Building Bridges between Regions

First forum of exchange of experience

Report of the Meeting

Introduction

The background of the project and the goal of the 1st exchange forum are presented by the moderator of the call, Ms. Tsvetelina Borissova Filipova, Senior Expert, REC. Participants of the forum present themselves.

Jit Peters: I think it is a very good initiative of REC to have this meeting. I am the chair of the MoP of Aarhus and we will have Meeting of the Parties in Netherlands in the end of June, beginning of July.

Jerzy Jendroska: I am Jerzy Jendroska and I am independent lawyer from Poland, I am managing partner of a law firm specialized in environmental law and we are working for different stakeholders, including international institutions, European institutions and Polish government. In that capacity I have been involved in a number of international processes, including in Aarhus. I was the vice-chair of the negotiations. I was the first secretary of the Aarhus Convention, I was the first chair of the MoP of the Aarhus Convention, now I am a member of the Compliance Committee of the Aarhus Convention.

Jeremy Wates: I am Secretary General of European Environmental Bureau, the largest confederation of environmental NGOs in Europe, we have 140 members from 30 countries. I was serving 11 years as Secretary of the Aarhus Convention, working for the UNECE in Geneva. Before that I was involved in the NGO campaign to have such a convention and then led the delegation in the negotiations.

Magdi Toth Nagy: I am REC project consultant for the moment. Before, I worked for 22 years for the REC and was involved in the development, negotiations and implementation of the Aarhus Convention.

Anna Barreira: I am Anna Barreira from IIDMA which means International Institute for Law and the Environment. I am a lawyer, too. We have been promoting the three pillars of Aarhus Convention in different matters Spain. We have been litigating, mainly on behalf for Oceana, - a big NGO specialized in marine issues. In my capacity of lawyer, I have won already several cases for Oceana, mainly on access to environmental information. And now I am working on another case before the court regarding access to justice.

Andrea Sanhueza: I am Andrea Sanhueza from Chile, and I have been involved in the ECLAC project since the beginning.

Danielle Andrade: I am Danielle Andrade, a lawyer from Jamaica and have been involved in this ECLAC preparation from the beginning.

Daniel Barragan: I am Daniel Barragan from the Ecuadorian Centre for Environmental Law. We are acting as core team of Access Initiative.

Dmitro Skrylnikov: I am Dmitro Skrylnikov, I am environmental lawyer from Ukraine and head of environmental NGO Bureau for Environmental Investigation.

Jesse Worker: I am associate with the Access Initiative from the World Research Institute. I am based in Washington DC.

Kaidi Tingas: I am Kaidi Tingas, and I am public participation expert at the REC and within this framework it is worth mentioning that I was behind the ratification process of the Aarhus Convention in my home country – Estonia in the end of 90's, beginning of 2000.

Luisa Arauz: My name is Luisa Arauz, and I am attorney working at environmental advocacy center in Panama. We are part of the TAI network and we have been following the ECLAC process since the beginning.

Mara Silina: My name is Mara Silina, and for the specific project I am part of the team. I am involved in the Aarhus work since the beginning and I am dealing with NGO capacity building, awareness raising, and all other issues.

Olimpia Castillo: I am Olimpia Castillo. My organization is dealing with communication and environmental education and it is part of part of the Access Initiative Mexico.

Theodore Koukis: Thank you for the invitation! My name is Theo, and I am working for the Aarhus Convention since 2011, currently responsible for public participation in international forums and for public participation in decision-making.

Tomas Severino: I am from Cultura Ecologica and Access Initiative Mexico and part of the process in Latin America from the beginning.

Valeria Torres: I am Valeria Torres, and I am working for the Sustainable Development and Settlement Division at the ECLAC, and at the division we are acting as technical secretariat of the Principle 10 Declaration for Latin America and the Caribbean countries.

Vera Berrantes: I am from UN Institute for Training and Research (UNITAR). We are working on capacity building initiatives on access to information and Principle 10.

Tsvetelina Borissova Filipova: I believe we could quickly move to the presentations. Before that I want to make clear that this project is part of bigger project within the Eye on Earth Process. It is funded by Abu Dhabi Environmental Agency. It will run only within this year. We are very much hoping to look for opportunities for its continuation beyond this year.

I also propose that we add to the list of participants short bios with links to relevant web sites which could help the participants in order to get familiar with all of us in detail, so when we circulate the list of participants you can add your short bios, that would be helpful for the others.

Exchange of experience between Aarhus Parties and stakeholders, and ECLAC stakeholders

1st presentation

Jit Peters, Chair, Chair, Aarhus MoP: First of all I want to greet everybody in this conference. I already mentioned that it is a very good initiative of the REC to call this meeting. The Aarhus Convention was concluded in 1998, and this is important to keep in mind. It is dealing with access to information, public participation and access to justice. The Meeting of Parties takes place every three years and now it takes place in Maastricht in the end of June, beginning of July 2014. The Conference is organized under the auspices of United Nations. There are currently 45 Parties of the Convention. 27 of these members are members of EU. The target of the conference is to discuss the implementation of the Convention and the Protocol on PRTR by the Parties, to conclude new strategy and work programme for the coming three years and to discuss budgets, financial arrangements, the exchange of knowledge and experiences, to discuss the mechanism of the compliance and agenda for the future. We have two high-level meetings/panels: one dealing with access to information, and the other one is about social media. The outcomes will be finalized by Declaration of Maastricht.

I would like to take the opportunity to stress that I think there are three new, interesting elements in the Declaration of Maastricht:

(1) the first one is the protection of environmental activists, we may say "the whistle-blowers",
(2) the second one is the role social media can play also in the connection and relation between governments and the citizens, and
(3) the third is that the information about products will be on the agenda for the future.

Now coming to the questions about why legally binding instruments are needed. I was involved in the legal drafting process of the Aarhus Convention and consider myself one of the founding fathers like if you ask Jeremy he could consider himself as one of the founding fathers of the Convention. I was involved in the previous document: *The Guidelines on Public Participation, Information and Access to Justice of the Sofia Conference*, 4 years before the Aarhus Conference. We drafted guidelines on these topics, and many of these provisions are included in the Convention. I think there is a big difference. The Convention, the legal binding instrument, has much bigger impact and plays a legal role in the court cases and so forth, can be enforced. I am very much in favour of leading legally binding instruments. For those who consider whether to have a legally binding instrument or should have another instrument, I am very much on the side of those who favour legally binding instruments. Of course, there are some fears of potential Parties, as for example on the question of compliance. We have, I think, unique compliance mechanism under the Convention, which is based on non-confrontational and consensus-building approach. When you are interested in our compliance mechanism, you could ask Jerzy Jendroska from Poland about it. We will have recommendations at the MoP about the compliance of the Member States, and not only the Member States from Eastern Europe are not in compliance but also EU countries have problems, like Austria, Germany, UK and Spain. We have to discuss some of the recommendations as to their compliance. This is all done in consensual, non-confrontational manner.

In the second place, is there a fear of too high standards and if there is time to implement the Convention? I think an option would be to start with minimum standards. Anything is better than nothing, and perhaps at that time we were very ambitious with the Aarhus Convention but maybe little less ambitious approach also could work. I could think of a developed convention where they are dealing with minimum standards. You should be a little bit ambitious. With the implementation this is very gradual, slow process. Not all of our Member States, I must acknowledge, have implemented the Aarhus Convention, and often this is a question of non-compliance. Don't be afraid that you have to implement everything at once – this is a slow process. Last but not least, I have to mention also the reporting mechanism that we developed. Once in three years when we have a MoP, every Member State reports on the implementation of the Convention, and the NGOs and citizens are also involved in the reporting mechanism. With this I want to conclude.

Questions/answers

Andrea Sanhueza: Thank you for your presentation! If I understood correctly the citizens are involved in the reporting mechanism, which the governments have to do every three years. My question is if we could learn in very concrete terms about how they will be involved in this specific public participation procedure?

Jit Peters: Thank you very much! Of course, it is up to the Member States how they organize it. In the Netherlands the draft report is published on the web site and then the NGOs and the citizens could make comments on the report. I think that in lot of Member States this is done in the same way. In the Netherlands not many people were involved in commenting of the report but there is an opportunity.

2nd presentation

Jerzy Jendroska, Member of the Aarhus Compliance Committee: In my presentation I will reply implicitly to the questions about the lessons learnt from our negotiations of the Aarhus Convention. What is important is to understand the background of the convention and that's the democratic changes after the collapse of the Berlin wall and the Soviet Union, and all these democratic movements in Central and Eastern Europe. That was one factor – in most of these countries there were former oppositionists in power – people that used to fight for democracy, and they were very sympathetic about initiatives of that kind extending the democratic rights. That was the first issue. The second issue is that there was organized process, the so called *Environment for Europe process*, within which the ministers of environment in Europe met from time to time, willing to undertake initiatives, including binding treaties addressing environmental issues common for all European countries. These were two factors that were very sympathetic towards the Aarhus Convention. And the third one was that already in the European Community there were already pieces of legislation on two pillars – on access to environmental information and on public participation in the EIA Directive and the Integrated Pollution Prevention and Control, directive so called integrated permits. So, there was already some experience. Then within this process the ministers decided to start with a non-binding instrument, – the so called *The Sofia Guidelines* that Jit mentioned already. This was more or less nothing else than repeating what was in the European Community legislation at that time, just two pillars mostly – no access to justice. Then the Sofia Conference was supposed to adopt these non-binding guidelines but due to

different political circumstances already on the spot the ministers were favourable to take decisions to start negotiations on a binding legal instrument, so that was more or less ad hoc decision. I remember my own government going to Sofia Conference was not expecting any decision about a legally binging instrument, they were just prepared to sign non-binding guidelines. So, that happens. And second, during the negotiations we gradually extended the scope of the mandate. The original mandate of binding instrument did not cover access to justice but during the negotiations the internal logical process extended this. So, that was the background to give you information about binding or not-binding instrument. You don't need to have any decision about this, it is not fixed in stone, it could change any time, and any political event could change it. For example, I believe that situation that Chevron judgement and that damages were awarded, this kind of situations may change the approach towards preventive tool because Aarhus is about prevention not about damage.

About experience, about some lessons during the negotiations: First of all, I think what was our mistake is that the Aarhus Convention is very much based on the Western model, and the Eastern countries, especially the former Soviet Union countries, at that time did not raise any objections. But later on after more than 10 years we realise that some of the features, especially of the system of public participation, were based on different approaches. And here is one lesson that during the negotiation it is good to have well identified legal systems involved. It is very good that the countries can have different approaches, and make these crystal clear to the others. Here is striking difference in approach for example between the Scandinavian countries where, - when we discussed the access to justice pillar, - they raised the issue of specific institution of Ombudsman, and they wanted this to be approved by the others. This system is slightly different from the normal code. As opposed to this, the Russian Federation, for example, did not say anything about that their model of public participation is slightly different, but they insisted that it should be put in a general clause, and that it should be within the national legislation. That is basically saying this means that any binding agreement within the national legislation makes this commitment not working well at all. In my view they should have said that during the negotiations so that we would have known the problems and could have avoided the problems experienced now that most post-Soviet countries have with public participation. It turned out after so many years that there is a systemic failure. That was one issue.

The second issue that is important: -in some areas the first pillar on access to information it was not only a piece of EC legislation but there was also extensive study how it was implemented in different countries, and that's why during negotiations we prepared to take very specific provisions. Art. 4 and 5 are very detailed because we were ready and we knew what it is the situation. For the second pillar, public participation, there was again a piece of EC legislation on which we gained some experience but there were no extensive studies how was it working. Therefore it was limited to Art.6 about specific activities, concrete projects, and if you look at the Convention you will see that part is more elaborated than the provisions related to plans, programmes and legislation. And there was access to justice where there was almost no EC legislation at all, and no studies about implementation in practice. Such studies have only recently been done, after more than 10 years, and they reveal such a difference in the approaches in the different countries and problems with implementation. Another lesson is that is good to have extensive studies on the different systems in the countries participating in the negotiations, to reveal the differences, and to try to find the language that suits to different approaches in different countries so that every country would not be confronted with the situation where the Convention is not working in

this country. It does not mean that in each and every country everything needs to be in place right from the beginning. And that's the third lesson, that in all European countries we had to change our legislative framework to implement the convention – that's natural and it is happening.

Then the issue, how the capacity building has to be built in the treaty. We don't have such capacity building clause in the Aarhus Convention. In a similar convention – the Espoo Convention which is about transboundary impact assessment, -there are some programmes about support for countries which have problems with the legislative reform, and that is something that could be seriously considered.

Finally, since I am not familiar with the situation in Latin America and Caribbean, but I guess there is a difference that you don't have such an organization like European Community but there could be some international financial institutions, like World Bank, which might have already some rules about access to information and public participation. I think their involvement in the negotiations and in the capacity building activities under the future instrument might be very important and worth exploring.

About the question binding/non-binding instrument: I think it could not be decided beforehand but in the process of negotiations it evolved in a lengthy discussion. You could have an elaborated but not binding act or not so elaborated but binding act which leaves some details for the future, and gives some principles that everybody agrees upon. I agree with Jit that a binding instrument even not meeting the expectations is better than more elaborated non-binding guidelines. It is good to list enabling clauses, and in case there are detected differences between the countries, they should be stated clearly and spelled out so that all countries could understand what the problem is and try to solve it. And if they could not solve it, there could be an enabling clause that we will come back to this in a couple of years from now. We agree on what we could now and leave certain issues for the future, as we did in Aarhus. We left the question about the public participation in GMOs for the future for negotiations. That would be my presentation at this stage.

Questions-answers

Danielle Andrade: I have two questions. You mentioned that there is no capacity building programmes under the Aarhus Convention. Before the Compliance Committee decision is made about the non-compliance of the Party and is there recommendation for the party, how do you resolve the issue with the capacity building at that moment? Is there any technical assistance provided to that Party? Secondly, you said there were no studies available or legislation that would harmonise the access to justice approach among the countries. How did you decide about the minimum standards in relation to the access to justice pillar?

Jit Peters: I fully agree with what was said by Jerzy about the process of dealing with the Aarhus Convention. It was decided in a very short period before the Aarhus Conference, that there should be a convention, and Denmark suggested at that time a legally binding instrument. Therefore there was not much time to study the different legal systems of the member states. Sometimes this type of conventions can only be complemented and agreed upon under the pressure of time.

Jerzy Jendroska: I might have made a wrong impression that you shouldn't start the negotiations before you have all the studies. It was not my intention. My point was that it is easier to have negotiations once you have all the studies, then everybody understands why they have certain positions. Such studies help but not necessary.

The second question was about the Compliance Committee. If the Committee has the recommendation, we say clearly what needs to be done. It must be clearly understood. We are not the court of law. We are not a remedy. Even if we find out that there was no public participation and it should have been done, we are trying to help the country to establish the framework that this does never happen again. We would tell the country that is what you need to do, and if the problem is the wrong legislation or gaps in legislation, we at the Compliance Committee are saying to the country that it should introduce into the legislation the precise wording how to inform public. So, we find a concrete problem in the legislative framework and we say how to eliminate it, or if it is a problem with court practice, we are saying it is wrongly interpreted, and in the light of Aarhus Convention this legislation should be interpreted differently.

Now on the question is there any technical assistance: To my understanding, Aarhus Convention as such has no special programme for this, and this is a difference with other conventions. Even at the Espoo Convention, which is a sister convention, we have a special programme to assist countries which are found to have legislative problems. They could ask for assistance and the Compliance Committee (it is called Implementation Committee) could oversee the process. In Aarhus the technical assistance is normally provided by other donors like the European Community but the assistance is not overseen by the Compliance Committee.

Danielle Andrade: On the access to justice you had no EU legislation, you had no studies done, and I was wondering how did you arrive to the common language? But it was answered by Jit that they felt they have to agree on a legally binding convention and the language was developed in that way.

Jerzy Jendroska: Let me add on this. The other problem with access to justice was that the Convention was negotiated by the representatives of environment ministers and foreign affairs ministers, and not by representatives of justice ministers. Therefore even the representatives of the governments did not quite understand how their legal system worked. So we agreed after long process of negotiations on some language on these provisions on access to justice which later on seemed to create a lot of problems for the countries. There should have been better understanding right from the beginning. It could be phrased easier to achieve the same result. We drafted something in very general terms which now needs to be put on the ground. I am not saying that you need to have first studies on this but it is good that the governments have quite well understanding how it works in their own system, so that they are well prepared to do negotiations. It does not mean that they wouldn't need to change something but it is always good to have well-informed decision making process.

Anna Baerreira: I would add few more comments on the Compliance Committee. It is important to emphasise that it is not a solution mechanism, it is not arbitration, it is not a mediation, it is not a remedy, it is not court of justice. It is more a kind of administrative procedure, it is more kind of administrative review. We put that mechanism more in the context of the state. It is very important that this is well understood. On the systems and

difficulties with the negotiations in the ECLAC area: we have in Latin American countries and Caribbean countries, what I believe we have most of the countries with civil court tradition, we have the Spanish tradition which comes from French tradition and we have Caribbean countries which have more case law tradition. There has to be a point of understanding among these legal systems to find solutions, and there are already studies (through the Access Initiative) which allow to know how the situation really is**.** There are studies and background, something is already known.

Whether to have legally binding convention or not from citizens' point of view, the negotiations are a long and expensive process, there are a lot of travels, but to make it all only for a guidance? Is it really useful? I mean we have Principle 10 already which is not legally binding, it is just a declaration. The citizens could question the whole process if they see finally only guidance which is applied or not. In the 21st century it is a bit shocking to see all this arrangements, so many people meet and so many expenditures only for a non-binding document. That is my point of view.

Sandor Fulop: I want only to underline the double nature of the capacity building. It was mentioned already that it means on one hand capacity building for the Parities and on the other hand for the members and organizations of the public, and these two sides are interrelated. So, Art. 3 is very strong in the second sense, and it means if it is done well, it helps for the capacity building for the countries as well – learning by doing.

My second comment is that in new conventions on environmental democracy some future generations' rights language would be very important because speaking of environmental democracy, the future generations are very important stakeholders whose interest is often totally overlooked. In some ways, probably only on principle level, the future generations' interest and participation should be mentioned.

Theodore Koukis: Just a small note regarding capacity building. First of all, capacity building is something which brings in many partners. At the UNECE, although we don't have ability to provide support for capacity building, we collaborate with other partners so with OSCE, with the Aarhus Centres, with UNEP, with UNITAR, with financial institutions, etc. Through synergies, there could be a lot of projects supported in capacity building. Following on Jerzy's comments, there was a mission to Turkmenistan following a decision on non-compliance by the Meeting of the Parties in 2011 regarding Turkmenistan, so the Compliance Committee was visiting Turkmenistan to provide further support and recommendations to the government. There is plenty of room for action, and I think most countries which have received such a support, have demonstrated that they have appreciated such a support.

Valeria Torres: How will we not discourage the countries which we have seen are not in a strong position regarding the implementation of Principle 10?

Jerzy Jendroska: I could tell you from our experience in negotiating the Aarhus Convention. There were two countries which were constantly opposing any binding language – that were the Russian Federation and Turkey. We spent a lot of time discussing certain provisions and then we were forced to make less binding language there, and eventually they did not even sign it, let alone to ratify the convention. For example, the Compliance Mechanism was written in the convention in a very open form, and then only those who ratify it and are committed to implementation of the convention, they started negotiations

how to monitor compliance. I think it is most important to start negotiations with all countries on board, and then during the negotiations you will see how far countries are willing to go. And it is not so much about the countries. We have seen countries with one government which is not very sympathetic to some issues, and then the government changes and the next government within the same country will change its view. I think it is most important to start the negotiations in the broadest possible scope, not to take right from the beginning decisions that deter anyone from participation, and try to keep on board as long as possible everyone.

3rd presentation

Jeremy Wates, **Secretary General, EEB**: If I may pick up on some of the issues from the previous discussion, first. I think it is crucial to get this decision on the legally binding instrument as soon as possible, and this is really a key difference. You see so many sets of guidelines but they are not legally binding. You should not make a trade off on legally binding instrument on the level of ambition, but if you make a decision first on a legally binding one, then start the negotiations on the content. That's the level of ambition.

There are international processes there has been no decision about the type of instrument but negotiations already start on the content. Sometimes governments agree on non-binding instrument and then it becomes suddenly binding. More likely they consciously negotiate assuming that it could be binding, and then it might end up not being binding. But it is much clearer to have legally binding issue right on the way.

Now 16 years after the AC was adopted almost, and I am working in EU which is one of the most progressive region in the world on daily basis, we are grateful to the fact that EU is party to of the treaty, because we see tendencies inside the EU backsliding, what is only prevented because it is legally building instrument.

Regarding the Compliance Committee, the key issue is when to bring it up. I suggest not to talk too much about the Compliance Committee when you negotiate the text parties will have to comply with, it may be a deterrent. We ended up with very weak text in the Convention but we managed to design very strong mechanism. The way we did it was not by design but almost by luck that it worked out well. We managed to design strong instrument when countries like Russia or Turkey dropped out of the process and had no point to shake the compliance mechanism.

As a minimum at least to mention that the Compliance Committee is a participatory mechanism with independent review body. These are two key points you should try to get into the text. Leave the rest for later, unless you find the momentum to bring it forward.

The main is issue I want to talk about is the role of the CSO in the process. This is absolutely fundamental because of the nature of the instrument. The fact is that this is an instrument what is all about the relationship between governments and people. The paradox is that this is the agreement between governments but in contents, it is of the relationship of individuals and governments. You can make use of that argument while involving CSOs to the negotiation process because they are one of these two halves of the treaty. Their rights should be upheld by the instrument.

Question is in what stage to take procedural agreement about the CSO participation in the negotiation. It is good to have as a minimum a broader agreement that CSOs participation will be included. Try to go further and get some specific text in but if you get counter reactions, stick to the broad outcomes. The point is, once one NGO can put foot into the door, it is easier to elaborate their input later.

What did we do in Europe 18 years ago: first point is to have early involvement of NGOs, this is crucial. We were involved in the negotiations of the Sofia Guidelines, and in this process we were pushing already for legally binding instrument. We got no support but repeated our demands. And then suddenly there was critical mass around this idea – by the government of Denmark, who wanted flagship initiative to be reported 3 years later in Aarhus, - and they were supported by other countries as Belgium, Holland.

When the official decision came to start the negotiation, as of an early involvement, the secretariat set up a small group called Friends of Secretariat, which drafted the elements of the text. Nine members belonged there, 3 people were not from member states but from the NGO community. There was Magdi, representing REC, me myself, representing Friends of the Earth Europe/EEB and Wolfgang Burhenne, representing IUCN. As NGO community, we had to build the process around the negotiations. It was on the one hand very democratic and open but from another hand needed to be very pragmatic, in order to make sure that we have right expertise sitting around the table in Geneva. We had open-ended list, extensive email list of several hundred people, anybody could join the group and contribute to generating the ideas. We used larger group to generate ideas in advance, and we were reporting back to them.

Then we had two smaller groups inside that. One was more political group, representing generally large environmental organisations, which had democratic mandate, like Friends of Earth, EEB. Then next to them we had expert group from universities, etc. who went to the details. Then we had a small delegation: 2 people from East, 2 from West who were in the front line of negotiations. Sandor Fülöp from Hungary was representing at that time East with, Olga Razbash from Russia, me and Peter Roderick from the West. Our positions were formed by a larger group of experts. We were reporting back to the larger group. And we had strategy meetings with larger groups.

Something was crucial: we succeeded right from the beginning in raising some funds from Denmark, the Netherlands, Finland to fund the coordination activities, travels, delegations to come to Geneva, it allowed us to have strategy meetings with the larger groups.

It is important to raise boarder awareness. We got feedback on the negotiation process through the Pan-European NGO conferences. We also tried to keep the contact with larger NGOs on regular bases.

Answers-questions

Luisa Arauz: Which role the CSOs play to add more governments to the process of Aarhus negotiation?

Jeremy Wates: we did not play any role to add governments to the process. It is good to be as inclusive as possible. But we were fortunate from the very beginning of the negotiation that the US made the statement that they don't want to participate. Canada made the same decision. They had rather negative approach to the entire process, and this was the most constructive they could do, rather to come to block every decision. Parties who were involved were determined by UNECE region. North Americas stepped out but most of ECE region participated.

Andrea Sanhueza: I agree that it is very important to start with the content rather than discussing the binding, non-binding options but I also agree with Jeremy that it is good to decide rather earlier than later about the nature of the instrument. We are facing the dilemma here: if we agree on non-binding text, it can have stronger language than the convention. From another hand legally binding instrument might lead to the temptation to have weaker language. Therefore the content should go first, and then the decision about the nature should follow on in the same year but later. CSO society thinks that if we have a voluntary instrument, it is very hard to get governments to implement the agreement.

Jeremy Wates: First of all, you already have a number of non-binding instruments, Bali Guidelines, etc. You really have to consider what the added value to negotiate another non-binding instrument is. Would it motivate NGOs to mobilise, I would question that. This is pretty fundamental issue. Even if the negotiations are then harder, you should make the decision about it. At least you have something potentially useful.

Jerzy Jendroska: You could have a binding instrument but still you can have some provisions written in less binding form. Even a binding instrument does not have always only binding provisions. It is middle way, a compromise solution, you could go for, and this would be much better than to have completely non-binding instrument. Governments should understand that.

Constance Nalegach: I want to share with you what reasons the government gave to us while explaining why they didn't join the declaration. There were three main reasons not to join the declaration. Firstly, there are too many multilateral agreements already which are new burden to the country and countries in the region do not have capacity to implement the new instrument. Also we have sign of strong dilemma: do we need to have the total implementation of legislation on the three pillars before engaging in a regional instrument or not. Chile's argument was that they had to comply with the Rio Declaration since 1992 and countries are still not in compliance. So an international instrument could trigger compliance. 10 countries joined in and now look for a possible instrument. In the first Focal Points meeting there was a discussion about this. Is a Bali Guidelines type of instrument enough? The instrument we want should look at the full implementation of access rights. We should advance in the content and hope to have agreement.

3rd presentation

Magda Toth Nagy, Project Consultant, REC: The Regional Environmental Center was during the Aarhus negotiation in a quite unique position. When REC was established in 1990, it was already said in the mission statement that it should support access to information and public participation in environmental decision-making and therefore our activities were

moving already into this direction. We had to create awareness about the importance of access to information, public participation and access to justice, and REC was very lucky to have projects already in mid 90s on these issues. We manage to fundraise to conduct training workshops and draft public participation manuals already in 1994 and 1995.

We were participating in drafting the Sofia Guidelines, and for the Sofia conference we were preparing an assessment together with the governmental and NGO experts about the status of the access to information, public participation in the region. Then we were asked to assess how the Sofia Guidelines were implemented, however at that time we were already focusing on developing a legally binding instrument.

In the Aarhus negotiations we were finding very important to have strategic and well founded perspectives when negotiators formulated the decisions. REC was working both with NGOs and governments and had the advantage to assist both parties on this. We found also essential to cooperate with the NGOs' network and support a harmonised input of NGOs. Another goal for us was to make the negotiations more transparent so that it wouldn't happen as usually with international conventions, behind the closed doors.

With the help of partners we initiated a series of consultations in the region when the convention draft was available, asking reactions and providing opportunity for the discussion, as well as influencing the individual country positions. In this way there was an opportunity to influence the country positions, using also lobbying and other actions to influence the negotiations on country level, and we used the information gathered during these workshops at the negotiation table. We also built very constructive relations with some of the governmental officials during that process who then at the negotiation table supported many of CSO initiatives and proposals.

Another initiative together with EEB and Ecopravo from Ukraine was the preparation of a series of country assessments, called *"Door to Democracy"* with the help of a governmental and NGO expert network, which pointed out where countries stand, what are their biggest challenges, problems, what improvements are needed, etc. It also mapped the overall trends of the European region and the sub-regions and helped us to prepare for the negotiations. The assessment was asked to be presented even during the Environment for Europe Conference in the ministers' and NGOs' session as the background for the dialogue.

It can be suggested that such tools and instruments are also used in your process. I would emphasise some of the challenges and lessons learnt. Key challenge – we had high standards to start with on the content of the instrument but we had to accept the differences and find consensus. Sometimes we were of course very disappointed of the results. We could place to the text of the convention only more compromise type of text which we later could follow up in the PRTR Protocol, GMO amendment, etc.

Another challenge was coping with the complexity and diversity of the issues. Aarhus Convention is a horizontal instrument which is actually linking human and environmental rights. You should have general transparency requirements outside of the environmental field as well, e.g. freedom of information acts. You should use the experiences from other fields, and this could help you to draft the environmental instrument. The mobilisation and bringing together the governmental and NGO experts to shape the opinion of the governments in the

negotiations is also one of the learning points. Another one is to combine the national and international level actions to support the negotiations. Openness and transparency of the negotiations is important – messages were taken out from the negotiation room, and outside ideas were brought into the negotiation room, and this was paying off in the negotiation process.

Questions-answers

Tomas Severino: Could you develop more on how did you specify the topics which needed to be developed further and how it was done? What strategy did you have for that?

Jeremy Wates: There wasn't strategy to say which piece of text to take further. NGOs wanted to strengthen entire text in all front. One of our first priorities was to have three pillars for the AC, as in the guidelines adopted there was only access to information and public participation. Then we were also looking at what kind of decision-making processes we look for public participation. At that time, we had quite a number of strategic discussions but went according to the process I described earlier: we had broad mechanism to generate the ideas and then small group of people get them included to the negotiations.

Magdi Toth Nagy: I would underline the flexibility of NGO negotiators during the negotiations. CSOs had very high standards and marked some priorities. But when it was seen that there is no chance for agreement, we had to see what the back-up position is. What kind of compromise can be done? The lobbying and other tools were in parallel used to make the pressure. I would underline the evolution during the negotiations: also governments became more open and supportive to NGO ideas. But there had to be always in the first place some government which supported NGO viewpoints during the negotiating sessions.

Andrea Sanhueza: I will change a bit the issue. When the implementation process started, did the Secretariat help to start the implementation or was it monitoring the implementation process? How was that done when the implementation phase started?

Jeremy Wates: There is no big emphasis on capacity building in the text of the Convention in a formal sense, but lots of capacity building has been going on. On the other hand the Secretariat has a unique role in servicing the inter-governmental process in the formal sense. It was forming the network together with organisations like UNECE, UNITAR, REC to do the capacity building work. The Secretariat did not play bigger role than other bodies involved to capacity building. REC was for example working a lot on individual countries, sub-regions, while some others more on superficial level.

Having actually international treaty you encourage donors to put funding into capacity building because there is stronger reason to build capacity if there is legal obligation you want to comply with.

Magdi Toth Nagy: One important thing to mention is that the Aarhus Secretariat provides financial support for some NGOs (selected by EEB) to take part in the work of different working bodies and travel to the annual meetings of working group of Parties or to the meeting of Parties. The Secretariat assists in the implementation of the work programme and strategy adopted by the Parties, and it funds sub-regional workshops. At the beginning there

were general sub-regional workshops covering all pillars, lately these have been organized mostly on the access to justice pillar. Also guidance materials were developed. We can also later tell on how we work with individual governments, Aarhus Focal Points, ministries and NGOs on developing implementation strategies and action plans.

Andrea Sanhueza: Was each government using their own pace for implementing the convention or was there set some milestones of the implementation?

Jeremy Wates: In our region there were two different legal traditions: post-Soviet countries had different approach to the international treaties; these countries take the treaty over the national law, while when Western countries implement the international treaty, it needs to be transposed into the national legislation. And so, a Western country would be actually in non-compliance without this. They needed to have legislation in place. That's why Eastern countries were the first ones to ratify the convention because it was more a political decision they made. In a way it was legally more or less correct. You could argue whether they were really in compliance but there were different traditions. In a way, Eastern parties made very important political commitment when they were not ready for it yet but it also pushed them forward.

On the modalities of CSO participation: the CSOs could be present in all plenaries, and every drafting group. The Chair always made sure that this happened. During the negotiations we had a chair sympathetic to the NGO participation (a civil servant who had the responsibility of governments). Building a community around the negotiation is important, even more for civil servants but also for NGOs. We had this community built and we can see the fingerprints of NGOs on the convention.

Conclusions, next steps and closure

Magdi Toth Nagy: We learnt a lot from this discussion; we should continue and address the questions we couldn't address yet.

Tsvetelina Borissova Filipova: We are planning to organise 2-3 webinars, addressing different issues. We will define the topics with you. We will have additional call with some of you to design your presence in the MOP in Maastricht. Thank you very much!