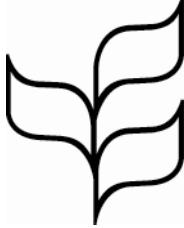




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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fourth meeting
Montreal, 21-23 November 2007

REPORT OF THE COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY ON THE WORK OF ITS FOURTH MEETING

INTRODUCTION

A. *Background*

1. The Compliance Committee under the Cartagena Protocol on Biosafety was established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol pursuant to Article 34 of the Protocol.
2. The Committee held its third meeting from 5 to 7 March 2007 in Kuala Lumpur. It reviewed information on the experience of other multilateral environmental agreements regarding measures concerning cases of repeated non-compliance. It agreed to further review the information at its next meeting. It addressed a number of other issues as a follow up to its previous meetings, including general issues of compliance and possible lessons learned from analysing the interim national reports. It also considered how the Committee could contribute to the upcoming review process of the effectiveness of the Protocol in general and the procedures and mechanisms on compliance, in particular in the context of Article 35 of the Protocol and decision BS-III/15 of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.
3. At its third meeting, the Compliance Committee had agreed to hold its fourth meeting in the last quarter of 2007. Accordingly, the Secretariat made the necessary arrangements, and the meeting took place from 21 to 23 November 2007 in Montreal.

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B. Attendance

4. The following members of the Committee were present at the meeting:

Africa:

Mr. Bather Kone
Ms. Mary Fosi Mbanekhu (Vice-Chair)

Latin America and Caribbean

Mr. Lionel Michael
Mr. Victor Villalobos Arámbula

Asia and the Pacific:

Dr. Nematollah Khansari

Western Europe and Others Group

Ms. Jane Bulmer
Mr. Jürg Bally
Mr. Veit Koester (Chair)

Central and Eastern Europe

Mr. Gábor Nechay
Ms. Liina Eek
Mr. Sergiy Gubar

5. Following agreement at its third meeting, the Committee conducted its fourth meeting in an open session. The decision to have an open session was announced on the Secretariat's web page five weeks prior to the date of the meeting. However, the Secretariat did not receive any request to be represented at the meeting as an observer within the deadline set.

ITEM 1. OPENING OF THE MEETING

6. Mr. Veit Koester, Chair of the Committee, opened the meeting at 9.30 a.m. on 21 November 2007. He welcomed members of the Committee and thanked the Secretariat for its preparations. He then invited the representative of the Secretariat to report on the attendance at the meeting.

7. In response to the invitation of the Chair, the Secretariat reported that three members of the Committee, Dr. Tewolde Birhan Gebre Egziabher from the Africa region, Mr. Gurdial Singh Nijar from the Asia and Pacific region and Mr. Paul Damien Roughan, also from the Asia and Pacific region were not able to attend. The Secretariat also recalled that one member from the Latin American and Caribbean region had resigned in August 2006 and no replacement has been effected. Eleven members of the Committee were present and thus there was a quorum for the meeting to proceed in accordance with rule 16 of the rules of procedure.

ITEM 2. ORGANIZATIONAL MATTERS***2.1. Adoption of the agenda***

8. The Committee adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/BS/CC/4/1) prepared by the Secretariat under the guidance of the Chairperson of the Committee:

1. Opening of the meeting.
2. Organizational matters:
 - 2.1 Adoption of the agenda;
 - 2.2 Organization of work.

3. Further information and experience regarding repeated cases of non-compliance under the compliance mechanisms of other multilateral environmental agreements.
4. Review of general issues of compliance as identified through an analysis of the first national reports.
5. Follow-up on other issues arising from the third meeting of the Committee:
 - 5.1 Evaluation of the compliance procedures and mechanisms;
 - 5.2 Open or closed session.
6. Election of new members of the Committee.
7. Structure of the report of the Committee, including its recommendations.
8. Other matters.
9. Adoption of the report.
10. Closure of the meeting.

2.2. Organization of work

9. The Committee agreed on the organization of its work as proposed by the Chairman, including the schedule of its sessions, as specified in annex I to the annotations to the provisional agenda (UNEP/CBD/BS/CC/4/1/Add.1).

ITEM 3. FURTHER INFORMATION ON EXPERIENCE REGARDING REPEATED CASES OF NON-COMPLIANCE UNDER THE COMPLIANCE MECHANISMS OF OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS

10. The Secretariat introduced the note by the Executive Secretary on further information on experience regarding repeated cases of non-compliance under the compliance mechanisms of other multilateral environmental agreements (UNEP/CBD/BS/CC/4/2), the working document relevant to the item. The Committee had considered an earlier version of this document at its third meeting and had made a number of comments on the document. The Secretariat had accordingly revised the document to the version that the Committee had before it.

11. The Committee reviewed the information contained in the document. It agreed that the document would be revised further and finalized on the basis of the discussion at its present meeting by the Secretariat with guidance from the Chair of the Committee. It also agreed that the final document that would go to the fourth meeting of the Parties should be issued as a note from the Compliance Committee in line with paragraph 2 of decision BS-III/1.

ITEM 4. REVIEW OF GENERAL ISSUES OF COMPLIANCE AS IDENTIFIED THROUGH AN ANALYSIS OF THE FIRST NATIONAL REPORTS

12. The representative of the Secretariat introduced the note by the Executive Secretary on preliminary suggestions and information for consideration in relation to items 4, 7 and 8 of the provisional agenda (UNEP/CBD/BS/CC/4/2/Add.1). Some general issues of compliance had been identified in section I of the document on the basis of the advance draft copy of the note by the Executive Secretary on the analysis of information contained in the first national reports

(UNEP/CBD/BS/COP-MOP/4/13). The latter was based on an analysis of 52 national reports received by 16 October 2007 in a format that allowed the analysis and was supported by an advance draft of the summary of responses submitted in the first regular national report on the implementation of the Cartagena Protocol on Biosafety (UNEP/CBD/BS/COP-MOP/4/INF/11), which was also made available for the information and reference of the Committee. The complete text of the responses to all questions provided in these national reports as submitted to the Secretariat could also be accessed through the website of the Convention at <http://www.cbd.int/reports/list.shtml?type=cpb1>. The Secretariat indicated that national reports were still being submitted to the Secretariat and a total of 65 first national reports have been received as of 21 November 2007. Out of these, three were from non-Parties.

13. The Committee noted the low number of first national reports received by the deadline. Moreover the number of national reports received and included in the analysis by 16 October 2007 (50 from Parties and two from non-Parties) was still very low, which raised a general issue of compliance. The Committee explored the possible reasons for the low rate of reporting, particularly when compared to the relatively high level of reporting under the Convention. The Committee therefore considered that it would be important, by means of a recommendation, to call the attention of the Parties to the Protocol to the issue, which, in the opinion of the Committee, constitutes a serious issue of non-compliance.

14. The Committee considered what lessons might be learned from the Convention process. In this regard, members of the Committee observed that funding was available to support the preparation of national reports under the Convention while such support has not been made easily available for the preparation of reports under the Protocol despite the guidance provided by the eighth meeting of the Conference of the Parties to the financial mechanism (decision VIII/18, para. 12 (i)) based on the recommendation of the third meeting of Conference of the Parties serving as the meeting of the Parties to the Protocol, which, in turn, was based on a recommendation made by the Compliance Committee.

15. Some members noted that there was some difficulty in accessing resources from the Global Environment Facility (GEF) for activities related to the implementation of the Protocol, including the preparation of national reports. The Committee strongly suggested that access to GEF funding should be facilitated for eligible Parties to implement their obligations under the Protocol, including their reporting obligation. In this connection, the Committee recommends that the dialogue session proposed by the second meeting of the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention (UNEP/CBD/COP/9/4, annex, recommendation 2/3, paragraph 4) to be organized by the Executive Secretary on 17 May 2008 in Bonn that will bring together Parties and the Chief Executive Officer of the GEF also include biosafety within its scope.

16. The Committee applauded the high number of national reports submitted by African countries. It also noted that the difficulties in adhering to the obligation to submit national reports by the deadline is shared by both developed and developing country Parties, suggesting that improvements were needed at the national level.

17. The Committee requested the Secretariat to compile experience on the reporting rates under other multilateral environmental agreements and to make that information available.

18. The Committee recalled paragraph 4 of decision BS-III/14, in which Parties were reminded that not submitting a national report within the deadline did not absolve them from fulfilling their obligation for that reporting period.

19. The Committee next addressed the continued existence of significant gaps regarding the obligation to put in place at the national level the necessary legal, administrative and other measures required to implement the Protocol, which the Committee considers to be a serious issue of

non-compliance. It recalled the recommendations that it made on this same general issue of non-compliance in the context of the interim national reports.

20. Similarly, the Committee considered that compliance with the obligation to promote public awareness and participation is not at a satisfactory level.

21. Finally, the Committee identified the gaps that exist with respect to implementing the requirement to adopt national measures addressing illegal transboundary movements of living modified organisms and reporting the occurrence of such movements to the Biosafety Clearing-House. In this regard, it was noted that most of the incidents of illegal transboundary movements were reported by developed countries suggesting that lack of reporting by developing countries of such movements could be linked to the capacity to detect and identify the presence of living modified organisms. The Committee felt that it was appropriate to make a recommendation to the fourth meeting of the Parties to the Protocol with respect to the need for capacity-building for developing country Parties, in particular the least developed and small island developing States among them, as well as Parties with economies in transition, in the area of sampling and detection of living modified organisms in relation to illegal transboundary movements.

22. The Committee agreed that the format for national reports should include questions about the possible origin of living modified organisms deemed to be illegal transboundary movements and the nature of the living modified organism, where known, and should require explanations, where available, as to why such movements occurred or were illegal.

23. The Committee agreed to include a recommendation on illegal transboundary movements to the fourth meeting of the Parties to the Protocol.

24. The Committee recalled paragraph 30 from the report of its third meeting wherein it noted a suggestion on the reporting format for the national reports, i.e. to include a question relating to Article 14 (Bilateral, regional and multilateral agreements and arrangements) seeking specific information on the nature and scope of any such arrangements.

ITEM 5. FOLLOW-UP ON OTHER ISSUES ARISING FROM THE THIRD MEETING OF THE COMMITTEE

5.1 *Evaluation of the compliance procedures and mechanism*

25. It was recalled that, at its third meeting, the Compliance Committee agreed to consider at its fourth meeting the issue of the review of the effectiveness of the procedures and mechanism on compliance to be undertaken at the fourth meeting of the Parties to the Protocol within the framework of the overall evaluation of the effectiveness of the Protocol, as provided under Article 35 of the Protocol.

26. Taking into account the difficulty of Parties in effectively implementing the Protocol, the Committee agreed to recommend to the fourth meeting of the Parties to the Protocol that it request Parties and other Governments to submit views and information on the lack of submissions by Parties with respect to themselves under section IV of the annex to decision BS-I/7, and to request the Committee to make observations and suggestions, on the basis of these views and information, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol, taking also into account experiences of compliance mechanisms under other multilateral environmental agreements.

27. The Committee recalled its suggestion that the Parties should allow the Executive Secretary to use any balance of funds that may be available in the budget allocated for two meetings of the Committee to cover the costs of participation of eligible Parties that may be involved in a submission before the

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Committee and that may wish to be represented. The Committee agreed to make a recommendation in this regard to the fourth meeting of the Parties.

5.2 *Open or closed session*

28. Based on the experience from conducting its third and fourth meetings in an open session, the Committee decided to conduct, as a general practice, its upcoming meetings in an open session unless specific circumstances require otherwise. The Committee noted that any given meeting could have both closed and open sessions, as appropriate. The Committee was of the view that such a decision is consistent with rule 14 of the rules of procedure.

ITEM 6. ELECTION OF NEW MEMBERS OF THE COMMITTEE

29. The Secretariat drew attention to section II of the note by the Executive Secretary on preliminary suggestions and information for consideration in relation to items 4, 6 and 7 of the provisional agenda (UNEP/CBD/BS/CC/4/2/Add.1), and informed the Committee that the terms of nine of its members would end on 31 December 2008. In addition, the term of the replacement for the member who had resigned would also end at this time. Therefore, the election of ten members would occur at the fourth meeting of the Parties to the Protocol.

30. The Committee recalled its discussion at its third meeting regarding its concern of the absence of a procedure for the expeditious replacement of members of the Committee who resign inter-sessionally or who are unable to complete their terms. It decided to recommend to the Parties that they should address the situation by inviting each regional group to consider mechanisms that would best suit their respective region and enable them to replace expeditiously members of the Committee who resigned inter-sessionally.

ITEM7. STRUCTURE OF THE FINAL REPORT OF THE COMMITTEE, INCLUDING ITS RECOMMENDATIONS

31. The Secretariat introduced the suggestion made in the note by the Executive Secretary on preliminary suggestions and information for consideration in relation to items 4, 6 and 7 of the provisional agenda (UNEP/CBD/BS/CC/4/2/Add.1) that the Committee might wish to prepare for the consideration of the Parties at their fourth meeting a consolidated report of its two meetings held since the previous meeting of the Parties, together with an addendum containing the information regarding the experience on repeated cases of non-compliance. The consolidated report could also include an annex containing the recommendations of the Committee for the consideration of the Parties.

32. The Committee agreed to the Secretariat's suggestion and requested the Chair, with assistance of the Secretariat, to prepare the consolidated report. It was further agreed that the draft consolidated report would be circulated to members for their comments within a certain timeframe before it was finalized.

33. The Committee did not find it necessary this time to submit its recommendations in the form of a draft decision as the consideration of each of the elements of the recommendations could be taken up by the Parties under the relevant items of the agenda of their fourth meeting.

ITEM 8. OTHER MATTERS

34. The Chair invited members of the Committee to raise any other item that may be relevant to the work of the Committee other than those specifically addressed under the preceding items of the agenda.

35. In this regard, the Committee considered whether and when to hold its fifth meeting in 2008. It was tentatively agreed to hold the next meeting from 24 to 26 September 2008.

ITEM 9. ADOPTION OF THE REPORT

36. At the 4th session of the meeting, the Chair introduced the draft report of the meeting, which was adopted as orally amended.

ITEM 10. CLOSURE OF THE MEETING

37. The Chair expressed his gratitude to members of the Committee for their valuable contributions and to the Secretariat for the preparation of documents and facilitation of the meeting. He declared the meeting closed at 3.30 p.m. on Thursday, 22 November 2007.

Annex

**RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE FOR SUBMISSION TO THE
FOURTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE BIOSAFETY PROTOCOL***

The Compliance Committee recommends that the Conference of the Parties at its fourth meeting serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decide at its fourth meeting to:

1. *Remind* each Party of its obligation to submit national reports in accordance with Article 33 of the Protocol, emphasizing that failure to do so constitutes non-compliance, and urge Parties to respect relevant decisions on reporting including provisions on timeframes for the submission of national reports;

2. *Request* the Executive Secretary to include biosafety funding within the scope of the dialogue session with the Global Environment Facility as proposed by the second meeting of the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention in paragraph 4 of its recommendation 2/3, with a view to facilitating the availability of funding for eligible Parties to undertake activities related to the implementation of the Protocol including the preparation of national reports, taking into account the simple procedure used to make funding available for the purpose of reporting under the Convention on Biological Diversity;

3. *Remind* each Party of its obligation to adopt national measures addressing illegal transboundary movements of living modified organisms and to report the occurrence of such movements to the Biosafety Clearing-House;

4. *Encourage* Parties and other Governments to implement paragraph 10 of decision BS-III/10 relating to exchanging experiences and building capacities in the use and development of techniques for sampling and detecting living modified organisms with a view to, *inter alia*, facilitating the prevention, detection and reporting of illegal tranboundary movements of living modified organisms, especially in developing country Parties, in particular the least developed and small island developing States among them, as well as in Parties with economies in transition;

5. *Request* Parties to submit views and information on the lack of submissions relating to compliance by Parties with respect to themselves under section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex) and to *further request* the Committee to make observations and suggestions, on the basis of these views and information, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol, taking also into account experiences of the compliance mechanisms under other multilateral environmental agreements;

6. *Authorize* the Executive Secretary to use the balance of any funds that may be available in the budget allocated for two meetings of the Compliance Committee in any given year for covering the costs of participation of an eligible Party or Parties concerned in the consideration of any submission regarding their compliance before the Committee, as provided for in paragraph 4 of section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex); and

7. *Call upon* the members of each regional group to consider and apply mechanisms that would best suit and enable them to replace members of the Compliance Committee who resign during an inter-sessional period or who are unable to complete their term of office in accordance with rule 10 of the rules of procedure of the Compliance Committee and to do so in an expeditious manner.

* Following the effective practice adopted by the Parties to the Protocol at their third meeting, each recommendation may be considered under the agenda item where it will substantively be relevant.