

**Comments by Mr. Jit Peters, Chair of the Meeting of the Parties to the Aarhus Convention  
on the research paper “Typology of International Instruments”  
prepared by Dr Marcos A. Orellana for the Working Group on Access Rights and the  
Regional Instrument  
Lima, Peru, 29 October 2013**

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Honourable Ministers, Your excellencies Ambassadors, distinguished delegates, Ladies and Gentlemen,

- **I warmly welcome the research paper “Typology of International Instruments” prepared by Dr Marcos Orellana for the working group on access rights and the regional instrument.**
  - The paper provides a very good analytical overview of the differences between legally binding instruments and soft law, with helpful examples. Also very useful, is the overview of the implementation and compliance mechanisms. In my experience, the value of such implementation and compliance mechanisms cannot be overstated. They make a very significant contribution to the effectiveness of the instrument, and are usually associated with legally binding instruments, rather than soft law. In fact, in my view, such mechanisms are one of the key advantages of legally binding instrument.
  
- **The benefits for the ECE region of Aarhus being a legally binding instrument**
  - Those involved in negotiating the Aarhus Convention in the mid-late 1990s recognized the importance of having a legally binding instrument. Our experience after the non-binding Sofia Guidelines were adopted in 1995 made it clear that real progress could only be made if such an instrument was legally binding.
  - The value of a legally binding agreement has been abundantly clear over the past 12 years since the Aarhus Convention entered into force in 2001. One can confidently say that the Aarhus Convention has made an identifiable positive contribution to environmental protection, human rights, sustainable investment and good governance in most if not all of its Parties This includes Parties at all levels of economic development, and very different political and governance systems. For example,
    - In Denmark it has seen the cost of fees for environmental NGOs to bring appeals before the Danish Environmental Appeals Board reduced.
    - In Albania, new legal instruments on public participation in decision-making were adopted to fully meet the requirements of the Convention thereby leading to effective public participation in a number of projects.
    - In Republic of Moldova and Belarus, new laws on access to environmental information and public participation are currently being prepared in the light of the Convention.

- In addition, its standards of good governance contribute to sustainable economic development thus encouraging new sources of foreign investment. It has also proved useful for attracting international development assistance like funded projects, capacity building and technical assistance, for example OSCE-funded Aarhus Centres now established in 14 countries. Its common standards have also helped closer regional integration, for example, compliance with Aarhus is included in the European Neighbourhood Policies between EU and non-EU countries.
- **The implementation and compliance mechanisms described in the background paper have made a fundamental contribution to the Aarhus Convention's success**
  - The fact that the Parties and stakeholders are able to benefit from such implementation and compliance mechanisms is due to the legally binding character of the Aarhus Convention. For example:
    - **Meeting of the Parties**, which meets every three years, provides the strategic oversight and leadership for the Convention.
    - **Specialized secretariat**, which supports the Meeting of the Parties and all the Convention's subsidiary bodies and provides regular and timely information to the parties stakeholders. The Aarhus secretariat is the oil that keeps the machinery of the Convention running smoothly and well.
    - **The Aarhus Working Group of the Parties** provides oversight of the implementation of the Convention's work plan on an annual basis. The three **task forces**, one dedicated to each pillar provide an opportunity for Parties and stakeholders to meet together in a more informal setting to exchange experiences regarding key challenges, good practices and emerging issues on each pillar.
    - **Reporting mechanism**, which is adhered to by Parties, provides a valuable source of information on national implementation. Parties are required to report on a three-yearly basis prior to each Meeting of the Parties. National implementation reports should be prepared in a transparent and participatory way.
    - **Compliance mechanism**. The background paper prepared by Dr Orellana gives a helpful synopsis of the Aarhus Convention Compliance Committee mandate and procedures, so I shall not repeat that here. Just to say, that it has proven to be a very valuable tool to assist countries to achieve compliance in a non-confrontational, non-adversarial way.
    - **Aarhus Clearinghouse** is another mechanism for Parties and stakeholders to exchange information on good practices, key challenges, relevant developments and events, research and jurisprudence.
    - **Aarhus trust fund** to cover the costs associated with implementing the work plan of the Convention and to support participation of eligible governments and civil society representatives to attend meetings of the Convention's bodies. Parties are contributing to the trust fund on a voluntary basis.

- If Aarhus was simply soft law, we would not have these important and useful mechanisms to assist us to make real progress.

## **Conclusion**

In my view, the globally recognized success story that is Aarhus would be very different if it was a soft instrument. The adoption of a legally binding instrument sent a strong signal to other States, including trade and aid partners, as well as foreign investors and international institutions of the governments' commitment to effective governance and democracy.

The Sofia Guidelines were in place for 6 years before Aarhus entered into force, and whilst they served as an important source of principles for the negotiation of the Convention, they did not create significant change at the national level. In the same way, the Latin American and Caribbean region already has a soft law instrument on Principle 10 at its disposal – the Bali Guidelines adopted by the UNEP Governing Council in 2010. I imagine that if the signatories to the LAC initiative are serious about making progress on Principle 10, they will not wish to duplicate efforts through another soft law instrument when the region already has one at its disposal.

It is the legally binding character of the Aarhus Convention, plus its support of implementation and compliance mechanisms that have made the Convention into the dynamic and landmark instrument that it is today. I welcome this paper, as a valuable contribution to your discussions towards a common vision for going forward. Sharing a common vision was also very important in the story to create the Aarhus Convention as it helped to inspire and guide governments of the ECE region in our journey to create the Aarhus Convention.

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