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CONFERENCE OF THE PARTIES TO THE CONVENTION  
ON BIOLOGICAL DIVERSITY SERVING AS THE  
MEETING OF THE PARTIES TO THE CARTAGENA  
PROTOCOL ON BIOSAFETY

Ninth meeting

Sharm El-Sheikh, Egypt, 17-29 November 2018

Item 5 of the provisional agenda\*

### ACTIVITIES UNDERTAKEN BY THE COMPLIANCE COMMITTEE WITH REGARD TO THE OBLIGATION TO SUBMIT NATIONAL REPORTS LEADING UP TO THE RECOMMENDATION TO CAUTION INDIVIDUAL PARTIES

*Note by the Executive Secretary*

#### INTRODUCTION

1. In accordance with section IV of the procedures and mechanisms on compliance under the Cartagena Protocol (procedures and mechanisms),<sup>1</sup> the Committee receives submissions relating to compliance from a Party with respect to itself or with respect to another Party. Section VI of the procedures and mechanisms provides a number of measures that may be taken with a view to promoting compliance and addressing cases of non-compliance.
2. Failure by Parties to comply with their reporting obligation under Article 33 of the Cartagena Protocol has been considered by the Committee as a general issue of compliance, in accordance with section III, paragraph 1(d), of the procedures and mechanisms.<sup>2</sup> The Committee has reviewed the issue extensively since its second meeting (February 2006) and has made several recommendations to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.
3. In decision [BS-V/1](#), the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decided that the Committee could consider taking certain measures when a Party fails to submit its national report or information has been received through a national report or the Secretariat, based on information from the Biosafety Clearing-House, that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol.
4. Following decision BS-V/1, the Committee started following up with certain individual Parties that had not complied with their reporting obligation under Article 33 of the Cartagena Protocol, in particular in respect of Parties that remained non-compliant despite repeated efforts by the Committee to support Parties in this regard.

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\* CBD/CP/MOP/9/1.

<sup>1</sup> Decision [BS-I/7](#), annex.

<sup>2</sup> The Secretariat issued a document for the thirteenth meeting of the Compliance Committee (UNEP/CBD/BS/CC/13/INF/1) that provides an overview of the Committee's consideration of national reporting as a general issue of compliance starting at its second meeting until the adoption of decision BS-V/1 (paras. 7-20). It also provides an overview of the changes made to the Committee's activities, giving effect to decision BS-V/1 and how it has considered compliance with the reporting obligation under Article 33 of the Protocol during the second reporting cycle (paras. 21-32). The relevant latter information is reproduced in the present document for ease of reference.

5. At its fifteenth meeting, the Committee decided to recommend that, at its ninth meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol issue a caution, in accordance with section VI, paragraph 2(b), of the procedures and mechanisms on compliance under the Protocol,<sup>1</sup> to Greece, the Marshall Islands, Montenegro and Turkmenistan for their failure to submit multiple national reports as required by Article 33.

6. The present document provides information on the steps taken by the Committee leading to this recommendation.<sup>3</sup> Section II provides an overview of the consideration of and activities undertaken by the Committee concerning compliance by Parties with their reporting obligation under the Protocol.

## **II. CONSIDERATION OF AND ACTIVITIES UNDERTAKEN BY THE COMMITTEE WITH REGARD TO THE OBLIGATION TO SUBMIT NATIONAL REPORTS**

### **A. Reporting under the Cartagena Protocol on Biosafety**

7. Article 33 of the Cartagena Protocol provides that each Party shall monitor the implementation of its obligations under the Protocol and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol, report to the Conference of the Parties serving as the meeting of the Parties to the Protocol on measures that it has taken to implement the Protocol.

8. In decision BS-I/9, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol requested Parties to submit their national reports with a general frequency of every four years, and 12 months prior to the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol that will consider the report.

9. Following each decision by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety agreeing to the reporting format and the timing for submission of national reports for each reporting cycle, the Secretariat issues a notification and subsequent reminders concerning the specific date of submission of the national reports. In addition, the Secretariat contacts the Biosafety Clearing-House national focal points by e-mail to remind them of the submission deadline.

10. At relevant meetings of the Compliance Committee, the Secretariat informs the Committee of the number of reports received and provides an overview of the Parties that have not submitted their national report. Depending on the circumstances, such as the number of Parties concerned or the previous actions taken, the Committee may decide to consider non-submission of national reports either as a general issue of compliance or as individual cases of non-compliance, or both.

### **B. Consideration of and activities undertaken by the Committee concerning the second national reports**

11. Following decision BS-V/14, the deadline for the submission of second national reports was initially 30 September 2011.<sup>4</sup>

12. At its eighth meeting, held in October 2011, the Committee agreed to consider compliance-related information specific to individual Parties as case-studies in developing experience in the application of decision BS-V/1. In that regard, it requested the Secretariat to inform the Committee, for consideration at its ninth meeting, which Parties had the obligation to submit the interim, first and second national reports but had not done so.<sup>5</sup>

13. By the extended deadline for submission of second national reports of 30 December 2011, second national reports were still due from 17 Parties, namely the Bahamas, Barbados, Belize, Georgia, Greece,

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<sup>3</sup> Item 5 of the provisional agenda (CBD/CP/MOP/9/1).

<sup>4</sup> [Notification 2010-215](#), issued on 13 December 2010.

<sup>5</sup> Report of the Compliance Committee on its eighth session (UNEP/CBD/BS/CC/8/3), para. 21.

Luxembourg, the Marshall Islands, Montenegro, Nauru, Nicaragua, Oman, Pakistan, Palau, Paraguay, Suriname, Trinidad and Tobago, and Turkmenistan. The Executive Secretary sent individual reminders to these Parties in March 2012.

14. At its ninth meeting, held in May/June 2012, the Committee considered the rate of submission of second national reports. It welcomed the high rate of reporting and noted the contribution of the financial resources made available by the Global Environment Facility (GEF) in achieving the high rate of reporting and the importance of maintaining such support in the future.

15. In considering the number of reports received, the Committee noted that, among the 17 Parties that had not yet submitted their second national report, 7 Parties — namely the Bahamas, Luxembourg, Marshall Islands, Nicaragua, Nauru, Oman and Paraguay — had never submitted an interim, first or second report despite having had an obligation to do so. The Committee requested that the Chair of the Committee send letters to these seven Parties with a view to: (a) urging them to complete the format for the second national report; (b) seeking an explanation of the situation that may have prevented them from submitting national reports; and (c) offering them any advice or assistance, as appropriate, that they might wish to receive from the Committee. The letters were sent in June and July 2012.<sup>6</sup> The Committee also requested the Secretariat to follow up with the other 10 Parties with a view to seeking information on the difficulties that may have prevented them from submitting a report and offering assistance, as appropriate, and to remind them of the need to submit their report without further delay.

16. Nauru, Paraguay and Suriname submitted reports in the latter half of 2012.

17. By the sixth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, held in September/October 2012, therefore, 14 Parties had not submitted their second national reports, including 5 Parties that had never fulfilled their reporting obligation under Article 33 of the Protocol.<sup>7</sup> In its decision BS-VI/14, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety urged these Parties to submit their national reports at the earliest opportunity.<sup>8</sup>

18. In response to the Committee's request and in keeping with decision BS-VI/14, the Executive Secretary sent a follow-up letter in December 2012 to the national focal points of the Parties that had not yet submitted a second national report and had not responded to previous communications from the Secretariat. The Executive Secretary sought information from the Parties on the difficulties that may have prevented them from submitting a report, reminded them of the need for the submission of their report without further delay, and offered assistance.<sup>9</sup>

19. At the tenth meeting of the Committee, the Secretariat informed the Committee that an additional report had been submitted<sup>10</sup> and that reports from 13 Parties were outstanding. The Committee decided that the Chair should send a letter to the Parties concerned.

20. Accordingly, a letter signed by the Chair of the Committee was sent in September 2013 to 12 Parties that had not submitted their second national report.<sup>11</sup> Subsequently, second national reports were received from Trinidad and Tobago and Georgia in September and November 2013, respectively.

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<sup>6</sup> Paraguay was not contacted at this time since it had already responded to the reminder sent by the Executive Secretary in March 2012.

<sup>7</sup> Bahamas, Luxembourg, the Marshall Islands, Nicaragua and Oman. These Parties were required to submit an interim, first, second and third national report.

<sup>8</sup> Decision BS-VI/14, paragraph 3, urged the 14 Parties that had not yet submitted their national reports to do so at the earliest opportunity by fully completing the report form for the second national report, as contained in the annex to decision BS-V/14.

<sup>9</sup> Sample letters sent by the Chair of the Committee and the Executive Secretary in 2012 are available in the document updating the status of national reporting issued for the tenth meeting of the Committee (UNEP/CBD/BS/CC/10/2).

<sup>10</sup> Oman submitted its report in March 2013.

<sup>11</sup> Palau had submitted its report in June 2013.

21. Having been informed at its eleventh meeting that a second national report was still due from 10 Parties, the Committee recommended that the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol at its seventh meeting request the Bureau to follow up with the 10 Parties concerned to encourage them to submit their second national report as part of their national processes for completing their third national report. While this recommendation was not taken up by the Conference of the Parties serving as the meeting of the Parties to the Protocol,<sup>12</sup> a further two Parties — Belize and Pakistan — submitted their reports in December 2013 and September 2014, respectively.

22. At the twelfth meeting of the Committee, in May 2015, some members of the Committee briefed the Committee on their efforts to encourage Parties in their respective regions that had not yet done so, to submit their second national reports. The Committee agreed that members would continue to remind Parties in their respective regions to fulfil their reporting obligations as regards the submission of third national reports.

23. The Committee requested the Secretariat to inform Parties that they could direct any questions on the reporting format to the Secretariat for clarification. The Committee also requested the Secretariat to make available online any clarifications provided by the Secretariat so that others might also benefit. Accordingly, the Secretariat set up a Frequently Asked Questions (FAQs) page on the Biosafety Clearing-House which provides answers on the preparation and submission of third national reports and has also made available a dedicated online forum where additional questions may be posted.<sup>13</sup>

24. By the thirteenth meeting of the Committee, held in February 2016, 153 out of 161 Parties had submitted their second national report. The Committee recognized that its efforts and the efforts of individual members had contributed positively to the high rate of submission of second national reports and the submission of reports that had long been overdue. It also welcomed the efforts made by the Secretariat in assisting Parties in submitting national reports and ensuring their completeness. Only eight Parties had not submitted a second national report,<sup>14</sup> three of which — Luxembourg, the Marshall Islands and Nicaragua — had not submitted an interim, first, second or third report.

### **C. Consideration of and activities undertaken by the Committee concerning the third national reports**

25. Following decision BS-VII/14, the deadline for the submission of third national reports was initially 31 October 2015.<sup>15</sup>

26. At its thirteenth meeting, held in February 2016, the Committee considered the rate of reporting for the third national reports and noted that third national reports had only been submitted by 112 out of the 170 Parties that had an obligation to do so. The Committee further examined to what extent eligible Parties had accessed GEF funds available to them for the preparation of their third national reports and requested the Secretariat to contact GEF and to explore the possibility of extending the deadline for eligible Parties to apply for GEF funds. The Committee decided to recommend that, at its eighth meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety express concern about the lower rate of submission of third national reports in comparison with the previous reporting cycle, and urge the Parties that had not yet submitted their third national report to do so as soon as possible.<sup>16</sup>

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<sup>12</sup> This was due to the inadvertent omission of the recommendation of the Committee from the suggested elements for a draft decision contained in the document on monitoring and reporting (UNEP/CBD/BS/COP-MOP/7/12).

<sup>13</sup> The FAQ page is available at: <https://bch.cbd.int/protocol/ThirdNationalReportFAQ.shtml>

<sup>14</sup> Second national reports had not been received from the Bahamas, Barbados, Greece, Luxembourg, the Marshall Islands, Montenegro, Nicaragua or Turkmenistan. The Bahamas submitted a third national report on 30 October 2015. Barbados submitted its second and third national reports in November 2016.

<sup>15</sup> [Notification 2015-001](#), issued on 6 January 2015.

<sup>16</sup> The recommendation included a footnote identifying the Parties concerned (see UNEP/CBD/BS/CC/13/6, para. 12).

27. In this context, the Committee reviewed the individual cases of non-compliance of Luxembourg, the Marshall Islands and Nicaragua, expressing profound concern that these three Parties had not submitted any report since becoming Parties at the entry into force of the Protocol, in September 2003. The Committee decided that its Chair would send a further follow-up letter to the Ministries of Foreign Affairs of Luxembourg, the Marshall Islands and Nicaragua, with a copy to their national focal points, seeking an explanation of the situation that had prevented them from submitting their interim, first, second or third national reports to date and informing them that the Committee would recommend to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety that it issue a caution at its eighth meeting to these Parties, as provided for in section VI, paragraph 2(b), of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety,<sup>1</sup> unless a response was received before the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

28. Nicaragua and Luxembourg submitted their third national reports on 4 April 2016 and 9 November 2016, respectively, before the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

29. Consequently, the Marshall Islands was the only Party considered by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for the issuance of a caution. The meeting of the Parties did not adopt the recommendation of the Committee to caution the Marshall Islands but noted with regret that one Party had not submitted its interim, first, second or third national reports and urged the Party to submit its third national report to fulfil its obligation. The meeting of the Parties also noted that the Committee and the Executive Secretary had contacted the Party on numerous occasions, in accordance with decision BS-V/1, including by offering support in preparing its reports. The meeting of the Parties encouraged the Party to accept the offers of assistance of the Committee and any other assistance, should it require support to prepare its report.

30. At its fourteenth meeting (May 2017), in the context of the assessment of the outcomes of the eighth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, the Committee reviewed decision CP-VIII/1 on compliance and recalled all its previous efforts to encourage and assist Parties that had not complied with their reporting obligations. The Committee decided that the recommendation to issue a caution, although not taken up by the meeting of the Parties, was nevertheless very useful and likely encouraged two of the Parties concerned to submit their third national reports. The Committee furthermore noted that informal follow-up with the Marshall Islands could be beneficial and agreed that a report on any informal discussions with the Marshall Islands could be addressed at the Committee's fifteenth meeting. The Committee was also of the opinion that a videoconference could be set up during its fifteenth meeting with a representative of the Marshall Islands, if necessary.

31. The Committee furthermore decided to include a standing item in the agenda of its future meetings in order to facilitate consideration of ongoing individual cases of non-compliance.

32. At the same meeting, the Committee also considered the reporting rate of third national reports in the context of its consideration of general issues of compliance. It noted that 30 Parties had not yet submitted their third national report, including four Parties that had also not submitted their second national report. The Committee decided that the Chair of the Committee would send a letter to the national focal points for the Cartagena Protocol of those Parties that had not submitted a third national report, reminding those Parties of their obligation to do so as soon as possible.

33. The Committee also decided that its Chair would send a similar letter to the Ministries of Foreign Affairs of Greece, Montenegro and Turkmenistan for their not having submitted their second and third national reports, as a follow-up to previous communications addressed to the national focal points of those three Parties.

34. At its fifteenth meeting (May 2018), in the context of its review of general issues of compliance, the Committee considered an update of the submission of third national reports and the results of the

communications by the Chair in this regard. The Committee welcomed the seven additional reports received but noted that 23 third national reports were still outstanding. The Committee decided that its Chair would send a follow-up letter in hard copy to the Minister of Foreign Affairs with a copy to the national focal points for the Cartagena Protocol and the Convention on Biological Diversity to the Parties concerned. The Committee decided to consider follow-up measures in respect of Greece, Montenegro and Turkmenistan in the context of its consideration of individual cases of non-compliance, as set out further in paragraphs 36 to 39 below.

35. In the context of the review of the individual case of non-compliance by the Marshall Islands with its reporting obligation, the Committee took note of the steps taken by the Secretariat at the request of the Committee at its fourteenth meeting, which included: communications with the national focal points of the Biosafety Clearing-House and the Convention on Biological Diversity,<sup>17</sup> assistance with the development of a draft online third national report and informal communications.

36. The Committee noted that Greece, the Marshall Islands, Montenegro and Turkmenistan had not submitted their third national reports, as well as reports under previous reporting cycles, despite the efforts on numerous occasions by the Committee to address this issue.

37. Following lengthy and careful deliberations, the Committee decided to recommend that, at its ninth meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol issue a caution, in accordance with section VI, paragraph 2(b), of the procedures and mechanisms on compliance under the Protocol, as contained in the annex to decision BS-I/7, to Greece, the Marshall Islands, Montenegro and Turkmenistan for their failure to submit multiple national reports, in compliance with Article 33.

38. The Committee decided that its Chair would send a follow-up letter in hard copy to the Minister of Foreign Affairs with a copy to the national focal points and the competent national authorities for the Cartagena Protocol and the national focal points for the Convention on Biological Diversity of Greece, the Marshall Islands, Montenegro and Turkmenistan, informing them of the recommended caution, unless they submitted their national report before the ninth meeting of the Conference of the Parties serving as the meeting of the Parties.

39. The letters were sent in August 2018. An update will be provided by the Chair of the Committee to the Conference of the Parties serving as the meeting of the Parties at its ninth meeting.

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<sup>17</sup> In the absence of the Marshall Islands having designated a national focal point for the Cartagena Protocol.