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CONSIDERATION OF THE ESTABLISHMENT OF A MULTILATERAL CONSULTATIVE PROCESS FOR THE RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION (ARTICLE 13)

A review of selected non-compliance, dispute resolution and implementation review procedures

Note by the interim secretariat

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I. INTRODUCTION

A. Convention provisions

1. Article 13 of the United Nations Framework Convention on Climate Change states:

> "The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to the Parties on their request, for the resolution of questions regarding the implementation of the Convention."

B. Committee mandate

2. At its tenth session, the Committee decided "to recommend to the Conference of the Parties at its first session that it establish an ad hoc and open-ended working group of technical and legal experts to study all issues relating to the establishment of a multilateral consultative process and its design, and to report its findings to the Conference of the Parties at its second session" (A/AC. 237/76, para. 114).

C. Scope of the note

3. As indicated in the note prepared by the interim secretariat for the tenth session of the Committee (see A/AC.237/59, para.4), the secretariat was to prepare a review of selected non-compliance, dispute resolution and implementation review procedures. Accordingly, the present note reviews the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer; the Second Sulphur Emissions Protocol to the United Nations Economic Commission for Europe (UN/ECE); the Convention on Long-range Transboundary Air Pollution; the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) dispute resolution panels; the International Labour Organisation (ILO); the 1982 United Nations Convention on the Law of the Sea; and the human rights conventions.

4. The purpose of the following review is solely to provide background information on the above-mentioned procedures for the forthcoming discussions at the first session of the Conference of the Parties (COP 1). It does not provide a critique of these procedures but is descriptive in its approach. Moreover, it does not attempt to design a multilateral consultative process for the United Nations Framework Convention on Climate Change.

II. THE NON-COMPLIANCE PROCEDURE OF THE MONTREAL

PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER

5. The Protocol's non-compliance procedure was adopted on an interim basis at the Second Meeting of the Parties in London in 1990. The full non-compliance procedure was only created at the Fourth Meeting of the Parties to the Montreal Protocol (hereinafter referred to as "the Fourth Meeting"), held in Copenhagen in 1992. 1/ It is based on four fundamental principles: the non-compliance regime should avoid complexity, should avoid confrontation, should be transparent, and should leave the taking of decisions to the Meeting of the Parties.

6. The procedure may be triggered by any of the following: the Convention secretariat; a Party regarding the implementation of the Protocol by another Party; or a Party with regard to its own implementation.

7. If one or several Parties have reservations about another Party's compliance with the Protocol, those concerns are submitted in writing to the secretariat together with corroborating information. The secretariat sends a copy of the submission to the Party whose implementation of a particular provision of the Protocol is at issue, and which then has a "reasonable opportunity" to reply. The reply is sent to the complaining Parties and to the secretariat, which forwards all information from the Parties concerned to the Implementation Committee.

8. The Implementation Committee handles questions regarding non-compliance. Its aim is to secure "an amicable solution of the matter on the basis of respect for the provisions of the protocol." 2/ Its task is to consider the following: the annual report of the secretariat; a reservation by one or more Parties regarding another Party's implementation of its obligations under the protocol; and a submission by a Party with regard to its own implementation of its obligations under the Protocol.

9. The Implementation Committee is made up of ten members, who are elected by the Parties and represent their States. There is no specific provision spelling out the qualifications required for serving on the Committee. Nevertheless, it is deemed important that members of the Implementation Committee come from a multi-disciplinary background. Elected members serve a term of two years and may only be re-elected for one consecutive term. To ensure a certain level of experience among the members serving on the Committee, only half are replaced every year. Election of members is based on the principle of equitable geographic distribution. The Committee elects its own President and Vice-President, who serve a term of one year. The Committee meets at least biannually, unless it decides otherwise, and its meetings are organized by the secretariat.

10. The Committee may request further information and also undertake further information-gathering inside the territory of a Party, but only "upon invitation of the Party concerned". 3/ While the Party under consideration has the right to participate in the consideration of its case, it is excluded from the process of elaboration and recommendation that the Committee makes to the Meeting of the Parties. Non-governmental organizations and international governmental organizations may not participate in the non-compliance procedure.

11. The non-compliance procedure is applied without prejudice to the traditional diplomatic dispute settlement procedures. Hence, in accordance with Article 11 of the Vienna Convention on the Protection of the Ozone Layer, 4/ States may settle disputes through negotiations or any other peaceful means of their own choice; submission of the dispute to the International Court of Justice; arbitration; or, finally, through an ad hoc conciliation commission. It should be noted that if the Parties to the dispute decide to resort to any of the afore-mentioned dispute settlement procedures, they must inform the Meeting of the Parties through the secretariat thereof.

12. The Committee reports to the Meeting of the Parties recommending the adoption of any measures it deems necessary. The Meeting of the Parties may decide upon the report and call for action to bring about full compliance with the Protocol, including measures to assist the Party's compliance with the Protocol. Annex V to the Fourth Meeting Report contains an indicative list of measures that might be taken in case of non-compliance. These are, inter alia: "providing appropriate assistance", "issuing cautions" and "suspension of specific rights and privileges under the Protocol".

13. The disputing Parties report back to the Meeting of the Parties on their implementation of any decision regarding non-compliance actions.

III. THE NON-COMPLIANCE PROCEDURE OF THE SECOND PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON FURTHER REDUCTION OF SULPHUR EMISSIONS

14. On 1 March 1993, the Bureau of the Executive Body of the UN/ECE Convention on Long-range Transboundary Air Pollution 5/ held a short consultative meeting to consider ways in which supervision of compliance with the obligations contained in the various Protocols to the Convention might be strengthened. The participants at the meeting noted various precedents but focused particularly on the non-compliance procedure of the Montreal Protocol, as they saw no reason to diverge substantially from it.

15. At a special session of the Executive Body for the Convention on Long-range Transboundary Air Pollution held in Oslo on 14 June 1994, the Parties to the Convention

adopted the Protocol on Further Reduction of Sulphur Emissions, 6/ which aims at reducing sulphur emissions to the atmosphere beyond those levels already set in a first sulphur protocol. 7/ The new Protocol establishes a much more elaborate national reporting regime than under any previous protocol under the Convention. Compliance monitoring will be based on an Implementation Committee established under Article 7 of the Oslo Sulphur Protocol. The structure and functions of this Committee are to be decided by the Parties after the entry into force of the Protocol. However, with the adoption of the Protocol, the Parties to the Convention adopted a decision setting out the envisaged structure and function of the Committee.

16. The main principles of the non-compliance regime of the Oslo Sulphur Protocol are similar to those of the Montreal Protocol, namely, to avoid complexity, to avoid confrontation, to be transparent and to leave any decision-making to the Parties. The system provides no sanctions, but rather foresees cooperative measures, such as assisting Parties to comply with the Protocol.

17. The Implementation Committee, as envisaged, will consist of eight members that will be elected. Election of members is based on the principle of equitable geographic distribution. Elected members serve a term of two years. As in the Montreal Protocol, only half the members of the Committee are replaced every year. Outgoing Parties may be re-elected for one consecutive term only. The Committee elects its own President and Vice-President both of whom serve a one-year term. The Committee meets twice a year, unless it decides otherwise.

18. The tasks of the Implementation Committee are both compulsory and facultative. Hence, the Committee is obliged to carry out a synthesis and evaluation of the information reported by the Parties. The Committee is also obliged to evaluate progress made in the implementation of the Protocols. Additionally, it must consider any matter brought before it regarding the settlement of disputes. Finally, it is to ensure that the quality of the data provided by a Party is controlled either by the Cooperative Programme for Monitoring and Evaluation of Long-range Transmissions of Air Pollutants in Europe technical centres, or by independent experts. Conversely, the Committee may request further information, through the secretariat, from any source it deems appropriate. It may, upon invitation of the Party concerned, gather information in its territory, and, finally, it may consider any information forwarded by the secretariat.

19. The Implementation Committee is to consider the following inputs: a reservation that one or more Parties may have concerning the implementation of the obligations of the Protocol by another Party; a reference made by a Party with regard to its own implementation; and the report of the secretariat. Hence, activity by the Implementation Committee may be triggered either by one or more Parties or by the secretariat.

20. The role of the secretariat in the Oslo Sulphur Protocol is even more marked than in the Montreal Protocol: it is not limited to the provision of information and is allowed to

report on possible non-compliance, however it may have been made aware of it. Moreover, if, upon reviewing the report submitted by Parties, it becomes aware of possible non-compliance by any Party, it requests further information on the matter. If the matter is not resolved through administrative action and diplomatic contacts, the Implementation Committee is informed accordingly. Hence, although non-governmental organizations and intergovernmental organizations cannot trigger the non-compliance procedure, they may, nevertheless, provide the secretariat with information on alleged non-compliance.

21. All complaints concerning implementation by another Party must be supported by corroborating information and submitted to the secretariat. The secretariat informs the Party whose behaviour is at issue and transmits all information and any eventual reply from the State concerned to the Implementation Committee. Similarly, when a Party refers itself to the Implementation Committee for consideration, it must clearly state in its submission what it considers to be the cause of its failure to comply.

22. While the Party under consideration has the right to participate in the consideration of its case, it is excluded from the process of elaboration and recommendation that the Committee makes to the Meeting of the Parties.

23. The Committee must report to the Parties on its activities at the annual session of the Executive Body. On that occasion, it makes any recommendation it deems appropriate regarding compliance with the Protocol.

24. One of the distinctions between the Oslo Sulphur Protocol and the Montreal Protocol is that in the former, reports relating to compliance are not required to be confidential. This is largely due to the fact that data on sulphur emissions do not have the same commercial implications as those concerning chlorofluorocarbons.

25. The non-compliance procedure is applied without prejudice to the provisions laid down in Article 9 of the Oslo Sulphur Protocol. Consequently, as in the Montreal Protocol, States may settle disputes through traditional diplomatic dispute settlement procedures.

IV. THE SUPERVISORY PROCEDURES OF THE INTERNATIONAL LABOUR ORGANISATION

26. The ILO plays a pivotal role in the creation and administration of international legal instruments in the labour and social security field. It has a unique tripartite composition: Governments and employers' and workers' organizations. The three main organs of the Organisation are : the General Conference of Representatives of Member States (hereinafter referred to as the International Labour Conference), the Governing Body and the International Labour Office.

27. The ILO compliance monitoring machinery is uniform in that the same machinery is applied to all ILO conventions. 8/ Conversely, the United Nations usually creates a different non-compliance machinery for each new convention adopted under its auspices.

28. The Constitution of the ILO 9/ provides for monitoring machinery consisting of regular supervision and special procedures. This system combines a technical evaluation carried out by independent experts, with a further evaluation carried out by a tripartite organ.

29. States must periodically submit reports on the measures they have taken to implement ratified ILO Conventions (see Article 22 of the Constitution of the ILO). The frequency of reporting ranges in practice from a year to once every five years, according to the nature of the problems. The reports are examined by two bodies: the Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as "the Committee of Experts") and the Conference Committee on the Application of Standards (hereinafter referred to as "the Conference Committee").

30. The Committee of Experts consists of twenty independent members, coming from all regions. These experts are of recognized competence in the field of labour, social and international law and sit in their personal capacity. Furthermore, they are appointed by the Governing Body upon the designation of the Director-General of the ILO.

31. The Committee of Experts (a quasi-judicial body) meets annually, and makes an objective and technical examination of the compliance of obligations under ratified Conventions. In addition, it examines reports by States on the implementation of non-ratified conventions and recommendations requested by the Governing Body each year.

32. The Committee of Experts is assisted by the Office's analysis of government reports and other relevant information and also considers observations from employers' and workers' organizations pertaining to alleged non-compliance. Moreover, if States so agree, ILO representatives may gather information directly on the territory of the member concerned ("direct contacts").

33. The reports of the Committee of Experts are presented to the Conference Committee. The Conference Committee reflects the tripartite structure of the ILO. It is established by the International Labour Conference, which is the plenary conference of ILO Members, and has the task of considering the most serious cases of persistent non-compliance contained in the Committee of Experts' report. The Conference Committee calls before it government representatives of countries under examination and seeks explanation for the alleged non-compliance.

34. The findings of the Conference Committee are contained in a report which reflects the views of employers' and workers' as well as governments' representatives. The report is then submitted to, and discussed in, the International Labour Conference and subsequently published as part of the "Proceedings of the International Labour Conference".

35. A Party to a given Convention or the Governing Body itself or a delegate to the Conference may make a complaint alleging that another Party is not securing the "effective observance" of a convention it has ratified (Article 26 of the Constitution). To deal with the complaint, the Governing Body may establish an ad hoc Commission of Inquiry. A Commission of Inquiry is composed of three highly qualified individuals who serve in their personal capacity and are appointed by the Governing Body on the recommendation of the Director-General.

36. The Commission, in considering a complaint before it, may require the implicated Party to provide all information in its possession pertaining to the case. In addition to the information supplied by the Government, the Commission may hear other Parties and witnesses and even, where necessary, undertake on-site visits.

37. The Commission drafts a report on the case and transmits it, via the Director-General, to the Parties and the Governing Body. The report includes recommendations on how to ensure compliance and is published in the ILO Official Bulletin.

38. Article 24 of the Constitution also provides for representations by industrial associations of employers or workers alleging failure to secure the effective observance of ratified Conventions. The Governing Body may publish such representations and any government response. It may set up a committee to examine the representation and publish its findings.

V. REVIEW AND RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION PROCEDURES IN HUMAN RIGHTS CONVENTIONS

39. In order to provide a brief outline of the review and resolution of questions regarding implementation procedures used in human rights instruments, the following section concentrates on the fundamental aspects of the process carried out under the International Covenant on Civil and Political Rights 10/ (hereinafter referred to as "the Covenant"). Other compliance control procedures under human rights conventions are essentially similar to the one reviewed below. 11/

40. The system of implementation of the Covenant centres upon the Human Rights Committee (hereinafter referred to as "the HRC"). The HRC consists of 18 members elected from among the nationals of the contracting parties. One representative from each Party is allowed to serve. States elect members of the Committee in a secret ballot, with consideration given "to equitable geographic distribution of membership and to the representation of the different forms of civilization and of the principal legal systems" (see Article 31.2 of the Covenant). The members are independent experts, mostly lawyers, and do not represent their Governments. They serve for a term of four years and may be re-elected. The HRC elects its own officers and decides on its own rules of procedure.

41. The task of the HRC is limited to the review of reports submitted by States regarding their implementation of the obligations contained in the Covenant. The aim of the review procedure is to assist Parties to fulfil their obligations and, in this regard, to make available to them the experience of the Committee. The Parties to the Covenant "undertake to submit periodic reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights" (see Article 40.1). Reports must be submitted every five years. They are usually considered at public hearings, to which the Party whose report is being discussed is invited to send a representative to introduce the report and to answer questions. The Committee is not a judiciary body; rather it tends to emphasize its role in encouraging a constructive dialogue instead of criticism, thus assisting in the fulfilling of the obligations under the Covenant.

42. In the light of recent or current events indicating that the enjoyment of human rights protected under the Covenant has been seriously affected in certain Party States, the Committee has resorted to the practice of requesting the States concerned to submit urgent reports on the situation (generally within three months).

43. While intergovernmental organizations and non-governmental organizations cannot participate orally in the consideration of State reports, they may submit written information or reports to be used by Committee members when considering such State reports. In addition, specialized agencies and other United Nations bodies are invited to contribute to the work of the Committee's pre-sessional working group on Article 40, the main purpose of which is to conduct a preliminary review of periodic reports scheduled for consideration during the session.

44. At the end of the consideration of State reports, the Committee adopts concluding comments reflecting the views of the Committee as a whole on each Party State report considered during a given session. Such comments are dispatched to the Party State concerned as soon as practicable and made public at the end of the session.

45. Article 41 of the Covenant provides for an optional system of State applications whereby States may, on condition of reciprocity, accept the right of the other Parties to bring a claim to the Committee alleging a violation of the Covenant. A claim may not be brought unless a negotiation between the two Parties has been unsuccessfully completed. If satisfied that local remedies have been exhausted, the Committee "shall make available its good offices". The Committee must within twelve months submit a report detailing the facts and the solution reached, or, if no solution has been reached, simply indicating the facts and attaching thereto the submission of the two Parties. In such a case, the Committee "may, with the prior consent of the States concerned", appoint an ad hoc conciliation commission, made up of five members acceptable to both Parties. This commission must provide, within twelve months, a report to the Chairman of the Human Rights Committee for communication to the Parties concerned. In the event that the matter remains unresolved, the report will contain the findings of the commission on all questions of fact, the submissions of the Parties and its views on an amicable solution of the matter.

46. Within three months of receiving the report, the States concerned communicate to the Chairman of the Committee their acceptance thereof. The expenses of the ad hoc commission are shared equally between the two Parties concerned. The report of the commission is not binding.

47. The resolution of disputes through the "good offices" of the HRC does not prejudice the use of any other traditional dispute settlement procedure as provided for under Article 33.1 of the Charter of the United Nations.

VI. DISPUTE SETTLEMENT PROCEDURE OF THE WORLD TRADE ORGANIZATION AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE: THE PANELS SYSTEM

48. The dispute settlement procedure of the GATT, though formally based on Articles XXII and XXIII of the General Agreement on Tariffs and Trade 12/ is not described therein. It has been built up over time through the evolution of customary practice, and subsequently codified. 13/

49. The Uruguay Round of the GATT 14/ led to the creation of a formal international trade organization, namely, the World Trade Organization (WTO), whose institutional structure is derived from the GATT. The "Contracting Parties", which is the supreme body of the GATT, has been renamed the "Ministerial Conference"; it is open to all members and will meet at least once every two years. Many functions of the GATT Council have been taken over by a "General Council" which will meet regularly, as appropriate, to decide on all issues conferred upon it by the Ministers. The Dispute Settlement Body, whose members will probably be identical to those of the Council, will be another central institution.

50. The WTO is endowed with a comprehensive dispute settlement machinery described in the "Understanding on Rules and Procedures Governing the Settlement of Disputes" of the 1994 Uruguay Round (hereinafter referred to as "the 1994 DSU"). The WTO will not succeed in a strict legal sense to the GATT. States which have ratified the WTO agreements without at the same time withdrawing from the GATT, will continue to apply two different sets of legal rules. Moreover, Article XVI.1 of the Final Provisions of the Agreement establishing the WTO states that " . . . the World Trade Organization shall respect the rules, decisions and customary practice of the General Agreement on Tariffs and Trade". Similarly, Article 3 of the 1994 DSU provides that: "the Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of the GATT 1947, and the procedures further elaborated and modified herein." Finally, the law and the practice as developed thus far by the GATT and improved upon by the 1994 DSU, will be applied to all disputes under the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Intellectual Property Rights (TRIPs).

51. In order to ensure the effective functioning of the WTO, the 1994 DSU, unlike the dispute settlement procedure of the GATT, sets out in great detail the procedure and the timetable to be followed in the settling of disputes. The entire procedure, from the establishment of the panel to the implementation of the decision of the Dispute Settlement Body, must not exceed fifteen months (or eighteen, if the decision is appealed).

52. The main feature of the WTO settlement of disputes machinery is the creation of the Dispute Settlement Body. This Body has the sole authority to establish panels, adopt panel and appellate reports, maintain surveillance of implementation of rulings and recommendations, and authorize retaliatory measures in cases of non-implementation of recommendations.

53. The purpose of both the WTO and the GATT dispute settlement procedures is not to sanction breaches of a rule under the respective agreements but to ensure predictability and maintenance of the balance of advantages in trade between the Parties. This balance is considered to be restored when the Parties to a dispute reach agreement. This principle governs the various phases of the procedure as described below.

54. The procedure commences with bilateral consultations. The member concerned must reply within ten days to a request for consultations and should enter into consultations within thirty days from the date of request. Moreover, if a WTO member, other than the consulting members, considers that it has a substantial trade interest and requests consultation, it may join therein with the consent of the Parties. If these consultations do not result in a settlement of the dispute and if both Parties so agree, the case at this stage may be brought to the WTO Director-General, who, acting ex officio, may offer his good offices.

55. If the Party concerned does not respond to a request for consultations within ten days, or if the consultations fail to arrive at a solution after sixty days, the Party concerned may request that a panel be set up by the Dispute Settlement Body. In support of its request a Party need only claim that a benefit accruing to it under the "covered agreements" (basically, GATT, GATS and TRIPs) is nullified or impaired, or that the attainment of any objective of the covered agreements is impeded. Thus, it is not always necessary for a Party to the dispute to invoke the actual breach of a rule of these agreements. If the breach of a rule is invoked, the adverse effect on the balance of benefits is presumed. Conversely, if the plaintiff claims that the benefits in question have been nullified or impaired by measures that do not contravene the agreements, it has the burden of proof.

56. The establishment of a panel, though not an absolute right of the complainant, is almost automatic. A panel is to be established no later than the second meeting of the Dispute Settlement Body at which the request appears on the agenda of the Body, unless the Body itself decides (by consensus) otherwise. This means that the Party which is the subject of the complaint cannot block the establishment of a panel. The panel is to be constituted within thirty days of its establishment.

57. The panels consist of three members, unless the Parties to the dispute decide on five members. Members may not be nationals of a country whose Government is a party to the dispute. They perform their duties in their individual capacities and may not receive instructions from their Government. The 1994 DSU does not give preference to governmental members (as was the case under GATT practice) and instead emphasizes the quality and independence of the members and the preference for diverse backgrounds and a wide spectrum of experience. The WTO secretariat must suggest the names of three potential panellists to the Parties to the dispute, drawing as necessary on a list of qualified persons (previous panellists, former representatives to the GATT, scholars). If the Parties to the dispute do not agree on the panellists within twenty days, the Director-General, in consultation with the Chairman of the Dispute Settlement Body, shall constitute the panel by appointing the panellists he considers most appropriate.

58. The panels examine the dispute, consider the various questions of fact and law involved, record their findings and recommendations, and send their report to the Dispute Settlement Body for a decision. They are required to make a report to the Body to assist it "to discharge its responsibilities under this Understanding and the covered agreements" (see Article 11 of the 1994 DSU). In accordance with Article 11, the report of the panel must include "an objective assessment of the matter before it" and present findings and recommendations as will assist the Dispute Settlement Body in making its recommendations or rulings (see Article 7 of the 1994 DSU).

59. The panels receive written and oral submissions from the contending Parties and may receive submissions from other interested Parties. They may request members to provide any information which they deem necessary and appropriate and may also seek information and technical advice from any individual body within the jurisdiction of a member after informing the Government thereof.

60. The report of the panel is structured similarly to a judgment, with an introduction, the facts of the situation, the investigation, a summary of the arguments of the Parties and, finally, its findings, conclusions and recommendations. If a bilateral settlement is reached while the dispute stands before the panel, it may confine its work to a brief description of the case and a report that an agreement has been reached.

61. In order to allow Parties to check for factual errors or omissions before drafting the final report, the panel submits to the Parties concerned the descriptive sections therein. Parties are given two weeks to comment thereon. Subsequently, the panel submits an interim report, this time including its findings and conclusions to the Parties, giving them one week to request a review. The period of review must not exceed two weeks during which the panel may hold additional meetings with the Parties. If this final attempt to reach an agreement fails, the panel must make a detailed report setting out its findings and recommending the adoption of measures it deems appropriate to the Dispute Settlement Body. The Body then circulates this report to all WTO members.

62. The panel report in and of itself has no force and is treated as an advisory opinion by the Dispute Settlement Body. The report is automatically adopted, unless otherwise decided by consensus, by the Body, which is, strictly speaking, a political body.

63. The 1994 DSU has introduced an appellate review system. Accordingly, the panel report shall not be considered for adoption by the Body until after the completion of any appeal. The appellate review is undertaken by a standing Appellate Body, which is composed of seven persons, broadly representative of the WTO membership, who are to serve a term of four years. As members of the Body, they are persons of recognized standing in the field of law and international trade and are not affiliated with any Government. The appeal is limited to issues of law covered in the panel report and to legal interpretations developed by the panel. The appeal may uphold, modify or reverse the legal findings and conclusions of the panel. The appellate report is adopted by the Body, unless otherwise decided by consensus, and must be accepted unconditionally by the Parties to the dispute.

64. Prompt compliance with recommendations or rulings of the Dispute Settlement Body is essential in order to ensure effective resolution of disputes. The member concerned must inform the Body of its intentions with respect to the implementation of the ruling within thirty days after the adoption of the report of the panel. If it is not possible to immediately comply, the member concerned must be given a reasonable period of time to do so. If the "reasonable period of time" elapses without implementation of the ruling of the Body, compensation and suspension of concessions may be resorted to. Compensation is voluntary and is the result of an agreement reached between Parties. If no satisfactory compensation has been agreed to within twenty days, the Body may authorize the plaintiff to suspend the application of concessions under the "covered agreements". In principle, concessions shall be suspended in the same sector as that of the issue referred to in the panel case. Nevertheless, if this is not effective or practicable, and if circumstances are considered to be of a serious nature, the complaining Party may cross-retaliate by suspending concessions under agreements other than the one in which the panel has found impairment of the balance.

VII. DISPUTE SETTLEMENT PROCEDURE UNDER THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 15/

65. The United Nations Law of the Sea Convention (UNCLOS), adopted in Montego Bay, Jamaica, in 1982, 16/ lays down a basic scheme for the settlement of disputes arising from its implementation, with exceptions laid down for certain categories of dispute. The basic structure of the dispute settlement procedure is contained in part XV of the UNCLOS (see Articles 279-299) and Annexes V-VIII to the Convention.

66. Parties shall settle any dispute concerning the interpretation or application of the Convention by peaceful means and to this end shall seek a solution by the means indicated in Article 33, paragraph 1 of the Charter. Parties are free to choose peaceful means other than those prescribed in the Convention, such as regional or special arrangements or instruments in force between them outside the dispute settlement system of the UNCLOS, provided that if the Convention so requires, it should lead to the binding settlement of the dispute. A party to the Convention which is a party to a dispute concerning the interpretation or application of the Convention may invite the other party to submit the dispute to the conciliation procedure. If this invitation is accepted, each Party appoints two conciliators, one of which may be its national. The four so appointed conciliators select a fifth conciliator who acts as chairman. The conciliation commission has twelve months to help the parties to reach an amicable settlement. Within that period the commission is supposed to submit its report recording any agreement reached and, failing agreement, its conclusions and recommendations as the commission may deem appropriate for an amicable settlement. Conclusions and recommendations of the commission are not binding upon the parties.

67. If the parties fail to reach a settlement by peaceful means of their choice outside the framework of the Convention or through the conciliation procedure provided for in the Convention, the dispute, unless it falls under the limitations and exceptions referred to in Section 3 of Part XV of the Convention (boundary disputes, disputes concerning military activities, disputes in respect of which the Security Council is exercising the functions assigned to it by the Charter etc.), shall be submitted at the request of any party to the dispute for compulsory settlement to the court or the tribunal having jurisdiction in accordance with the Convention. On signing, ratifying or acceding to the Convention, or at any time thereafter, States may choose by means of written declaration one or more of the following judicial bodies:

(a) The International Tribunal for the Law of the Sea;

(b) The International Court of Justice;

(c) An arbitral tribunal constituted under Annex VII of the UNCLOS; or

(d) A special ad hoc arbitral tribunal constituted under Annex VIII.

Such declaration does not affect the obligation of a Party to accept the jurisdiction of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea with respect to the categories of disputes relating to the activities in the Area (sea-bed, ocean floor and subsoil thereof, beyond the limits of national jurisdiction) referred to in Article 187 of the Convention. If a Party does not select one of the aforementioned judicial bodies, it is deemed to have accepted arbitration under Annex VII. If both Parties to the dispute have chosen the same judicial body, their dispute may be submitted to that body only, unless the Parties otherwise agree. If the Parties have accepted different procedures, the dispute may be submitted only to arbitration under Annex VII, unless the Parties agree otherwise.

68. In accordance with the Convention, the seat of the International Tribunal for the Law of the Sea shall be in Hamburg, Germany. The Tribunal shall be composed of twenty-one members elected by the Parties to the Convention from among persons of recognized competence in the field of the law of the sea so as to ensure the representation of the world's principal legal systems and equitable geographical distribution. The first elections of the members of the Tribunal will be held on 1 August 1996. A quorum of eleven members is required to constitute the Tribunal. The Tribunal may also operate through special chambers composed of three or more of its members. To expedite the dispatch of business, the Tribunal shall annually form a five member chamber which may hear and determine disputes by summary procedure.

69. In addition, the Tribunal shall establish a Sea-Bed Disputes Chamber composed of eleven members selected by a majority of the members of the Tribunal from among them. As noted above, the Sea-Bed Chamber has competence with regard to the categories of disputes relating to the activities in the Area specified in Part XI, Section 5 of the Convention, namely, inter alia, disputes between Parties; Parties and the Authority (the organization responsible for the organization and control of the activities in the Area, particularly with a view to administering its resources); the Authority and a prospecting contractor. The Sea-Bed Chamber, in its turn, shall establish an ad hoc chamber, composed of three members, for dealing with a particular dispute referred to it by its Parties in accordance with Article 188, paragraph 1(b) of the Convention. It should be noted, however, that disputes concerning the interpretation or application of a contract relating to the activities in the Area shall be submitted at the request of any Party to the dispute, to binding commercial arbitration, unless the Parties agree otherwise. In the absence of a provision on arbitration in the contract, the arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Committee on International Trade Law or such other regulations and procedures as may be prescribed in the rules, regulations and procedures of the Authority.

70. As a general rule arbitral tribunals constituted under Annex VII of the Convention shall be composed of five members. One member is appointed by each of the parties to the dispute and the remaining three are chosen by these Parties from a list of arbitrators maintained by the Secretary-General of the United Nations to which each Party to the Convention is entitled to nominate four arbitrators. An arbitrator shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. In cases where there are several parties having separate interests, the arbitral tribunal may be composed of more than five members. If parties to the dispute fail to agree on the three jointly chosen arbitrators, the latter are appointed by the President of the International Tribunal for the Law of the Sea.

71. Special arbitral tribunals under Annex VIII of the Convention are constituted at the request of any party to the dispute, subject to the limitations and exceptions referred to in Section 3 of Part XV of the Convention, relating to (1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research or (4) navigation, including pollution from vessels and by dumping. A list of experts is established and maintained in respect of each of the aforementioned four categories respectively by the Food and Agriculture Organization of the United Nations, by the United Nations Environment Programme, by the Inter-Governmental Oceanographic Commission and by the International Maritime Organization. Every Party to the Convention may nominate two experts to each of four lists whose competence in the legal, scientific or technical aspects of a particular field is established and generally recognized. With the exception of cases where there are several parties having separate interests, the special arbitral tribunal shall consist of five members.

The party instituting the proceedings and the other party to the dispute have the right to appoint two members of the tribunal, preferably from the appropriate list of experts. Only one of these two members may be a national. If the latter party fails to make an appointment within thirty days of receipt of the notification instituting the proceedings, such appointments are made by the Secretary-General of the United Nations. The fifth member of the arbitral tribunal, who is also its President, shall be appointed by the parties or by the Secretary-General of the United Nations if the parties fail to agree on a candidate within thirty days of receipt of the notification instituting the proceedings.

72. The Convention also provides that the court or the tribunals referred to in paragraph 67 above, which "considers that prima facie it has jurisdiction" under the Convention with regard to a particular dispute submitted to it, may prescribe, at the request of a party to the dispute and pending its final decision, any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment. Such provisional measures may be prescribed only after the parties have been given an opportunity to be heard. If the case is to be heard by an arbitral tribunal which has not yet been constituted, and if the urgency of the situation so requires, provisional measures may be prescribed by the International Tribunal for the Law of the Sea, or, with respect to activities in the Area, by the Sea-Bed Disputes Chamber. The arbitral tribunal may subsequently either revoke or reaffirm these measures.

73. As mentioned earlier, the Convention stipulates that when signing, ratifying or acceding to the Convention or at any time thereafter, a State may declare in writing that it does not accept any one or more of the compulsory procedures under the Convention entailing binding decisions with respect of categories of disputes listed in Article 298 of the Convention. This stipulation is without prejudice to the general obligation under the Convention that Parties shall settle disputes between them by peaceful means. The categories of disputes listed in Article 298 include:

(a) Disputes concerning the interpretation or application of Articles 15, 74 and 83 of the Convention relating to sea boundary delimitations, or those involving historic bays or titles;

(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service; and

(c) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.

Such declaration may be withdrawn by a State at any time.

74. It may be noted that the Convention also contains certain limitations on the applicability of compulsory procedures entailing binding decisions. These limitations are listed in Article 297 of the Convention which is a very complex provision. The first paragraph refers to three cases where disputes concerning the exercise of the coastal State's sovereign rights or jurisdiction shall be submitted to compulsory jurisdiction. These relate to cases where either the coastal State or other States in exercising high seas freedoms have allegedly acted in contravention of the provisions of the Convention concerning the high seas freedoms applicable to the exclusive economic zone and their reconciliation with the rights of the coastal State and acts by the coastal State, which allegedly contravene the applicable international rules and standards for the protection of the marine environment. The second and third paragraphs of that Article provide for limitations on the applicability of the compulsory procedures in cases of disputes concerning firstly, marine scientific research, whereby a State exercises its rights or discretion under Articles 246 and 253 of the Convention, and secondly, fisheries, whereby a coastal State may exercise its sovereign rights with respect to the living resources in the exclusive economic zone.

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Notes

1/ UNEP/OzL.Pro./4/15.

2/ Report of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, UNEP/Doc.OzL.Pro. 2/3 (20 June 1990), annex III, paragraph 7.

3/ Annex IV to the Fourth Meeting Report; Article 7(d).

4/ Vienna Convention for the Protection of the Ozone Layer (22/3/1985).

5/ EB.AIR/WG.5/18, annex II.

6/ ECE/EB.AIR/40.

7/ ECE/EB.AIR/12.

8/ A special procedure is provided for in the Governing Body Committee on Freedom of Association to examine complaints alleging infringements of trade union rights, whether or not the Member State in question has ratified the ILO Conventions on Freedom of Association.

9/ Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference, International Labour Office, Geneva, October 1985.

10/ General Assembly document A/6316 (1966).

11/ For further examples of compliance control procedures under human rights conventions, see:

- International Covenant on Economic, Social and Cultural Rights (General Assembly Document A/6316 (1966))
- International Convention on the Elimination of All Forms of Racial Discrimination (660 United Nations Treaty Series 195)
- International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly Document A/9030 (1973))
- Convention on the Elimination of All Forms of Discrimination Against Women (General Assembly Resolution 34/180 (1980))

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39/46 (1984))

12/ The 1947 General Agreement on Tariffs and Trade (Basic Instruments and Selected Documents (BISD) vol. IV).

13/ The main documents constituting the dispute settlement procedure under the GATT are as follows:

- The Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 1979 (BISD 26 S/210), to which is annexed an Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement. They were largely reiterated in the 1982 Ministerial Declaration on Dispute Settlement (BISD 29 S/13)

- The 1989 Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36 S/61)

- The special regime of disputes in which the plaintiff is a developing country, adopted on 5 April 1966 (BISD 14 S/18)

- The special regimes provided for in some of the non-tariff agreements concluded during the Tokyo Round

14/ The Uruguay Round of the GATT entered into force on 1 January 1995.

15/ The United Nations Convention on the Law of the Sea entered into force on 16 November 1994.

16/ General Assembly document A/CONF. 62/122.

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