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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Seventh meeting
Montreal, 8-10 September 2010
Item 4 of the provisional agenda*

COMPILATION OF THE WORK OF THE COMMITTEE CONCERNING THE TRIGGER MECHANISM OF THE COMPLIANCE PROCEDURES UNDER THE PROTOCOL AS RECORDED IN THE REPORTS OF ITS PREVIOUS MEETINGS

Note by the Executive Secretary

I. INTRODUCTION

1. The Compliance Committee under the Cartagena Protocol on Biosafety held its sixth meeting from 4 to 6 November 2009 in Montreal. The Committee requested the Secretariat to, among other things, compile the Committee's previous discussions regarding the trigger mechanism under the compliance procedures as noted in the relevant reports of the Committee, for consideration at its next meeting.
2. The Committee also noted that it will consider the matter in the context of the submissions that may be received by the Secretariat from Parties as regards how the supportive role of the Committee could be improved, as specified in paragraph 6 of decision BS-IV/1.
3. Accordingly, this document presents the text of the procedures adopted by the Conference of the Parties serving as the meeting of the Parties to the Protocol concerning rules on making submissions to the Compliance Committee as specified in section IV of the Annex to decision BS-I/7 on the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety, followed by text of the relevant discussions, conclusions and recommendations of the Committee extracted from the reports of its past meetings regarding these procedures and their implementation. Finally, suggestions are submitted, in section III, for the consideration of the Committee.

II. PROCEDURES FOR MAKING A SUBMISSION RELATING TO COMPLIANCE

4. Compliance procedures and mechanisms in the context of Article 34 of the Protocol had been the subject of deliberations at the three meetings of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP), an interim arrangement established after the adoption of the Protocol to undertake preparations necessary for the entry into force of the Protocol. An Open Ended Meeting of Experts was also convened from 26 to 28 September 2001 in Nairobi with a view to making recommendations to ICCP on a possible compliance regime under the Protocol.

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5. The final text of the procedures and mechanisms was adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in February 2004. The first meeting of the Parties adopted, on the basis of recommendations of the ICCP, decision BS-I/7 on the “Establishment of procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety”. The procedures and mechanisms on compliance were adopted as an annex to the decision, and include, in section IV, the following:

IV. Procedures

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from:

(a) Any Party with respect to itself;

(b) Any Party, which is affected or likely to be affected, with respect to another Party.

The Committee may reject to consider any submission made pursuant to paragraph 1 (b) of this section that is *de minimis* or ill-founded, bearing in mind the objectives of the Protocol.

2. The Secretariat shall, within fifteen days of receipt of submissions under paragraph 1 (b) above, make the submissions available to the Party concerned, and once it has received a response and information from the concerned Party, it shall transmit the submission, the response and information to the Committee.

3. A Party that has received a submission regarding its compliance with the provisions of the Protocol should respond and, with recourse to the Committee for assistance if required, provide the necessary information preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.

4. A Party, in respect of which a submission is made or which makes a submission, is entitled to participate in the deliberations of the Committee. This Party shall not participate in the elaboration and adoption of a recommendation of the Committee.

6. Decision BS-I/7 also established the Compliance Committee with one of its functions being to identify the specific circumstances and possible causes of individual cases of non compliance referred to it.

III. CONSIDERATION OF THE COMPLIANCE PROCEDURES BY THE COMMITTEE

(a) Second meeting of the Committee

7. The Committee had, for the first time, briefly considered at its second meeting, issues related to the procedures on making submissions relating to compliance. That consideration came as a result of information submitted to the Committee by the Secretariat regarding receipt by the latter of an interim national report from a Party which requested that its report be brought to the attention of the Committee. Accordingly, the Committee:

“..... took note of this information but stressed that its mandate does not include scrutinizing, out of its own initiative, individual national reports with a view to identifying possible cases of non-compliance.”

(Paragraph 46, UNEP/CBD/BS/COP-MOP/3/2, report of the second meeting of the Compliance Committee under the Cartagena Protocol on Biosafety)

(b) Third meeting

8. Following the decision of the Conference of the Parties serving as the meeting of the Parties to the Protocol to undertake the review of the effectiveness of the procedures and mechanisms on compliance at its fourth meeting within the framework of the overall evaluation of the effectiveness of the Protocol in accordance with Article 35 (paragraph 1, decision BS-III/1), the Chairman of the Committee at that time suggested at the third meeting of the Committee “that the Committee might contribute to the process of evaluation by bringing to the attention of the Conference of the Parties serving as the meeting of the Parties to the Protocol some of the perceived limitations of the procedures and rules adopted in relation to compliance.” In that context:

“The Committee recalled its second report to the Conference of the Parties serving as the meeting of the Parties to the Protocol and noted that there may be possible cases of non-compliance. However, the Committee also noted that no cases of non-compliance had been submitted to it, and considered this issue in the context of the rule on triggering (decision BS-I/7, annex, section IV). In this regard, the Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to ask the Compliance Committee to consider the possible reasons why no specific case of non-compliance was submitted to the Committee, and to come up with recommendations. The Committee decided to reconsider, as appropriate, this issue further at its next meeting.”

(Paragraph 36, UNEP/CBD/BS/CC/3/3, report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its third meeting)

(c) Fourth meeting

9. The Committee continued, at its fourth meeting, its consideration of 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. Following extensive discussions, and “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.” Accordingly, the Committee included the following in the recommendations it submitted to the fourth meeting of Conference of the Parties serving as the meeting of the Parties, suggesting that the latter:

“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;”

(Paragraph 5, annex, UNEP/CBD/BS/CC/4/3, report of the Compliance Committee on the work of its fourth meeting. The same is also available in paragraph 5, annex, document UNEP/CBD/BS/COP-MOP/4/2 – consolidated report of the Committee on the work of its third and fourth meetings submitted to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol)

10. The Conference of the Parties serving as the meeting of the Parties to the Protocol considered, at its fourth meeting, the recommendation of the Committee referred to above. It recognized “the absence of any submissions relating to compliance to the Compliance Committee to date”. It however, decided to invite:

“...Parties to submit to the Executive Secretary no later than six months prior to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol their views on how the supportive role of the Compliance Committee could be improved, and requests the Executive Secretary to compile the views and make them available to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.”

(Paragraph 6, Decision BS-IV/1)

(d) Fifth meeting

11. In his review of the outcomes of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as they relate to the work of the compliance committee, Mr. Veit Koester, the chairman of the Committee at that time, indicated that paragraph 6 of decision BS-IV/1 has not fully captured the real concern of the Compliance Committee, namely why the compliance procedures were not being triggered by Parties facing difficulties fulfilling their obligations (Paragraph 19, UNEP/CBD/BS/CC/5/INF/2).

12. The Chairman of the Committee at that time reported to members about information received from a group of non-governmental organizations alleging the non-compliance of a certain Party with its obligations under the Protocol. It was the first case of its kind. The submission was received by the Secretariat immediately after the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Chairman recalled that members of the Committee were informed of the submission as well as the response given by him to the organizations. He also recalled that the organizations were informed that “the Committee lacked the mandate to consider their submissions as provided for in the relevant rules of procedure of decision BS-I/7, including paragraph 1 of section III” and the same was communicated to the concerned Party. Some members had suggested that the Committee should further consider how to handle similar submissions in the future. Accordingly, the Committee discussed the matter and agreed that:

“...in the event of allegations received from non-Party sources concerning the state of compliance of a Party, the Committee may invite the Party concerned to indicate, if the Party so wishes, to the Committee to consider the information received with a view to providing advice and assistance to that Party, as appropriate.”

(Paragraph 25, UNEP/CBD/BS/CC/5/4, report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its fifth meeting)

(e) Sixth meeting

13. At its sixth meeting, the Committee once again had before it a submission from a non-governmental organization alleging non-compliance of a Party with its obligations under the Protocol. The organization appealed to the Committee to consider the submission with a view to seeking a solution in accordance with paragraph 25 of the report of the fifth meeting of the Committee where the latter had indicated its intention to receive such submissions from non-Party sources and to invite the Party concerned to consider the information received, if the Party so wished, with the view to providing advice and assistance to the Party. The Committee considered whether it had a mandate to receive and consider the submission, and:

“...recalled paragraph 1 of section IV of decision BS-I/7 which mandates the Committee to receive and consider submissions relating to compliance only from Parties. In that regard, the Committee concluded that it was unable to consider the submission.

It also noted that the submission was made on the basis of paragraph 25 of the report of its fifth meeting, which stated that the Committee may invite a Party to indicate, if it so wishes, to the Committee to consider the information received from a non-Party source alleging non-compliance. However, the Committee decided not to invite the Party concerned to indicate whether it wished the Committee to consider the submission.”

(Paragraphs 20 and 21, UNEP/CBD/BS/CC/6/4, Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its sixth meeting)

14. This evolution in the views or positions taken by the Committee at its fourth, fifth and sixth meetings regarding the handling of submissions from non-Party sources prompted the Committee to request the Secretariat to prepare the present document compiling the Committee's previous discussions concerning the trigger mechanism under the compliance procedures, as reflected in the relevant reports of the Committee for consideration at the seventh meeting of the Committee.

III. SUGGESTIONS

15. The Committee may wish to:

(a) Take note of the views submitted by Parties as regards the improvement of the supportive role of the Committee as compiled in document UNEP/CBD/COP-MOP/5/2/Add.1, and the elements for a draft decision proposed by the Secretariat on the basis of the submissions;

(b) Encourage the Conference of the Parties serving as the meeting of the Parties to the Protocol to adopt a decision taking into account the proposed elements with a view to making the compliance procedures and mechanisms more effective and to strengthening the role of the Committee in promoting compliance and addressing cases of non-compliance.