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**OPEN-ENDED MEETING OF EXPERTS ON A COMPLIANCE  
REGIME UNDER THE CARTAGENA PROTOCOL ON  
BIOSAFETY**

Nairobi, 26-28 September 2001

Item 3 of the provisional agenda\*

**ELEMENTS AND OPTIONS FOR A COMPLIANCE REGIME UNDER THE  
CARTAGENA PROTOCOL ON BIOSAFETY**

*Note by the Executive Secretary*

**I. INTRODUCTION**

1. In line with its work plan, the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) addressed the issue of compliance at its first meeting, held in Montpellier, France, from 11 to 15 December 2000.
2. At that meeting, the Intergovernmental Committee considered a note by the Executive Secretary regarding the development of compliance procedures and mechanisms under the Cartagena Protocol on Biosafety (UNEP/CBD/ICCP/1/7).
3. ICCP invited Parties to the Convention and Governments to communicate their views in writing by 30 March 2001, regarding elements and options for a compliance regime under the Cartagena Protocol on Biosafety on the basis of the questionnaire attached to the above-mentioned note by the Executive Secretary. It also requested the Executive Secretary to compile the views submitted and prepare a synthesis report in consultation with the ICCP Bureau, and to organize an open-ended meeting of experts to review the synthesis report in a three-day session back-to-back with the second meeting of the ICCP.
4. The present note contains a synthesis of views received from Parties and Governments and suggests recommendations, which the Open-ended Meeting of Experts may consider and submit to the second meeting of the ICCP.

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\* UNEP/CBD/BS/EM-COMP/1/1.

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## **II. SYNTHESIS OF VIEWS REGARDING ELEMENTS AND OPTIONS FOR A COMPLIANCE REGIME UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY**

5. Following the request by the ICCP and the notifications issued by the Executive Secretary to Parties to the Convention and Governments, to communicate in writing their views regarding the elements and options for a compliance regime under the Cartagena Protocol on Bioasfety, the Executive Secretary had received, as of 30 June 2001, submissions from Argentina, Australia, Belarus, Chile, Cuba, Ecuador, the European Community, India, Indonesia, Japan, the Republic of Korea, New Zealand, Norway, Slovenia, Switzerland, Turkey, and the United States of America.

6. The structure of all the submissions followed the questionnaire that had been developed by the Secretariat and submitted to ICCP at its first meeting. The following synthesis follows the structure of the questionnaire in discussing the elements and options for a compliance regime. The full text of the all the submissions has been compiled and made available as an information document (UNEP/CBD/BS/EM-COMP/1/INF/1).

### *A. Objectives, nature and underlying principles*

7. There is as much convergence of views in the submissions as there was during the discussion of the same issues at the first meeting of the ICCP. Understandably, some views have not completely distinguished between the objectives and the nature of the regime, two elements that are so clearly interrelated and also dependent on the determination of the nature of the other major elements of the regime, in particular the determination of the consequences of non-compliance.

#### *1. Objectives*

8. As at the first meeting of the ICCP, the views on the objectives of the compliance regime turned out to be predominantly convergent. Most of the arguments are based on what has been already reflected in Article 34 of the Cartagena Protocol on Biosafety. Objectives for a compliance regime that have received considerable support are: to promote compliance with the provisions of the Protocol and to address cases of non-compliance through cooperation with and facilitation to those facing difficulties in achieving full compliance.

#### *2. Nature*

9. As is the case with the issue of objectives, most of the views favoured procedures and mechanisms for a compliance regime that are non-confrontational and non-judicial. Some have made it clear that the Protocol itself, by contemplating compliance procedures and mechanisms separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention, leaves no other option than to seek a simple and advisory mechanism that is non-confrontational in nature.

10. There is, however, an alternative approach submitted by one country that supports a differentiated approach with regard to LMO-exporting countries and LMO-importing countries. This approach favours procedures that are judicial and punitive in nature where non-compliance involves exporting countries, and facilitative and non-judicial in cases involving LMO-importing countries. During the first meeting of the ICCP, similar minority views were expressed in favour of procedures that treated developing and developed countries differently. According to this approach, failure to comply with the obligations of the

Protocol by a developed country Party or an LMO-exporting Party should put in motion a judicial process and entail sanction, whereas non-compliance by a developing Party or an importing Party should only trigger a non-judicial cooperative procedure.

### *3. Underlying principles*

11. The principles of expedition, fairness, transparency, predictability and due process have generally received support for both the formulation and implementation of the compliance regime. It has been pointed out, however, that whereas transparency and fairness are key elements to a non-judicial regime on compliance, the principles of expedition, due process and predictability are often associated with judicial regimes. The suggestion has also been made that the principles of effectiveness and efficiency should be included along with those of transparency and fairness.

12. One suggestion has been made to include further general principles of international law, in particular the principle of “common but differentiated responsibility”. In one other case, it has been suggested that the principle of “extended exporters’ responsibility” also be included. This suggestion was made in line with the proposal in favour of adopting a differential treatment of exporters and importers in defining the nature of the regime and elaborating the procedures.

13. Overall, there is much convergence of views in favour of using the principles of expedition, fairness, transparency, predictability and due process, as suggested by the Secretariat in the questionnaire, to underpin the compliance regime, and to guarantee them through procedures adopted or measures taken during the design stage of the regime as well as in its implementation.

### *B. Institutional mechanism*

14. With the exception of a few submissions favouring review of compliance through the Conference of the Parties serving as the meeting of the Parties, or addressing the issue relating to institutional mechanism at a later stage when agreement is reached on the issues of objectives and principles, all other views received support the establishment of some form of institutional mechanism, either as an ad hoc or permanent body. Such an institutional mechanism could be established right away or, according to some, once the possible functions have been identified. The majority of views favour the establishment of a standing compliance committee, a position also reflected in the outcome of the first meeting of the ICCP. It should also be noted that one country was in favour of constituting the body as a subsidiary body under paragraph 4 (b) of Article 29 of the Protocol.

#### *1. Structure*

15. There is wide support for the establishment of a compliance committee composed of a limited number of experts. Some suggested that membership should be limited to a particular number. In this regard, there are suggestions to limit the number of experts to between 8 and 10, between 10 and 15, between 10 and 20, and to only 10 experts. In case additional experts were needed, it is further suggested to draw them from the roster of experts on biosafety. Some, however, proposed that the size of the compliance body should be determined on the basis of availability of resources. Some of the proponents of an ad hoc body also suggest that size and composition should be decided on a case-by-case basis in accordance with the nature of the specific compliance problem under consideration.

16. There is no difference of views regarding the need for members of the committee to have some particular qualifications. It is widely accepted that the committee should contain a mixture of legal and other technical experts.

17. There is general agreement on the need to maintain regional balance in appointing the experts. Some suggested that there should be a further balance between exporting and importing countries, as well as between developed and developing countries. In this connection, there is also a proposal the chairmanship of the committee should be rotated between importing/developing countries and exporting/developed countries.

18. Views vary on the question whether experts should act on their individual capacity so that the committee would be an independent expert body, or should they be representing Governments. However, the issue of how members of the committee should be appointed seems not to cause any particular difficulty. It is generally considered acceptable to have the experts nominated by Parties. Here, however, further consideration needs to be given to whether Parties collectively, through the Conference of the Parties serving as the meeting of the Parties to the Protocol, should elect the individual experts from nominations made by countries or regions, or whether it would elect the Parties from which the experts are to be drawn.

## 2. *Functions and responsibilities*

19. There is almost complete agreement on the overall responsibility of the compliance body, when established. In line with the general agreement on the objectives of the regime, it is widely suggested that the body should generally be responsible for reviewing and promoting compliance with the provisions of the Protocol and addressing specific cases of non-compliance with a view to providing advice to the Party concerned or making recommendations for the consideration of the Conference of the Parties serving as the meeting of the Parties.

20. In particular, the following tasks have been proposed as possible functions of the compliance committee:

- (a) Receive, consider and report on submissions to it regarding non-compliance;
- (b) Monitor the implementation of and compliance with the Protocol in general;
- (c) Undertake, with the consent of the Party concerned, information gathering in the territory of that Party;
- (d) Give advice to Parties in order to help them comply with their obligations under the Protocol;
- (e) Make recommendations to Parties and to the Conference of the Parties serving as the meeting of Parties to the Protocol on the interpretation and application of the Protocol and on measures to be taken.

21. All respondents suggested that the compliance committee should be accountable to the Conference of the Parties serving as the meeting of the Parties to the Protocol and report to it periodically on its activities. With respect to the frequency of its meetings, opinions range from periodic meetings, as needed, to quarterly meetings. It was also suggested that the committee should develop its own rules of

procedure and submit them to the Conference of the Parties serving as the meeting of the Parties to the Protocol for its consideration and adoption.

### *C. Invocation of the procedures*

22. All the views communicated to the Executive Secretary are unanimously in favour of the invocation of the compliance procedures by Parties to the Protocol. Some have, in fact, indicated that only Parties should be able to invoke the procedures. In this respect, some have proposed that a Party may trigger the procedures with regard to its own compliance efforts or over the compliance efforts of another Party. There is also a proposal that the compliance committee itself should be able to invoke the procedures after assessing the information submitted to it or upon the request of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

23. Although a few countries have suggested that the procedures could also be triggered by the Secretariat, many believe that its role should be limited to bringing to the attention of the compliance committee information relating to compliance that it might gather from national reports. There was less support for the triggering of the mechanism by the private sector, non-governmental organizations and other civil-society organizations. Nevertheless, some respondents did support the involvement of the private sector, NGOs and other civil society in making the compliance mechanism work through the provision of relevant information, including cases of non-compliance, to the committee through the Secretariat.

### *D. Consequences of non-compliance*

24. The majority of views submitted favoured measures directed mainly towards the provision of appropriate advice and assistance to the Party failing to fully comply with its obligations under the Protocol. The imposition of sanctions or other punitive measures is generally not favoured. Incentive measures have received wide acceptance and are considered to be in tune with the non-judicial and non-confrontational nature of the procedures and the mechanism that that a large number of Parties support.

25. Some respondents emphasized the advantages of persuading the concerned Party or Parties to meet their obligations under the Protocol than to proceed to coerce them by punitive measures. Nevertheless, strong measures to signal the serious nature of a particular case were also been proposed. The overall view is to have a mix of hard and soft measures as outlined below. The order of the measures as proposed seems to indicate how progressively the Conference of the Parties serving as the meeting of the Parties to the Protocol should, based on proposals from the compliance committee, decide to impose the measures in a particular case. The proposed measures to follow as a consequence of non-compliance include:

- (a) Provision of appropriate advice and assistance, including financial and technical assistance, technology transfer, training and other capacity-building measures, as appropriate;
- (b) Requiring the adoption of detailed action plans that help achieve full compliance;
- (c) Inviting the Party concerned to submit progress reports on its efforts to comply with its obligations under the Protocol;
- (d) Issuance of cautions;
- (e) Publication of the non-compliance cases; and

- (f) Suspension of specific rights and privileges under the Protocol.

26. There is a suggestion to impose punitive measures or sanctions, as a last resort, in cases involving LMO-exporting Parties. On the other hand, it has been suggested that Article 34 of the Protocol does not contemplate the imposition of sanctions. It was also suggested that, in the absence of such an enabling provision in the Protocol, Parties should observe Article 60 of the Vienna Convention on the Law of Treaties, which again leaves no room to impose binding consequences that would compel a non-compliant Party to take action or refrain from certain action. It should be noted, however, that the wording of Article 34 does not necessarily exclude the imposition of sanctions; it only provides that the procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate.

***E. The role of the Secretariat and the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol***

27. As implied in the foregoing discussion, the predominant view was that the role of the Secretariat should be mainly one of receiving and channelling information with regard to non-compliance to and from the compliance committee and Parties. It was also suggested that the Secretariat should provide administrative support to the compliance committee in the discharge of its functions. More specifically, it was pointed out that the Secretariat should arrange for and service the meetings of the compliance committee. At the same time, however, some respondents were of the view that a greater role should be envisaged for the Secretariat in identifying cases of non-compliance and drawing the attention of the committee to these cases. It was suggested that the Secretariat might trigger the compliance procedures when it became aware of possible non-compliance during the course of reviewing national reports.

28. Almost all of the submissions accept that the Conference of the Parties serving as the meeting of the Parties to the Protocol should be the final decision-making body on matters relevant to compliance on the basis of recommendations by the compliance committee, when established. A few respondents expressed reservations on the role of the Conference of the Parties serving as the meeting of the Parties to the Protocol as a decision making body with respect to individual cases of non-compliance. They proposed that such a role would be appropriate only to the extent the decision focused on encouraging and assisting Parties to implement the obligations of the Protocol, or so long as the measures included in the decision were consistent with international law.

***F. Other issues***

29. A number of issues have been suggested for consideration in parallel to or during the development of the Compliance regime under the Protocol. These issues include:

- (a) The Biosafety Clearing-House and its use in assisting in or promoting compliance;
- (b) The need for fast-track procedures that allow quick settlement of specific cases of non-compliance that may arise between an exporting and importing Party with respect to a specific transboundary movement of LMOs;
- (c) The link or the interface between the compliance procedures and mechanism and the liability and redress issue;
- (d) The need for taking into account socio-economic considerations and the different levels of Parties in technological development in addressing compliance issues;

- (e) The relationship between the compliance regime and the dispute-settlement process; and
- (f) The relationship between compliance procedures under the Biosafety Protocol and under other relevant international instruments such as the International Plant Protection Convention (IPPC) and the Sanitary and Phytosanitary Agreement (SPS) under the World Trade Organization (WTO).

### III. LATEST DEVELOPMENTS IN OTHER PROCESSES

30. The note by the Executive Secretary on compliance, which was considered by the first meeting of the ICCP (UNEP/CBD/ICCP/1/7), reviewed some important ongoing processes addressing the issues of compliance with and implementation and enforcement of multilateral environmental agreements. It discussed initiatives under the United Nations Environment Programme (UNEP), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol with a view to identifying experiences that may be useful to the present work under the Cartagena Protocol on Biosafety. The following section provides an overview of further developments, if any, with respect to those processes, including the initiative in the context of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

#### A. *United Nations Environment Programme (UNEP)*

31. UNEP accords particular attention to the issue of compliance with and enforcement of multilateral environmental agreements (MEAs). It has been involved in the preparation of guidelines on compliance with and enforcement of environmental conventions since 1999, when a Working Group of Experts reviewed the preliminary elements of the draft guidelines.

32. The comments on the elements of the draft guidelines made by the Working Group of Experts and Governments were further reviewed by a regionally balanced Advisory Group of Experts on Compliance and Enforcement to the Executive Director of UNEP that met in Nairobi from 13 to 15 November 2000. The Advisory Group reviewed a note by the Secretariat, which contained draft Guidelines as revised, taking into account the comments received from Governments as well as comments by the experts during the December 1999 meeting.

33. UNEP intends to enhance the process of development of the draft guidelines on compliance and enforcement during the current year. Further consideration and development of the draft Guidelines will continue within a working group composed of government-designated experts and observers with the aim of having the draft ready for submission to the seventh special session of the Governing Council in 2002 for its consideration and approval. The issue was also discussed at the twenty-first session of the UNEP Governing Council, held in Nairobi from 5 to 9 February 2001. In its decision 21/27, the Governing Council requested the Executive Director to continue to prepare the draft guidelines in an open-ended and transparent manner.

34. The proposed Guidelines for Enhancing Compliance with Multilateral Environmental Agreements are designed to be non-binding. As can be seen from the key proposals derived from the draft as at 1999 and described in document UNEP/CBD/ICCP/1/7, the Guidelines are intended to provide options for Governments and other actors to consider in negotiating and implementing MEAs. The draft Guidelines are non-coercive by nature and aim at encouraging and assisting parties to MEAs and other actors to fulfil their treaty obligations. More weight is accorded to cooperation and coordination at both national and

international levels and the provision of information and other assistance to those concerned to facilitate and strengthen their capacity to comply.

***B. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal***

35. At its last two sessions, the Legal Working Group of the Basel Convention has considered, among other things, the issue of monitoring the implementation and compliance with the obligations of the Convention based on its mandate under decision V/16 of the fifth meeting of the Conference of the Parties to the Basel Convention. At its first session, held in Geneva on 6-7 April 2000, the Legal Working Group decided to carry out the activities related to implementation and compliance as a matter of priority, as the issue is one that has been under consideration for several years. In order to facilitate the deliberations on the matter, it was decided to convene an open-ended group that would consider the draft elements. The open-ended group reported back to the first session of the Legal Working Group. One of the few elements that the open-ended group agreed upon was that the central purpose of a Basel Convention implementation and compliance mechanism should be to assist particular States to comply with obligations arising under the Convention. It was noted that Parties having difficulties with implementation and compliance should be able to trigger the mechanism with a view to obtaining assistance for their particular problems.

36. The Legal Working Group continued its discussion on the issue at its second session, held in Geneva on 12-13 October 2000, and considered a synthesis of views expressed during and after its first session. Again an open-ended group was convened where there was general agreement in the objectives of the mechanism and further consideration was given to the other elements. Some of the suggestions made with respect to the draft elements are that:

- (a) The composition and tenure of the body responsible for the compliance mechanism would be better discussed after the procedures and the functions of the mechanism were agreed;
- (b) The functions needed to reflect the particular difficulties and constraints upon developing countries and the necessity to promote cooperation between those countries and other countries;
- (c) The mechanism would be invoked by the Parties in need of assistance from the body;
- (d) The body might be empowered to undertake information-gathering on the territory of a Party, with the consent of the Party;
- (e) The procedure should be consistent with the non-confrontational character of the mechanism that would also need to provide for the assessment of the capacity of Parties, particularly developing countries;
- (f) The body might need to have its own rules of procedure;
- (g) It would be appropriate for the procedure to be clear on how the body would make decisions; and
- (h) Any procedure would have to be tailor-made to suit the specific needs of the Basel Convention.

37. The Legal Working Group adopted the report of the open-ended group, which recommended, as a follow-up, that Parties and other Governments should submit written proposals by the end of January 2001. The submissions would be synthesized into a single text by the chairman of the Group and would be made available for the next session of the Legal Working Group. This next session of the Legal Working Group, i.e. its third session, is scheduled for 21 and 22 June 2001 in Geneva. According to its mandate under decision V/16, the Legal Working Group is expected to prepare a draft decision for adoption by the Conference of the Parties at its sixth meeting establishing a mechanism for promoting implementation and compliance based on the draft elements annexed to the decision. The sixth meeting of the Conference of the Parties to the Basel Convention is scheduled for May 2002.

**C. *The Kyoto Protocol to the United Nations Framework Convention on Climate Change***

38. The Joint Working Group of the Subsidiary Body for Scientific and Technical Advice and the Subsidiary Body for Implementation established by the fourth meeting of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) to look into the procedures and mechanisms relating to compliance under the Kyoto Protocol submitted its draft revised text on procedures and mechanisms on compliance along with draft decisions, to the sixth meeting of the Conference of the Parties held in The Hague from 13 to 25 November 2000.

39. The text on procedures and mechanisms on compliance under the Kyoto Protocol, as proposed by the Joint Working Group, consists of five sections that refer to general provisions, establishment and structure, procedures, consequences, and other provisions respectively. There is also an annex entitled "final clauses", which is intended to appear eventually as the sixth section of the proposed text. The objective of the procedures and mechanisms, as generally agreed, is to facilitate, promote and enforce compliance with the commitments under the Protocol. In line with this objective, which involves facilitation on the one hand and enforcement on the other, the compliance committee to be established is proposed to function through two branches, namely, a facilitative branch and an enforcement branch.

40. In accordance with the draft procedures and mechanisms on compliance, the facilitative branch of the committee is responsible for providing advice, assistance to Parties in implementing the Kyoto Protocol and promoting compliance by Parties with their commitments under the Protocol. The enforcement branch on the other hand, addresses matters related to quantitative emission commitments, eligibility requirements under articles 6, 12 (only annex I Parties) and 17. All cases of non-compliance other than those covered by the enforcement branch fall within the mandate of the facilitative branch. The evolving regime, based on the nature of the Protocol that provides for differentiated commitments, introduces different procedures of compliance for annex I Parties and non-annex I Parties.

41. The Conference of the Parties took note of the text on the procedures and mechanisms. The text is one of the agenda items forwarded to the resumed session of the sixth meeting of the Conference of the Parties, which is now scheduled to take place in Bonn from 18 to 27 July 2001. One of the options before the Conference of the Parties with regard to the adoption of the text is that it should be adopted as a formal agreement supplementing the Kyoto Protocol.

**D. *The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)***

42. The Aarhus Convention was adopted in June 1998. It grants rights to the public and imposes obligations on Parties and public authorities regarding access to information, public participation and access

to justice. It links environmental rights with human rights. At the first meeting of the signatories to the Convention, a task force on compliance mechanisms was established to draft elements for compliance mechanisms to facilitate discussion on the matter at the second meeting of the signatories. The first meeting of the task force considered an introductory paper on compliance and a proposal submitted by a coalition of non-governmental organisations.

43. At the second meeting of the signatories to the Convention, it was decided to establish an open-ended intergovernmental working group to draw up a text for a draft decision establishing a compliance mechanism in accordance with article 15 of the Convention, with the aim of having the text adopted at the first meeting of the Parties. The working group held its first meeting in Geneva from 12 to 16 February 2001 and discussed draft elements and alternatives for the structure and functions of a compliance committee and procedures for review of compliance.

44. In line with the nature of the Convention, the right of the public in making representations and invoking the procedures is one of the important issues under consideration. It is envisaged that the mechanism should consist of a compliance committee that will consider submissions and make recommendations to the meeting of the Parties. At the end of its first meeting, the working group proposed holding a second meeting, in November 2001, immediately before the preparatory meeting for the first meeting of the Parties, so as to finish its work.

#### **IV. DRAFT PROCEDURES AND MECHANISMS FOR COMPLIANCE UNDER THE BIOSAFETY PROTOCOL**

45. The main elements of Article 34 of the Cartagena Protocol that have been referred to repeatedly in many of the submissions as milestones in the designing of the procedures and mechanisms of compliance, are:

- (a) The need to promote compliance with the provisions of the Protocol; and
- (b) To address cases of non-compliance.

46. In order to achieve these two objectives, Article 34 envisages the consideration and approval of compliance procedures and institutional mechanisms:

- (a) That are cooperative;
- (b) That include provisions to offer advice or assistance; and

© That are separate from the dispute settlement procedures and mechanisms established under Article 27 of the Convention.

47. The results of the discussion on the matter at the first meeting of the ICCP and the synthesis of submissions made following the request of the ICCP and based on the questionnaire distributed by the Secretariat, show a broad convergence of views on many of the relevant issues under consideration. There is a general agreement or at least a majority view on most of the elements and options suggested for a compliance regime. The majority of views emphasize, expressly or implicitly, that the procedures should be consistent with the nature of Article 34, which requires cooperation and provision of assistance at times of difficulties to comply with the Protocol.

48. Based on the views of Parties and Governments, draft procedures and mechanisms for a compliance regime under the Biosafety Protocol are proposed in the annex to the present note for consideration and possible recommendation to the second meeting of the ICCP. Options are provided in cases where it is felt that there are some basic differences. Those alternative suggestions with regard to some of the elements as well as texts with no great deal of convergence of views are shown in square brackets. Since the issues pertaining to the role of the Secretariat and the Conference of the Parties serving as the meeting of the Parties to the Protocol are subsumed in the other sections of the proposed draft, no separate section was necessary. Some more procedural issues that have not been raised and discussed so far, but may be necessary to make the regime complete, have been included in the draft for consideration. These procedural issues include the terms of office for the compliance committee, and timeframes for a Party's response to submissions made with regard to its compliance.

## V. RECOMMENDATIONS

49. The Open-ended Meeting of Experts on a Compliance Regime under the Cartagena Protocol on Biosafety may wish to:

(a) Further review the views communicated by Parties and Governments with regard to procedures and mechanisms for a compliance regime under the Cartagena Protocol on Biosafety;

(b) Consider and further develop the elements and options of the draft procedures and mechanisms contained in the annex to this note and make appropriate recommendations to the ICCP at its second meeting.

*Annex*

**DRAFT PROCEDURES AND MECHANISMS FOR A COMPLIANCE  
REGIME UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY**

The following procedures and mechanisms\* are proposed in accordance with Article 34 of the Cartagena Protocol on Biosafety and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention on Biological Diversity:

**1. Objective, nature and underlying principles**

*Option 1*

(a) The objective of the compliance procedures and mechanisms is [to promote compliance with the provisions of the Protocol and] to address cases of non-compliance in a cooperative manner, including the provision of advice or assistance to Parties facing difficulties in complying with their obligations under the Protocol.

(b) The operation of the procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition, due process and predictability.

*Option 2*

(a) The objective of the compliance procedures and mechanisms is to promote compliance with the provisions of the Protocol and to address cases of non-compliance by Parties.

(b) The compliance procedures and mechanisms shall be non-confrontational and facilitative in cases involving developing/importing Parties, and judicial with binding consequences with regard to cases of non-compliance involving developed/exporting Parties.

(c) The operation of the procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition, due process, and predictability [and common but differentiated responsibility, including extended exporter's liability].

**2. Institutional mechanism**

**Establishment and structure**

*Option 1*

(a) A Compliance Committee is hereby established pursuant to Article 34 of the Cartagena Protocol on Biosafety to carry out functions specified herein;

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\* These draft procedures and mechanisms are based mainly on the proposals contained in the submissions by Parties and Governments. It should be noted that there are options where there are different views or approaches regarding the same elements, and square brackets are used to indicate items that lack consensus within the same options, and to show ideas that, although not yet expressed in the discussions or the submissions, are deemed appropriate to make the proposed procedures and mechanisms complete in the light of similar procedures and mechanisms under other regimes.

(b) The Compliance Committee shall consist of [10] [15] [20] [...] members [nominated by Parties] [elected by the Conference of Parties serving as the Meeting of the Parties] [drawn from the roster of experts on biosafety] with a balanced [geographical distribution] [representation of developing/developed countries] [representation of importing/exporting countries].

OR

[The Compliance Committee shall consist of members whose expertise and number shall be determined in accordance with [availability of financial resources] [the requirements of the individual case of non-compliance]].

(c) Members of the Compliance Committee shall have recognized expertise in biosafety and related issues, including legal expertise, and they shall serve [for four years] [in their individual capacity] [as representatives of Parties].

(d) [The Compliance Committee] [The Conference of the Parties serving as the meeting of the Parties] shall elect a Chairperson from among [its] members and chairmanship shall rotate [every year] between developing/importing Parties and developed/exporting Parties.

### ***Option 2***

An interim Compliance Committee is hereby established. The status of the interim Compliance Committee shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to the Protocol [after [ ] years] in order to determine the need for a permanent compliance body.

### **Option 3**

An ad-hoc compliance body shall be established as and when the need arises to address specific cases of non-compliance.

### ***Option 4***

The Conference of the Parties serving as the meeting of the Parties shall be the institutional mechanism for promoting compliance with the provisions of the Protocol and addressing cases of non-compliance.

## **Functions and Responsibilities**

(a) The [Compliance Committee] shall, under the overall guidance of the Conference of the Parties serving as the Meeting of the Parties, have the following functions:

- (i) Receive and consider, submissions and information regarding non-compliance;
- (ii) Undertake, with the consent of the Party concerned, information-gathering in the territory of that Party;
- (iii) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it, and make recommendations to the Conference of the Parties serving as the meeting of the Parties;

- (iv) Provide advice to the concerned Parties and propose measures, as appropriate, on matters relating to compliance with a view to assisting them to comply with their obligations under the Protocol;
- (v) Monitor the implementation of and compliance with the Protocol in general and make recommendations to the Conference of the Parties serving as the Meeting of Parties; and
- (vi) Submit reports on its functions to the Conference of the Parties serving as the meeting of the Parties [and to the Bureau].

(b) The [Compliance Committee] shall develop and submit its rules of procedure to the Conference of the Parties serving as the Meeting of the Parties for its consideration and approval.

(c) The [Compliance Committee] shall [unless it decides otherwise] meet [twice a year] [quarterly] [as may be deemed necessary]. The Secretariat shall service the meetings of the [Compliance Committee].

### **3. Invocation**

(a) A Party that, despite its bona fide efforts, fails to fully comply with its obligations under the Protocol, may make a submission in writing to the [Compliance Committee], through the Secretariat, regarding the specific circumstances of its non-compliance.

(b) One or more Parties having reservations regarding the extent of compliance by another Party or Parties, may make submissions in writing to [the Compliance Committee], through the Secretariat, regarding their concerns.

(c) The Secretariat shall [forthwith] [within [ ] days] make the submission it received 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 [Compliance Committee]. In case where the Secretariat has not received any response or information from the concerned Party [within three/ six months], it shall transmit the submission to the [Compliance Committee].

(d) The Conference of the Parties serving as the meeting of the Parties may refer possible cases of non-compliance to the [Compliance Committee] for consideration.

(e) A Party that has received submission regarding its compliance with the provisions of the Protocol shall respond and provide the necessary information [within three/six months].

(f) The [Compliance Committee] shall consider the submission it has received with regard to non-compliance by a Party and submit its recommendations to the Conference of the Parties serving as the meeting of the Parties as soon as practicable [but not later than [six] [twelve] months] of receiving the response and information from the Party concerned].

(g) [The Secretariat may inform the Compliance Committee of possible non-compliance by a Party or Parties that it has become aware of in the course of reviewing national reports, and for which it has notified and received no response from the concerned Party or Parties.]

(h) [Non-governmental organizations, the private sector and other civil-society organizations may provide information to the Compliance Committee, through the Secretariat, regarding cases of non-compliance with the provisions of the Protocol.]

#### **4. Consequences of non-compliance**

##### ***Option 1***

The Conference of the Parties serving as the meeting of the Parties may, on the recommendation of the [Compliance Committee], take the following measures with respect to non-compliance:

- (i) Provision of advice and assistance, as appropriate, including financial and technical assistance, technology transfer, training and other capacity-building measures;
- (ii) Require the development of appropriate action plans that may help the concerned Party to achieve full compliance;
- (iii) Invite the concerned Party to submit progress reports on the efforts it is making to comply with its obligations under the Protocol;
- (iv) [Issue a caution to the concerned Party;]
- (v) [Publish cases of non-compliance;] and
- (vi) [Suspend the specific rights and privileges of the concerned Party under the Protocol.]

##### ***Option 2***

(a) In case of non-compliance by a developing/importing Party, the Conference of the Parties serving as the meeting of the Parties shall, on the recommendation of the [Compliance Committee], take following measures with a view to facilitate, encourage and assist the concerned Party to fully comply with its obligations:

- (i) Provision of advice and assistance, as appropriate, including financial and technical assistance, technology transfer, training and other capacity-building measures;
- (ii) Require the development of appropriate action plans that may help the concerned Party to achieve full compliance;
- (iii) Invite the concerned Party to submit progress reports on the efforts it is making to comply with its obligations under the Protocol.

(b) In case of non-compliance by a developed/exporting Party, the Conference of the Parties serving as the meeting of the Parties shall, on the recommendation of the [Compliance Committee] take the following measures [as a last resort]:

- (i) Issue a caution to the concerned Party;
- (ii) Publish cases of non-compliance; and
- (iii) Suspend the specific rights and privileges of the concerned Party under the Protocol.

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