



**Economic and Social
Council**

Distr.
RESTRICTED

CEP/AC.3/R.1
11 April 1996

ORIGINAL : ENGLISH

ECONOMIC COMMISSION FOR EUROPE

COMMITTEE ON ENVIRONMENTAL POLICY

Working Group for the preparation
of a draft convention on access
to environmental information and
public participation in
environmental decision-making

First session, Geneva, 17-19 June 1996
(Item 3 of the provisional agenda)

**DRAFT ELEMENTS FOR THE CONVENTION ON ACCESS
TO ENVIRONMENTAL INFORMATION
AND PUBLIC PARTICIPATION
IN ENVIRONMENTAL DECISION-MAKING**

Note by the secretariat */

The Parties to this Convention,

Recalling Principle 10 of the Rio Declaration on Environment and
Development which states, inter alia, that: "Environmental issues are best
handled with the participation of all concerned citizens, at the relevant level",

Recognizing that improved access to environmental information and public
participation in environmental decision-making has proven to strengthen the
quality of environmental policy and decision making,

*/ The Working Group is expected to prepare a draft Convention on access
to environmental information and public participation in environmental decision-
making, pursuant with the relevant decision by the Committee on Environmental
Policy at its first session (ECE/CEP/18, para. 23 and annex I). These draft
elements have been prepared with a view to assist the Working Group in this task.
This document has been prepared without formal editing.

Recognizing that in order to increase awareness of environmental problems and to promote effective public participation, appropriate access to environmental information be guaranteed,

Recognizing that public participation contributes to the endeavours of public authorities to protect the environment and can be a source of additional information and scientific and technical knowledge to the decision makers, and bearing in mind that in environmental policy formulation and decision-making due account must be taken of the concerns of the public,

Recognizing that in order to promote effective public participation the public need to be aware of the procedures for participation in environmental decision-making processes and how to be involved in those procedures, and in doing so help to prevent and to solve environmental problems,

Convinced that there is a need for public authorities to promote greater public understanding and support for environmental policies and enforcement and, in this regard recognize the importance of making use of the media and environmental education,

Convinced that increased accountability and transparency of public authorities will stimulate these authorities to carry out their environmental responsibilities as well as improve their credibility and strengthen support for their activities,

Underline the importance of the role played by private industry without whose cooperation and partnership the promotion of access to environmental information and public participation in environmental decision-making is not possible,

Concerned that when emphasizing the importance of public participation in protecting environmental rights, it should also be recognized that all persons, both individually and in association with others, have a responsibility to protect, to preserve and to strengthen a sustainable use of the environment,

Considering that the courts and administrative complaints procedures be genuinely accessible to individuals and public interest groups so that these procedures ensure that their legitimate interests are protected and that prescribed environmental measures are effectively enforced and illegal practices stopped,

Recognizing the need for effective systems to ensure that public authorities are in the possession of accurate, comprehensive and up-to-date environmental information,

Noting the tangible benefits for the environment which have resulted from the application of mandatory reporting on emissions to the environment and their impacts,

Mindful of the fact that this Convention will further improve national policies facilitating access to environmental information and public participation in environmental decision-making in the ECE region and in this

respect support ongoing activities by Governments in strengthening democracy and providing for transparent societies within their respective countries,

Conscious of the role played in this respect by the United Nations Economic Commission for Europe (ECE) and recalling, *inter alia*, the ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making as well as the relevant procedures of the ECE Conventions on Environmental Impact Assessment in a Transboundary Context and on the Transboundary Effects of Industrial Accidents,

Conscious that the elaboration of this Convention will contribute to the further strengthening of the "Environment for Europe" process and to the convening of the Fourth Ministerial Conference in Denmark in 1998.

Having regard to the relevant provisions of the Ministerial Declaration as adopted by the Third Ministerial Conference "Environment for Europe" (23-25 October 1995, Sofia, Bulgaria),

Have agreed as follows,

Article 1

DEFINITIONS

For the purposes of this Convention,

(i) "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;

(ii) "Public authority" means

(a) Government at national, regional and local level;

(b) Other governmental bodies and persons having public responsibilities in relation to the environment, and

(c) Any other bodies with public responsibilities in relation to the environment which do not fall within sub-paragraphs (a) and (b) above but which are under the control of a body or person falling within these sub-paragraphs;

(iii) "Environmental information" means any environmental information in written, visual, aural or data-base form in registers, reports and returns as well as computer records and other records kept otherwise than in a document. This information includes information on human health and safety, biodiversity, flora, fauna, soil, air, water, climate, natural resources, noise, radiation, land and historical monuments or other physical structures or the interaction among these factors; it also includes information on cultural heritage or socio-economic conditions resulting from alterations to those factors and on activities or measures adversely affecting, or likely to affect these factors and on activities or measures designed to protect these factors, including administrative measures and environmental management programmes as well as economic or financial analysis used in environmental decision-making;

(iv) "Environmental Decision-making" means a procedure at national, regional and local level for a public authority to make decisions which may have a significant impact on the environment excluding decisions taken by courts or other bodies acting in a judicial capacity;

(v) "The public" means one or more natural or legal persons.

Article 2

GENERAL PROVISIONS

1. Each Party shall take all appropriate and effective measures to provide the public with access to environmental information and to ensure public participation in environmental decision-making.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including the establishment of a procedure that provides for access to environmental information as well as allows for public participation in environmental decision-making. In this respect, each Party shall establish a clear and transparent regulatory framework in its national legislation providing procedural and institutional guarantees and proper enforcement programmes in order to implement the provisions of this Convention.

3. Each Party shall set up organizational structures to facilitate the effective operation of the guarantees referred to in paragraph 2 of this Article by ensuring that particular governmental officials are designated in order to support the public in seeking access to environmental information and in facilitating its participation in environmental decision-making. Each Party shall also allocate environmental responsibilities to an ombudsman.

4. Each Party shall ensure that, in accordance with the provisions of this Convention, public participation in environmental decision-making is undertaken prior to a decision which may have a significant impact on the environment.

5. Each Party shall promote environmental education and training for the public, especially regarding the methods and techniques of obtaining access to environmental information and participating in environmental decision-making. Each Party shall encourage educational institutions to provide curricula that instill knowledge essential to understanding the environment and the opportunities of sustainable development, in particular in the education of children. These institutions shall also be encouraged to provide specific programmes and training addressing environmental and sustainable development issues. Other types of education, inter alia, by private organizations, shall also be encouraged to promote widespread public awareness of and participation in decisions affecting the environment and sustainable development. Each Party shall provide the officials referred to in paragraph 3 of this Article with the necessary education, training and resources to maximize their effectiveness in this role.

6. Each Party shall recognize that individual members of the public may form groups and give these groups the appropriate recognition and support.

Each Party shall ensure a legal basis for the establishment and operation of such groups and support their organizational and financial capacity.

7. The provisions of this Convention shall not affect the right of a Party to implement more stringent measures on access to environmental information, public participation in environmental decision-making and access to justice, than those of this Convention.

8. Each Party shall support the provisions of this Convention in international environmental decision-making processes involving other parties which are not Parties to this Convention.

Article 3

ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall take the necessary legal, administrative and other measures to ensure that, subject to paragraphs (2) and (7)(b) of this Article, public authorities shall provide and make available environmental information including the actual documentation containing or comprising such information to the public;

(a) without discriminating on the grounds of citizenship, nationality or domicile or any other ground;

(b) without an interest having to be proved, and

(c) as soon as possible and at the latest within six weeks after the request has been submitted.

2. Each Party may allow a request for environmental information that is held by a public authority, to be refused only under the condition that the public interest served by the disclosure is weighed against the interest of non disclosure in each case and where it adversely affects:

(a) the confidentiality, where that is specifically provided for in a reasoned decision by a public authority, of the proceedings of public authorities, international relations and national defence;

(b) public security;

(c) matters, the disclosure of which would prejudice the course of justice or a fair trial, which are sub judice or are or have been under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings, unless these enquiries or investigation proceedings are subject to public participation in environmental decision-making in accordance with the provisions of this Convention;

(d) commercial and industrial confidentiality, including intellectual property, unless the requested information relates to emissions or impacts on the environment;

(e) the confidentiality of personal data and/or files;

(f) material supplied by a third party without that party being under, or being capable of being put under, a legal obligation to do so, and where that party has not consented to the release of the material;

(g) material, the disclosure of which could endanger the environment, such as information on the breeding sites of rare species;

(h) the public authority to which the request is addressed does not hold the environmental information requested;

(i) the request is manifestly unreasonable or formulated in too general a manner;

(j) it would involve the supply of any material in the course of completion or internal communications.

3. Each Party shall ensure that, where a public authority does not hold the environmental information requested by the public, but that public authority knows, or is reasonably expected to know, that another public authority holds the requested environmental information, the public shall be promptly be referred to the public authority that holds the information or to the officer as referred to in paragraph 3 of Article 2.

4. Each Party shall ensure that, where a request for environmental information has been formulated in too general a manner, the concerned public authority assist the public in clarifying the request.

5. Each Party shall ensure that public authorities shall supply environmental information that has been requested and that is contained in the same record as, or otherwise held with, other information that is to be withheld because it falls within paragraph 2 of this Article unless it is incapable of being separated from the other information for the purpose of making it available.

6. Each Party shall ensure that a refusal or a partial refusal to comply with a request for information shall be stated in writing as soon as possible and at the latest within four weeks. The written refusal to comply with a request for information shall include one or more of reasons for the refusal in accordance with paragraph 2 of this Article and relevant information on access to the judicial or administrative review procedure in accordance with paragraph 8 of this Article.

7. Each Party:

(a) may allow its public authorities to make a charge for supplying information, provided that charge does not exceed a reasonable cost. This charge may include the actual costs of reproducing and transmitting the information but shall not include the costs of compiling or retrieving the information;

(b) which decides to allow its public authorities to make a charge for supplying information shall publish and disseminate a schedule of maximum charges which may be levied, indicating the circumstances in which they may be

levied and when the supply of information is conditional on the payment of such a charge;

(c) shall provide access to the environmental information which is contained in public registers free of charge;

(d) shall ensure that where information is held in various forms, it shall be provided in the form specified by the person requesting the information, eg in written, visual, aural or electronic form at low cost format.

8. Each Party shall ensure that the public who considers that his request for information has been wrongfully refused, whether in part or in full, or ignored, or has been inadequately answered by a public authority, or that it has been overcharged, shall be provided with access to an administrative appeals procedure which is transparent, independent, inexpensive, timely, binding unless challenged at judicial level and has competence in relation to all aspects of access to environmental information in accordance with this Convention. Each Party shall also provide access to judicial review of administrative decisions relating to access to information, in accordance with the relevant national legal system.

Article 4

DUTIES WITH RESPECT TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that:

(a) Relevant public authorities regularly collect and update important environmental information for which they are responsible; and

(b) Mandatory systems are established for ensuring that there is an adequate flow of information about planned and existing activities significantly affecting the environment to the public authorities.

2. Each Party shall ensure that the way in which they make environmental information available to the public is transparent. Such measures shall include :

(a) making the public aware of the type and scope of environmental information held by relevant public authorities; and the basic terms and conditions under which such information is made available and accessible and the process by which it can be obtained; and

(b) the establishment and maintenance of public registers and the designation of officers in accordance with paragraph 3 of Article 2 responsible for supporting the public in seeking access to environmental information and in facilitating its participation in environmental decision-making.

3. Each Party shall at regular intervals not exceeding three years, publish and disseminate general information on the state of the environment.

4. Each Party shall publicize the availability of

(a) important documents on national, regional, local and international environmental strategies, programmes, action plans to which the Parties are committed and progress reports on their implementation; and

(b) texts of international legal instruments, which are related to the environment and to which it is a party, in its national language or languages.

5. Each Party shall inform the public of its possibilities of submitting information to international bodies concerning non-compliance with international rules.

6. Each Party shall encourage entities whose activities have a significant adverse impact on the environment, to report regularly to the public on the environmental impact of their activities.

7. Each Party shall encourage public access to environmental information generated by voluntary schemes of private industry such as eco-auditing and the use of eco-labelling schemes for more environmentally friendly products.

Article 5

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

1. Each Party shall take the necessary legal, administrative and other measures to ensure that the public can participate in environmental decision-making, without having to prove an interest.

2. Each Party shall take the necessary legal, administrative and other measures to ensure that the public who is likely to be affected by or who has an interest in the environmental decision-making, is notified by public notice or individually, as appropriate, early in the environmental decision-making procedure. This notification shall contain, inter alia:

(a) Information on the proposed activity on which a decision will be taken, including any available information on its possible impact;

(b) the nature of the possible decision; and

(c) relevant information regarding the environmental decision-making procedure, including information on the commencement of the procedure, the possibilities for the public to participate, an indication of the time schedule for transmittal of comments and an indication of the public authority where relevant information can be obtained.

3. Each Party shall ensure that the public participation procedures in accordance with the provisions of this Convention shall include reasonable time-frames for the different phases of the public participation procedures such as access to environmental information, public consultation and public hearing, in order to arrange for an informed public. Where appropriate, the relevant public authority shall provide additional assistance and information to the public.

4. Each Party shall actively provide information on how public participation shall be implemented in the case of specific environmental decision-making procedures to individual members of the public as well as to groups of the public.
5. Each Party shall take the necessary legal, administrative and other measures to ensure that public participation commences early in the environmental decision-making procedure, at a stage when options and alternatives are still open and effective public participation can take place.
6. Each Party shall ensure that the relevant information is provided to the public as soon as it becomes available and in all circumstances before the start of the public participation procedure in environmental decision-making.
7. Each Party shall make the necessary legal, administrative and other measures to ensure that public participation in environmental decision-making arranges for the public:
 - (a) To be heard;
 - (b) When appropriate, to propose alternatives including the no action alternative;
 - (c) To make objections;
 - (d) To submit comments on the proposed activity before the decision is taken;
 - (e) To submit comments in written form;
 - (f) To express its views at a public hearing for which it has been properly notified;
 - (g) To propose measures to mitigate significant adverse impacts and
 - (h) To propose measures to monitor on the impacts of the decision.
8. Each Party shall ensure that, in the decision due account is taken of the outcome of the public participation, and that the decision includes the extent to which comments and objections made by the public have been taken into account. Each Party shall ensure that the relevant public authority, to which written comments have been submitted, shall reply to these comments as soon as possible and not later than six weeks after the decision has been taken:
9. Each Party shall ensure, that after the decision has been taken, the public has recourse to administrative and/or judicial proceedings in order to challenge acts or failures to act by public officials and to appeal the decision.
10. Each Party shall ensure that an environmental impact assessment procedure at the national, regional and local level is undertaken in accordance with the provisions of appropriate international regulations.

11. Each Party shall ensure that the public involved in public participation in environmental decision-making in accordance with the provisions of this Convention does not meet obstacles in any way for its activities.

Article 6

ACCESS TO JUSTICE

1. Each Party shall, in addition to the relevant provisions of paragraph 8 of Article 3 and paragraph 9 of Article 5 of this Convention related to administrative and/or judicial proceedings with regard to access to environmental information and public participation in environmental decision-making, ensure effective access for the public to judicial and quasi-judicial proceedings relating to matters covered by the provisions of this Convention as well as matters related to the protection of the environment, including the provisions of adequate remedies.

2. Each Party shall ensure that the judicial and quasi-judicial proceedings referred to in paragraph 1 of this Article:

(a) To be fully transparent and comprehensible to the participants in these proceedings;

(b) To be fair and that, in particular, the judicial or quasi-judicial body concerned shall not be biased and shall afford participants the opportunity to fully and adequately be heard;

(c) Not to permit the judicial or quasi-judicial body to make a judgement with respect to a matter in which it has an interest;

(d) To apply the national law fully; and

(e) To result in the issuing of a fully reasoned decision.

Each Party shall ensure, with respect to the proceedings referred to in paragraph 1 of this Article, that appropriate fair and transparent provisions are made with respect to costs involved and to possibilities for interim relief.

3. Each Party shall actively provide information to the public on how access to judicial and quasi-judicial proceedings will be implemented. Each Party shall encourage legal services to support the public in these proceedings.

4. Each Party shall ensure that the access to judicial and quasi-judicial proceedings are transparent and do not discriminate on the grounds of citizenship, nationality or domicile or other grounds.

5. Where appropriate, each Party shall ensure that the public, without having to show an impairment of its own interests, is entitled to make use of judicial and quasi-judicial proceedings with respect to the protection of the environment.

Article 7

MEETING OF PARTIES

1. The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter ordinary meetings of the Parties shall be held once every year. The Parties shall hold an extraordinary meeting if they so decide in the course of an ordinary meeting or at the written request of any Party, provided that, within six months of it being communicated to all Parties, the said request is supported by at least one third of the Parties.

2. At their meetings, the Parties shall keep under continuous review the implementation of this Convention, and, with this purpose in mind, shall:

(a) Review the policies for and legal and methodological approaches to access to environmental international and public participation in environmental decision-making of the Parties with a view to further improving these issues;

(b) Exchange information regarding experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Convention, to which one or more of the Parties are party;

(c) Seek, where appropriate, the services of relevant ECE bodies as well as other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Convention;

(d) Prepare, where appropriate, Protocols to this Convention;

(e) At their first meeting, consider and by consensus adopt rules of procedure for their meetings and establish subsidiary bodies;

(f) At their first meeting also consider and by consensus adopt a non-confrontational and transparent mechanism to support compliance with the provisions of this Convention which allows for public participation in this mechanism;

(g) At their first meeting start the preparation of a Protocol to this Convention in order to establish national pollutant release and transfer registers. Such registers could contain information to be:

(i) Maintained through periodic reporting, on a mandatory basis, of releases and transfers from a specified range of activities to air, water, land, off-site treatment and disposal and the product stream of a specified range of chemicals; and

(ii) Compiled through a standardised reporting form that serves as a basis for a structured computer database to aggregate data by chemical, regional, sector, company and facility.

(h) Consider and adopt proposals for amendments to this Convention;

(i) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

Article 8

RIGHT TO VOTE

1. Except as provided for in paragraph 2 of this article, each Party to this Convention shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 9

SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention;
- (c) The performance of such other functions as may be determined by the Parties.

Article 10

ANNEXES

Annexes to this Convention shall constitute an integral part thereof.

Article 11

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to this Convention.
2. Proposals for amendments to this Convention shall be considered at a meeting of the Parties.
3. The text of any proposed amendment to this Convention shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting at which it is proposed for adoption.
4. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort

be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

5. Amendments to this Convention adopted in accordance with paragraph 4 of this Article shall be submitted by the Depositary to all Parties for ratification, approval or acceptance. They shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of these Parties. Thereafter they shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 12

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this Convention, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure set out in annex I.

3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 13

SIGNATURE

This Convention shall be open for signature at (Denmark) from ... to ... inclusive, and thereafter at United Nations Headquarters in New York until..... , by States members of the Economic Commission for Europe as well as States having consultative status with the Economic Commission for Europe pursuant to paragraphs 8 and 11 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed

by this Convention, including the competence to enter into treaties in respect of these matters.

Article 14

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this Convention.

Article 15

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This Convention shall be open for accession by the States and organizations referred to in article 13.
3. Any organization referred to in article 13 which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under this Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under this Convention concurrently.
4. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 13. shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 16

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of such an organization.

3. For each State or organization referred to in article 13 which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 17

WITHDRAWAL

At any time after three years from the date on which this Convention has come into force with respect to a Party, that Party may withdraw from the Convention by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 18

AUTHENTIC TEXTS

The original of this Convention, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at (Denmark),

ANNEX I

ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 12, paragraph 2 of this Convention, a party or parties shall notify the secretariat of the subject-matter of arbitration and indicate, in particular, the articles of this Convention whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Convention.
2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.
4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Convention.
6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.
9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
 - (a) Provide it with all relevant documents, facilities and information;

(b) Enable it, where necessary, to call witnesses or experts and receive their evidence.

10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.

12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.

13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

15. Any Party to this Convention which has an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.

16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.

17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Convention.

18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.
