Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters

Background

The Convention is signed by thirty-five States and the European Community, takes a comprehensive approach. The Convention builds on prior texts, especially Principle 1 of the Stockholm Declaration, which it incorporates and strengthens. The Preamble states that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations." The following paragraph adds that to be able to assert the right and observe the duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. These provisions are repeated in Article 1 where States parties agree to guarantee the rights of access to information, public participation, and access to justice.

The Convention acknowledges its broader implications, expressing a conviction that its implementation will "contribute to strengthening democracy in the region of the UNECE." Although it was open for signature only by States members of the UNECE as well as States having consultative status with it, its Article opens the door to accession by other States under the conditions that they are members of the UN and that the accession is approved by the Meeting of the Parties of the Convention.

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Main Features

The Convention, also known as the Aarhus Convention, provides numerous exceptions in Article 4(4) to the duty to inform, in the light of other political, economic and legal interests. Thus, the state may refuse to provide the information if the information is not in its possession; the request is manifestly unreasonable or too general; concerns material not completed or internal communications of a public authority; or if the disclosure would adversely affect:

1. the confidentiality of public proceedings;
2. international relations, national defense or public security;
3. criminal investigations or trials;
4. commercial and industrial secrets; however, information on emissions relevant to the protection of the environment shall be disclosed;
5. intellectual property rights
6. privacy, i.e. personal data
7. the interests of a third party
8. the environment, such as the breeding sites of rare species.

The Convention states that all exceptions are to be read restrictively and the State may provide broader information rights than those contained in the Convention. In addition, where non-exempt information can be separated from that not subject to disclosure, the non-restricted information must be provided. In spite of these interpretive provisions, many environmental groups have expressed concern that the exceptions will result in the withholding of extensive and crucial information. Any refusal to provide information must be in writing and with reasons given for the refusal. Reasonable fees may be charged for supplying information. The government has special disclosure obligations in case of any imminent threat to human health or the environment.

To enhance the effectiveness of the Convention, the states parties must provide information about information, i.e. the type and scope of information held by public authorities, the basic terms and conditions under which it is made available and the procedure by which it could be obtained. The Convention also foresees the establishment of publicly-accessible electronic sites that should contain reports on the state of the environment, texts of environmental legislation, environmental plans, programs and policies, and other information that could facilitate the
application of national law.

In the Aarhus Convention public participation is guaranteed in Articles 6-8, and is required in regard to all decisions on whether to permit or renew permission for industrial, agricultural and construction activities listed in an Annex to the Convention as well as other activities which may have a significant impact on the environment. The public must be informed in detail about the proposed activity early in the decision-making process and given time to prepare and participate in the decision-making. During the process, the public must have access to all relevant information on the proposal including the site, description of environmental impacts, measures to prevent and/or reduce the effects, a non-technical summary, an outline of the main alternatives, and any reports or advice given. Public participation can be through writing, hearings or inquiry. All public comments, information, analyses or opinions shall be taken into account by the party in making its decision. All decisions shall be made public, along with the reasons and considerations on which the decision is based.

The provisions of Article 9 of the Aarhus Convention mirror many human rights texts in requiring proceedings before an independent and impartial body established by law. Each state party must provide judicial review for any denial of requested information, and a remedy for any act or omission concerning the permitting of activities and "acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment." Standing to challenge permitting procedures or results is limited to members of the public having a sufficient interest or maintaining impairment of a right; however, the Convention provides that environmental non-governmental organizations "shall be deemed" to have sufficient interest for this purpose. Standing to challenge violations of environmental law is open to the public, including NGOs "where they meet the criteria, if any, laid down in national law." (Article 9(3))

The Convention's topic has induced the drafters to take small steps towards the creation of compliance procedures and enhancement of public participation on the international level. Primary review of implementation is conferred on the Meeting of the Parties, at which non-governmental organizations "qualified in the fields to which this Convention relates" may participate as observers if they have made a
request and not more than one-third of the parties present at the meeting raise objections (Article 10). This is a common provision in international environmental agreements.

The Convention adds, however, a provision on compliance review (Article 15) which mandates the establishment by the Meeting of the Parties of a “non-confrontational, non-judicial and consultative” optional arrangement for compliance review, which “shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.” This tentative language marks the first time a petition procedure has been contemplated in an international environmental agreement. If the compliance procedure is established, it will mark an important step in enhancing the effectiveness of international environmental agreements. At present, nearly all such agreements vest authority over issues of implementation and compliance in the Conference or Meeting of the Parties, a plenary and political body. In some cases small secretariats are created, but they lack broad competence over compliance matters.

This convention consists of a preamble, thirty-five articles, and annex.

1. Article 1 of this Convention consists of definitions for the purpose of this Convention. The Convention defines underwater cultural heritage as all traces of human existence having cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously for at least 100 years. It does not include installations still in operation such as submarine cables or piers, jetties and wharves that have been utilized with the last 100 years.

2. Article 2 explains the objective of this Convention and its principles;

4. Article 4 describes relationship to law of salvage and law of finds.
5. Each State Party shall use the best practicable means at its disposal to prevent or mitigate any adverse effects that might arise from activities under its jurisdiction incidentally affecting underwater cultural heritage based on Article 5.
6. Furthermore, Article 6 stated that States Parties are encouraged to enter into bilateral, regional or other multilateral agreements or develop existing agreements, for the preservation of underwater cultural heritage.
7. According to Article 13 of this Convention, Warships and other government ships or military aircraft with sovereign immunity, operated for non-commercial purposes, undertaking their normal mode of operations, and not engaged in activities directed at underwater cultural heritage, shall not be obliged to report discoveries of underwater cultural heritage under Articles 9, 10, 11 and 12 of this Convention.
8. Moreover, according to Article 17, each State Party shall impose sanctions for violations of measures it has taken to implement this Convention.
9. Article 19 underlines States Parties shall cooperate and assist each other in the protection and management of underwater cultural heritage under this Convention, including, where practicable, collaborating in the investigation, excavation, documentation, conservation, study and presentation of such heritage.
10. In order to ensure the proper implementation of this Convention, States Parties shall establish competent authorities or reinforce the existing ones where appropriate, with the aim of providing for the establishment, maintenance and updating of an inventory of underwater cultural heritage, the effective protection, conservation, presentation and management of underwater cultural heritage, as well as research and education according to Article 22 paragraph 1.
11. Final provisions. Article 26 paragraph 1 stipulates that this Convention shall be subject to ratification, acceptance or approval by Member States of UNESCO. At the time of ratifying, accepting, approving or acceding to this Convention, a State or territory may make a declaration to the depositary that this Convention shall not be applicable to specific parts of its territory, internal waters,
archipelagic waters or territorial sea, and shall identify therein the reasons for such declaration based on Article 29. Article 31 stated that a State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. According to article 34, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General.

Entry into force

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. This is governed under Article 20 of the Convention. This Convention came into force on 25 June 1988 following signatures by 35 states.

Dispute Settlement

According to Article 16 of the Convention, 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. 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 to the above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

1. Submission of the dispute to the International Court of Justice;
2. Arbitration in accordance with the procedure set out in annex II.

(Luna Puspita)
Convention on the Political Rights of Women

Background

This Convention is the result of the Commission on the Status of the Women. This Convention desires to implement the principle of equality of rights for men and women contained in the Charter of the United Nations. Recognizing that everyone has the right to take part in the government of his country, directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights.

The Convention mainly speaks about whether women shall have the equal right as men to vote and participate equally and with all of the justice in political matters. In most countries, women have equal suffrage. Some may feel that for that reason this convention is of little importance to them, however, the Convention significantly reaches far deeper into the real issue of whether in fact women are recognized fully in setting the policies of our governments.

This Convention also explains whether women are sharing in the direction of the policy making in their countries; whether they have opportunities to serve as chairmen of important committees and as cabinet ministers and delegates to the United Nations.

Main Features

The terms of the draft convention before us are simple. Articles 1 and 2 provide for the right to vote and to be elected to publicly elected bodies, such as parliaments, established by national law. These are the basic rights which all people must have to express their interest and protect themselves against discrimination or deprivation of liberty. The Charter of the United Nations reaffirms in its preamble the principles of equal rights for men and women. The first General Assembly endorsed

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these rights when it unanimously adopted the resolution recommending that all member states, which had not already done so, adopt measures necessary to fulfill the purposes and aims of the Charter in this respect by granting to women the same political rights as men. This convention spells out this recommendation in clear and practical terms, on which all parties in a country can unite.

Article 3 of this convention goes beyond the basic rights in articles 1 and 2 into the matter of public office. It provides that women shall be entitled to hold public office established by national law on the same terms as men, and to exercise all public functions in the same way. The object of this article to encourage opportunities for women in government service—has my hearty endorsement, and that of my Government. Women today hold many important Government posts and an increasing number are in executive positions and in Foreign Service.

The term “public office” is taken to include appointments to posts in the (1) civil service, (2) foreign (diplomatic) service, and (3) judiciary, as well as (4) posts primarily political in nature, such as cabinet ministers or secretaries. The number of appointive offices established by national law is usually large, far larger than the number of offices filled by election, and the tasks to be performed by appointive officers are likely to vary widely in substance and in level of responsibility.

Article 3 specifies offices are to be held “on equal terms with men.” This is also an inclusive phrase, covering such matters as recruitment, exemptions, pay, old age and retirement benefits, opportunities for promotion, employment of married women. All these are important matters on which women have sought equality for many years.

Signatory and Entry into Force

This Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the General Assembly. As for entry into force, it is stated under Article VI of the Convention that The Convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification.
Dispute Settlement

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation, shall at the request of anyone of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement. This is stated under Article IX of the present Convention.

(Luna Puspita)

International Convention for the Protection of All Persons from Enforced Disappearance

Background

Enforced disappearance has been labelled as a particularly heinous violation of human rights and one of the gravest crimes that can be committed against a human being. The act of enforced disappearance typically involves the abduction, arrest or detention of an individual — usually a perceived political opponent — by members of a state-sponsored military group, and a deliberate denial by authorities of any knowledge of the victim’s arrest, whereabouts, or condition: the individual effectively vanishes. Enforced disappearances are viewed as a ‘doubly paralysing form of suffering’. The victim is removed from the protection of the law, and is often subjected to torture and extrajudicial execution.

Based on the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and Having regard to the Universal Declaration of Human Rights, Considering the International Covenant on Economic, Social

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and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law, some states believe that they should give a special concern for their people on the Protection from Enforced Disappearance.

The states parties aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity. The state parties also determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance. Recognizing the urgent need to protect the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation. So the states parties elaborated their consent through International Convention for the Protection of All Persons from Enforced Disappearance.

Concept

The Convention aims for the Protection of All Persons from Enforced Disappearance to assist countries in managing and preserving their right as human, their right not to be subjected to Enforced Disappearance. This convention:
1. sets out basic principles for the protection All Persons from Enforced Disappearance;
2. Provides the detailed responsibility of state parties on protection of all people from Enforced Disappearance whether in war and peace;

Main principles

The Convention contains a universally agreed definition of enforced disappearance and its main goal is to help and oblige States to protect persons from enforced disappearances by achieving the following objectives:
1. Defeat impunity;
2. Prevent new enforced disappearances cases
3. from occurring;
4. Defend the rights of the disappeared and their families.

The convention also features some basic elements such as:
1. Establishes the absolute and inderogable right of a person not to be disappeared.
2. An agreed and comprehensive definition of enforced disappearance. Enforced disappearance constitutes a crime against humanity in a context of widespread and systematic violations of human rights.
3. Non-State actors must also be prosecuted by States when they commit acts similar to enforced disappearances.
4. States are obliged to criminalize enforced disappearance in their penal system.
5. States exercise mandatory jurisdiction over all perpetrators of enforced disappearance.
6. Impunity is not to be tolerated.
7. Secret detention is totally prohibited.
8. All persons who are incarcerated must be protected from enforced disappearance. The provision of a minimum of information on detainees is mandatory.
9. A broad definition of the victims of enforced disappearance with their corresponding rights.
10. The right to truth about all circumstances of enforced disappearance cases.
11. Special protection for child victims.

Main Features

This convention consists of a preamble; the forty-five articles are divided into 3 parts.

1. Article 1 of this Convention consists of the right not to be subjected to enforced disappearance. The Convention defines No one shall be subjected to enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.
2. Article 2 defines a clear and comprehensive enforced disappearances definition. The Convention presents a universally
agreed authoritative definition of enforced disappearances which is constituted by three elements: 1) Deprivation of the liberty against the will of a person by arrest, detention, abduction or any other form; 2) Involvement of State agents or persons and groups that act with the support of, or tolerance or acquiescence by the State. This also includes non-governmental actors who operate with official approval (paramilitaries, death squads);
3. 3) Refusal to acknowledge the detention of the victim and the concealment of his/her fate and whereabouts. This concealment can be active or passive.
4. Article 3 describes about the position of Definition and non-State actors relationship.
5. Article 4 stated criminalization of the offence of enforced disappearances in law.
6. The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law based on article 5.
7. Furthermore, article 6 and article 7 stated about the measure the state should take on protection from enforced disappearance.
8. Article 8 considers enforced disappearance to be a continuous crime. This element is crucial as the alleged perpetrators often times defend themselves by referring to the passage of time.
9. Article 9, 10 and 11 stated Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance and applicability of its competence.
10. Article 12 considers an urgent investigation to seek and find a victim of enforced disappearances. The Convention guarantees the right to report immediately to the authorities a new case of enforced disappearance and have it promptly, thoroughly and impartially investigated.
11. According to article 14 and article 15 States Parties shall afford one another the greatest measure of mutual legal assistance in connection with an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.
12. Article 17 stated the prohibition of secret detentions.
13. Moreover, article 18, 19, 20, and 21 describe about States have to keep registers of detainees. States must keep official registers of all detainees. These records should contain at least a minimum of information (identity of the detainee, date, time, place and reason for arrest, state of health and the authority in charge). States have to guarantee access to this information to anyone with legitimate interest. States must sanction those agents that fail to record detentions or refuse to provide information on detainees.
14. According to article 23, each State Party shall ensure that the training of law enforcement personnel includes the necessary education and information regarding the relevant provisions of the Convention.
15. Right of victim is described broadly under article 24.
16. Therefore, article 25 explains about child victims.
17. Article 26 until 36 explain briefly about the establishment of a Committee on Enforced Disappearances.
18. Article 37 until 45 stipulates that this Convention shall not affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in the law of a State Party and international law in force for that State. This Convention is open for signature and subject of ratification by all Member States of the United Nations.

Entry into force

The Convention will become operative on the 30th day after 20 States have each deposited their instrument of ratification with the UN Secretary General. Its entry into force in December 23rd 2010. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

Dispute Settlement

According to Article 42 of this Convention relating to any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention...
shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

(Meike Rachmana)

Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954

Background

By looking back throughout the history of civilization, war has gone hand in hand with the devastation of people and property, including the cultural property. The events such as First World War and Second World War brought massive destruction toward the people and also the cultural property. Many people come to the awareness where cultural heritage is considered important aspect of civilization. They realize that it speaks the history and identity of a community, where its preservation could help to rebuild broken communities, and to establish their identity. Because of such reason, and also Triggered by the widespread cultural devastation perpetrated by Nazi in Second World War, international community took step to prevent destruction of cultural property in the time of armed conflict; hence, Convention for the Protection of Cultural Property in the Event of Armed Conflict came to existence in 1594.

Concept

The international community, through this convention, is endeavor-

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ing to protect the cultural property especially in the event of the arm conflict. By setting up the regulations, the convention urges each state to protect and to do any measures necessary to safeguard its cultural property against the armed attack. Parties to an armed conflict are not allowed to direct hostilities against cultural property and must avoid incidental damage to such property. Using the cultural property for the military purpose is strictly prohibited by this convention. But in the other hand, the convention presents the concept of ‘military necessity’, the condition where states parties could use cultural property or its immediate surrounding for military purposes and to conduct hostilities against such property. The convention also proposes the idea of Respect for cultural property situated within their own territory as well as within the territory of other States Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes likely to expose it to destruction or damage in the event of armed conflict.

Enter into Force
This convention entered into force in 7 August 1956. Pursuant to Article 33, the convention shall enter into force three months after five instrument of ratification have been deposit. Under the condition stated in Article 18 and Article 19, paragraph three of this article gives states that the convention will make an immediate effect after the ratification or accession deposited by the party

Main Features
This convention consists of forty Articles, which distributed into seven chapters and final provision. As an outset, within the Chapter 1 titled General Provision Regarding Protection, Article 1 serves its duty by giving the definition of what is cultural property since it is the prominent object that will be protected in this convention. The definition covers properties, such as, moveable and immovable property a great importance to the cultural heritage of every people, buildings whose main and effective purpose is to preserve or exhibit the movable cultural property, and centers containing a large amour of cultural
property. Under this convention, as stated in Article 2, High Contracting Parties have the obligation to safeguard and respect cultural property. In the case of safeguard, the convention states that the preparation of safeguarding the cultural property shall be undertaken by the High Contracting Parties in the peacetime against the foreseeable effects of an armed conflict. In the case of respect for cultural property, High Contracting States undertake to respect cultural property situated with their own territory as well as within the territory of other High Contracting Parties. Article 4 paragraph 2 should be worth to heed. As far as the concern of the convention is to protect the cultural property in the time of armed conflict, there are conditions deemed as ‘military necessity’ that waives the obligation to respect cultural property.

Chapter II is titled Special Protection. The Special Protection is the system established by the Convention for the limited refuges intended to protect the movable cultural property, centers containing monument, and immovable cultural property of very good importance. The special protection is granted by its entry in the International Register of Cultural Property under special Protection. The Convention states that the High Contracting Parties undertake to ensure the immunity of cultural property under special protection (Article 9), but the immunity also could be withdraw under the condition defined in Article 11.

Chapter III, consisted of Article 12, 13, and 14, regulates matter about transport of cultural property, which covers the issues such as transport under special protection, in the time of urgent case, and immunity seizure, capture and prize. The convention dedicates Chapter V, consisted only one article, to cover issue about the personnel, regulating personnel’s right who engaged in the protection of cultural property.

The emblem system established by the Convention is aimed to give distinctive mark for the purpose of identification of the cultural property. This matter is covered under the Chapter VI of the Convention, consisted of Article 16 and 17. Chapter VI is talking about the Scope of Application of the convention, which is not only applied in time of peace but also in the time of declared war or any other armed conflict. The last Chapter, which is Chapter VII, regulates about the Execution

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of the Convention. Article 21, within Chapter VII, introduces the Protecting Powers who is responsible for safeguarding the interest of the parties to the conflict.

Dispute Settlement

Unfortunately, this convention does not have Article dedicated to regulate matter about dispute settlement. Instead, there is Conciliation Procedure, provided by Article 22. Protecting Powers shall lend their good office if there is a disagreement between parties to the conflict as to the application or interpretation of the present convention or the regulation for its execution. In the High Contracting Parties’ jurisdiction, they shall take necessary steps, within their legal framework, to prosecute and impose penal sanction upon the person, who committed violation against the convention (Article 28).

(Samuel Yefta)