Contracting Parties shall take action on the reports, including, if appropriate, referral to the Compliance Group or the LP Scientific Group.

6.6 The Compliance Group shall submit a report to each Meeting of Contracting Parties presenting:

.1 the work that the Compliance Group has undertaken in fulfilling its functions concerning the compliance of individual Parties, including any recommendations to the Meeting of Contracting Parties;

.2 the work that the Compliance Group has undertaken in fulfilling its functions concerning systemic compliance issues, including recommendations, to the Meeting of Contracting Parties; and

.3 the Compliance Group's future work programme for the consideration and approval by the Meeting of Contracting Parties.

7 RELATIONSHIP WITH OTHER PROVISIONS OF THE PROTOCOL

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

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