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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

First meeting

Montreal, 14-16 March 2005

Item 3 of the provisional agenda*

DEVELOPMENT OF RULES OF PROCEDURE FOR MEETINGS OF THE COMPLIANCE COMMITTEE UNDER THE BIOSAFETY PROTOCOL

Note by the Executive Secretary

INTRODUCTION

1. Article 34 of the Cartagena Protocol on Biosafety provides that the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. In its decision BS-I/7, the Conference of the Parties serving as the meeting of the Parties to the Protocol adopted the procedures and mechanisms on compliance under the Protocol and established the Compliance Committee (hereinafter referred to as “the Committee”).

2. Paragraph 7 of section II of the procedures and mechanisms on compliance under the Protocol states that the Committee shall develop and submit its rules of procedure to the Conference of the Parties serving as the meeting of the Parties to the Protocol for its consideration and approval. Decision BS-I/7 requests the Executive Secretary, in consultation with the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol, to arrange for a meeting of the Committee, to be held before the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for the purpose of developing rules of procedure for the Committee.

3. Accordingly, the first meeting of the Committee will take place at the seat of the Secretariat, in Montreal from 14 to 16 March 2005. To facilitate the discussion, the Executive Secretary prepared this document which includes three sections and an annex. Section I outlines the general approach that the Committee may consider to take in developing its rules of procedure; section II offers explanatory notes for the proposed rules of procedure; section III includes recommendations that the Committee may wish to take; and the annex contains the draft rules of procedure for consideration by the Committee.

I. GENERAL APPROACH

4. The purpose of the rules of procedure for the Committee is to provide a set of rules governing the proceedings of meetings of the Committee. Generally speaking, these rules would cover issues such as places and dates of meetings, agenda, officers, conduct of business, voting, working languages and other

* UNEP/CBD/BS/CC/1/10.

procedural matters. In developing the rules of procedure for the Committee, the following considerations may be taken into account in order to accommodate the specific nature and functions of the Committee:

(a) First of all, it is important to keep in mind that the Committee is a small-size body consisting of 15 members who act in their personal capacities to promote compliance and address cases of non-compliance. The Committee carries out functions such as identifying causes of individual cases of non-compliance, providing advice and assistance to the concerned Party, and taking measures or make recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol. Any rules of procedures for the Committee should facilitate smooth operation of its meetings and ensure transparent and efficient decision-making process;

(b) Secondly, the rules of procedure for the Conference of the Parties to the Convention on Biological Diversity (COP), which, according to paragraph 5 of Article 29 of the Protocol and decision BS-I/1, applies *mutatis mutandis*, to the Conference of the Parties serving as the meeting of the Parties to the Protocol, contain rules for conducting meetings. Since many of those rules may well apply to the meetings of the Committee, it may not be necessary to repeat them in the rules of procedure for the Committee;

(c) Thirdly, it should be noted that the procedures and mechanisms on compliance under the Protocol contain some rules for the proceedings of the meetings of the Committee, such as those in paragraphs 3 and 4 of section IV. The rules of procedure for the Committee would further complement, and in some cases, elaborate the provisions laid out in the procedures and mechanisms on compliance;

(d) Lastly, it may be useful to look into the practices of the compliance bodies under the other multilateral environmental agreements. For example, the Implementation Committee under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol) has opted for applying, *mutatis mutandis*, the rules of procedures of the Meeting of the Parties; the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) follows the same practice, though it has developed its own *modus operandi*. The Implementation Committee under the Convention on Long-Range Transboundary Air Pollution (LRTAP) has so far not adopted its own rules of procedure.

5. In view of the forgoing considerations, the Committee may wish to adopt the approach where, in principle, the rules of procedure for the Conference of the Parties would apply, *mutatis mutandis*, to the meetings of the Committee, with the exception of a number of items for which the Committee may consider to deviate from the rules of procedure for the Conference of the Parties and develop its own rules.

II. EXPLANATORY NOTES

6. This section presents draft rules of procedure for meetings of the Committee with explanatory notes for the rationale behind the proposed rules.

A. Purposes

RULE 1

These rules of procedure shall apply to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety and shall be read together with and in furtherance of the procedures and mechanisms set out in decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

RULE 2

The rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity, as applied mutatis mutandis to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, shall apply, mutatis mutandis, to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety, except as otherwise provided in the rules set out herein and in decision BS-I/7, and provided that rules 16 to 20 on representation and credentials of the rules of procedure for the meetings of the Conference of the Parties to the Convention on Biological Diversity shall not apply.

Notes:

Rule 1 defines the purpose and application of the rules of procedure. It further suggests that the rules should not be read in isolation but together with those under the procedures and mechanisms on compliance under the Protocol.

Rule 2 indicates the general approach taken in developing those rules. As indicated in section I, the rules of procedure of the Conference of the Parties contain standard provisions in relation to conduct of meetings which could apply, *mutatis mutandis*, to the meetings of the Committee. However, rules 16 to 20 of the Conference of the Parties regarding representation of Parties and credentials of representatives are not relevant to this context and their application should be excluded. Exceptions are also made where the Committee would apply rules designed for the specific purpose of the Committee.

B. Definition

RULE 3

For the purposes of these rules:

(a) *“Protocol” means the Cartagena Protocol on Biosafety to the Convention on Biological Diversity adopted in Montreal on 29 January 2000;*

(b) *“Parties” means Parties to the Protocol;*

(c) *“Conference of the Parties serving as the meeting of the Parties to the Protocol” means the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on biosafety established under Article 29 of the Protocol;*

(d) *“Committee” means the Compliance Committee established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol;*

(e) *“Chair” means the chairperson elected in accordance with rule ..., of the present rules of procedure;*

(f) *“Secretariat” means the Secretariat referred to in Article 31 of the Protocol.*

(g) *“The Compliance Procedures” means the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and set out in the Annex to decision BS-I/7.*

Notes:

Rule 3 provides definitions to the terms that are used in the rest of the rules of procedure.

C. Dates and notice of meetings

RULE 4

At each meeting, the Committee shall decide on the dates and duration of its next meeting.

RULE 5

The Secretariat shall notify all members of the Committee of the dates and venue of a meeting at least six weeks before the meeting is due to commence.

Notes:

Rule 4 provides dates of meetings, indicating that the Committee shall decide on the dates and duration of its next meeting. It should be kept mind that this provision should be read together with paragraph 5 of section II of the Compliance Procedures, which states: "The committee shall meet twice a year, unless it decides otherwise."

Rule 5 provides the timeframe within which the Secretariat is required to notify the members of the Committee of the dates and venue for the meeting. The proposed time table is six weeks instead of two months as provided in Rule 5 of the rules of procedure for the Conference of the Parties in order to allow the Secretariat more time to receive submissions or information, as the case may be.

D. Agenda

RULE 6

The agenda of the Committee shall include items arising from its functions as specified in section III of the Compliance Procedures and other matters related thereto.

RULE 7

The provisional agenda, together with supporting documents shall be distributed by the Secretariat to all members of the Committee at least four weeks before the opening of the meeting.

Notes:

Rule 6 defines the scope of the agenda for each meeting of the Committee, which is proposed to include items arising from the functions of the Committee and any other related matters so as to enable the Committee to fully perform its functions.

In terms of procedures for arranging and circulating agenda, Rule 8 and Rules 10 to 15 of the Rules of procedure for the Conference of the Parties, will apply, *mutatis mutandis*, to the meetings of the Committee with the exception of the timeframe for distributing provisional agenda by the Secretariat. It is proposed four weeks instead of six weeks to allow the Secretariat more time to receive information or submissions, as the case may be.

E. Distribution and consideration of information

RULE 8

1. The information received in accordance with paragraphs 1 and 2 of section V shall be distributed by the Secretariat as soon as practicable to the members of the Committee. The information received in accordance with paragraph 1 of section V shall be considered in the context of the agenda item to which it relates. With respect to the information received under paragraph 2 of section V, the Committee may first determine the relevance of the information before placing it under the relevant agenda item for consideration.

2. Any information to be considered by the Committee shall, as soon as possible, be made available to the Party concerned.

Notes:

Rule 8 is intended to deal with the information received in accordance with paragraph 1 and 2 of section V of the procedures and mechanisms on compliance which read:

1. The Committee shall consider relevant information from:
 - (a) The Party concerned;
 - (b) The Party that has made a submission with respect to another Party in accordance with paragraph 1 (b) of section IV.
2. The Committee may seek or receive and consider relevant information from sources such as:
 - (a) The Biosafety Clearing-House, the Conference of the Parties to the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol, and subsidiary bodies of the Convention on Biological Diversity and the Protocol;
 - (b) Relevant international organizations.

As a matter of principle, the information received under these two paragraphs should be distributed by the Secretariat to the members of the Committee as soon as possible. However, some distinction may be made with respect to treatment of the information received from a Party referred to in paragraph 1 of section V and from other sources envisaged in paragraph 2 of section V. For the former, the information from Parties should be placed immediately under the relevant agenda item; but for the latter, it might be necessary for the Committee to conduct some preliminary assessment regarding the relevance of the information before considering it formally. This is because the chapeau of paragraph 2 of section V implies a wide range of potential sources of information that may be received by the Committee and there may be a need to screen out the information that is not relevant to the issues under consideration.

The information that will be considered by the Committee should be distributed to the Party concerned as soon as possible so that it would be able to prepare and respond accordingly.

F. Publication of documents and information

RULE 9

The provisional agenda, reports of meetings, official documents and, subject to rule 8 and paragraph 4 of section V of the Compliance Procedures, any other information documents shall be made available to the public.

Notes:

This rule deals with the question as to which information would be available to the public – e.g. by posting on the website of the Secretariat. To ensure transparency of the process and contribute to public participation, it is suggested that official documents such as agenda and reports of the Committee as well as other information papers that have been considered by the Committee and are non-confidential be accessible by the public.

G. Members**RULE 10**

1. *The term of office of a member shall commence on 1 January of the calendar year immediately following his or her election and end on 31 December, two or four years thereafter, as applicable.*
2. *If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate a replacement to serve for the remainder of that member's mandate, subject to the approval of the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol.*

Notes:

Rule 10 deals with the term of office for members of the Committee and is intended to supplement paragraph 4 of section II of the Compliance Procedures which states:

“Members shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for a period of four years, this being a full term. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall elect five members, one from each region, for half a term, and ten members for a full term. Each time thereafter, the Conference of the Parties to the serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall elect for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.”

This provision defines the term of office for members, but it does not address specific timing for commencement and end of the term; nor does it address the situation where a member of the Committee may not be able to complete his/her term for various reasons. Rule 10 is proposed to deal with these issues.

Regarding when the term of office of a member would commence and come to end, paragraph 4 of section II seems to suggest it be calculated on the basis of a calendar year. In effect, a member's term could start on 1 January of the calendar year and end on 31 December, two or four years thereafter. For example, the current members of the Committee were elected at the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in February 2004 and their terms of office is suggested to commence on 1 January 2005. For those who only serve a half term, their service would end on 31 December 2007. The election for new members to replace them may take place at the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol that may be held in 2007, or in 2006 if no such meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol is scheduled in 2007.

Alternatively, the commencement and the end of the term for a member of the Committee could take place around the circle of meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol in that the term of office of a member will commence upon the closure of one ordinary meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and end at

the end of the next ordinary meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol following or coinciding with the expiry of his or her term of office. It should be noted, however, that the disadvantages of this approach lies with potentially considerable irregularity of the term for a member who could serve much longer period of time than two or four years in particular in the situation when the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol takes place before a member's term expires.

In the situation where a member of the Committee is unable to complete the term, it is proposed that the Party who nominated that member propose a replacement to serve for the remainder of that member's mandate. Since in a normal situation the process for making nominations is carried out through consultations with five United Nations regional groups, some political oversight over the nomination for replacement may be necessary to ensure accountability of the process. As the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol has the function to provide guidance during the intersessional period, it is suggested that the nomination for replacement be subject to approval by the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

Both the compliance procedures under the Basel Convention and the Aarhus Convention deal with the issue of replacement but in a slightly different manner. Paragraph 4 of the terms of reference for the compliance mechanisms under the Basel Convention provides "If a Member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the mandate". Paragraph 10 of the compliance procedures of the Aarhus Convention states "If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee."

RULE 11

Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Any interest that may constitute a conflict of interest shall be disclosed as soon as possible to the Secretariat which shall forthwith notify the members of the Committee. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to such matter.

Notes:

Rule 11 addresses the issue of conflict of interest. As a general principle, members of the Committee should avoid conflict of interest. Procedurally, the proposed rules places the burden of disclosure of the information that may constitute a conflict of interest on the individual members who should inform other members of the situation through the Secretariat.

Under the *modus operandi* for the Compliance Committee under the Aarhus Convention, it indicates that "Normal principle of conflict of interest apply for the Committee. This implies that in a case where a Committee member found himself or herself faced with a possible or apparent conflict of interest, that member would be expected to bring the issue to the Committee's attention and decision before consideration of that particular matter. Being a citizen of the State whose compliance was to be discussed would not in itself be considered as a conflict of interest" (paragraph 10)

The rules of conduct for the understanding on rules and procedures governing the settlement of disputes of the World Trade Organization (WTO) has also set out principles regarding conflict of interest by requiring the members of the appellate body to "disclose the existence or development of any interest, relationship or matter that that person could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to, that person's independence or impartiality; and to take due care in the performance of their duties to fulfil these expectations, including through avoidance of any direct or

indirect conflicts of interest in respect of the subject matter of the proceedings.”(section III of annex I to the working procedures for Appellate Review)

H. Officers

Rule 12

The Committee shall elect a Chair and a Vice-chair for a term of two years. No officers shall serve for more than two consecutive terms.

Notes:

In view of the fact that the Committee is composed of only 15 members, it is suggested that a chair and a vice chair be sufficient to perform necessary functions for conducting meetings. Rules 22 to 25 of the rules of procedure for the Conference of the Parties relating to exercising the powers conferred upon the Chair or the Vice-chair will apply, *mutatis mutandis*, to meetings of the Committee.

I. Participation in proceedings of the Committee

RULE 13

A Party, in respect of which a submission is made or which makes a submission as referred to in paragraph 1 of section IV of the Compliance Procedures, shall be invited to participate in the deliberation of the Committee. The Party concerned shall be given an opportunity to comment in writing on any recommendation of the Committee. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Protocol.

Notes:

Rule 13 is devised to complement paragraph 4 of section IV of the procedures and mechanisms on compliance, which reads: “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.” Accordingly, the Party concerned will be invited to participate in the meetings of the Committee when the submission is under consideration. Moreover, in the interest of full transparency and fairness, Parties should have an opportunity to comment on the recommendations made by the Committee, and the comments, if any, would be forwarded together with the report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and action.

Similar practice can be found in the compliance mechanism under the Basel Convention, which provides “Where a Party is identified in a submission or itself makes a submission, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee. Conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties” (paragraph 15).

The compliance procedures under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol) also contain similar provisions, which specify the decisions of the branches of the Compliance Committee “shall notify the Party concerned in writing of its decision, including conclusions and reasons thereof...” and “The Party concerned shall be given an opportunity to comment in writing on any decision of the relevant branch” (paragraphs 7 and 8 of section VIII).

J. Conduct of business

RULE 14

The Committee shall meet in closed session unless it decides otherwise. The Party concerned and any person invited by the Committee shall be present at the meetings of the Committee.

RULE 15

Ten members of the Committee shall constitute a quorum.

RULE 16

Electronic means of communication may be used by the members of the Committee for the purpose of conducting informal consultations on issues under consideration and decision making on matters of procedure. Electronic means of communication shall not be used for making decisions on matters of substance.

Notes:

In general, the rules governing conduct of business for the Conference of the Parties, i.e. Rules 30 to 38 of the rules of procedure of the Conference of the Parties, will apply, *mutatis mutandis*, to the meetings of the Committee. However, in view of the fact that the functions of the Committee involves reviewing individual cases of non-compliance, it may be appropriate that the meetings of the Committee are held in closed sessions and open only to the Parties concerned and experts or organizations that are invited by the Committee, unless the Committee decides otherwise.

The international practice on this matter varies. Under the WTO working procedures for the Understanding on Rules and Procedures Governing the Settlement of Disputes, it provides that “the panel shall meet in closed session. The Parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.” (paragraph 2 of Appendix 3)

In the case of the Compliance Committee of the Aarhus Convention, however, it takes a very different approach due to the very nature of the convention. All meetings of the Committee “should in principle be open to the public as observers but, having regard to paragraph 26, 27, 29, 30 of the annex to decision I/7, parts of meetings may be closed ” (paragraph 4 of *modus operandi*).

With respect to a quorum, it is suggested that 10 members constitute a quorum in view of the size of the Committee.

Since emails have been frequently used as one of the main ways of communications, the Committee may explore electronic means of conducting business during the intersessional period. However, it may be necessary to clarify in the provision as to which activity can or cannot be carried out through electronic means. Given the importance of decision making on matters of substance, it is proposed that such action should not be conducted through emails.

The Compliance Committee under the Aarhus convention has made use of the electronic ways of communication. In its *modus operandi*, it provides “E-mail communication can be used by the Committee for the purpose of holding consultations, but not at this stage for making important decisions of a substantive nature”. (paragraph 3)

K. Voting

RULE 17

Each member of the Committee shall have one vote.

RULE 18

1. *The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a two-thirds majority of the members present and voting or by eight members, whichever is the greater. Where the consensus is not possible, the report shall reflect the views of the all the members of the Committee*

2. *For the purpose of these rules, the phrase “members present and voting” means members present at the session at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting shall be considered as not voting.*

Notes:

In general, Rules 40 to 51 of the rules of the procedure for the Conference of the Parties governing voting process would apply, *mutatis mudandis*, to that under the Committee. However, since the issue relating to voting on matters of substance has yet to be resolved under the process of the Conference of the Parties, the Committee needs to develop its own rule on this matter. Rule 18 is proposed for this purpose.

There are different options for voting in case where all efforts to reach consensus have been exhausted, such as:

- Simple majority, as is the case for subsidiary bodies under the Conference of the Parties;
- A two-thirds majority, as is the case for the compliance committees under the Basel Convention and the Aarhus Convention

In view of the fact that the Committee is composed of 15 members, it may be necessary to have at least two-thirds majority of members endorsing any decisions on matters of substance. Also, in order to maximize the legitimacy of decisions taken by the Committee, it is further proposed that a decision be made on the condition that at least eight members have cast concurring affirmative or negative votes.

The Compliance Committee of the Basel Convention which consists of 15 members has adopted a two-thirds majority for decision making with respect to matters of substance. It states “ The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible, the report and recommendations shall reflect the views of all the Committee members. If all effort to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a two-thirds majority of the members present and voting or by eight members, whichever is the greater. Ten members of the Committee shall constitute a quorum.” (paragraph 25)

The eight-member Compliance Committee of the Aarhus Convention also follows a two-thirds majority voting but elaborated in a specific manner: “The application of the rules of procedure with respect to decision-making implies that the presence of five members of the Committee is required for any decisions to be taken and that decisions on substantive matters can only be taken with the support of six members out of eight members present and voting; six of seven members present and voting; five out of six members present and voting; and four out of five members present and voting. Notwithstanding this, the Committee is generally sympathetic to the view that at least five members should be in support of any decision being taken” (paragraph 2 of the *modus operandi*).

L. Language

RULE 19

The working language of the Committee shall be English.

RULE 20

The submissions from the Party concerned, the response and the information, as referred to in section IV of the compliance procedures, shall be made in one of the six official languages of the United Nations. The Secretariat shall make arrangements to translate them into English if they are submitted in an official language of the United Nations other than English.

Notes:

For the purpose of cost-effectiveness, it is proposed that the working language of the Committee be English. However, when a Party makes a submission in one of the United Nations languages other than English, it is suggested that the Secretariat make appropriate arrangements for translation in order to facilitate full participation by Parties concerned.

In the situation where a representative of a Party taking part in the proceedings of the Committee speaks a language other than English, that Party may have to make its own arrangement to translate that language into English.

M. Amendments to the rules of procedure

RULE 21

Amendments to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

Notes:

Since the rules of procedure for the Committee are subject to consideration and approval by the Conference of the Parties serving as the meeting of the Parties to the Protocol, any amendment to those rules should follow the same procedure.

N. Overriding authority of the Protocol and decision BS-I/7

RULE 22

In the event of a conflict between any provision in these rules and any provision in the Protocol or decision BS-I/7, the provisions of the Protocol or, as the case may be, decision BS-I/7 shall prevail.

Notes:

This rule gives the Protocol and decision BS-I/7 overriding authority over the rules of procedure for the Committee.

III. RECOMMENDATIONS

7. The Compliance Committee is invited to develop its rules of procedure on the basis of the annex below, and in accordance with paragraph 7 of section II of the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety, submit them to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

Annex

**DRAFT RULES OF PROCEDURE FOR MEETINGS OF
THE COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY**

I. PURPOSES

RULE 1

These rules of procedure shall apply to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety and shall be read together with and in furtherance of the procedures and mechanisms set out in decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

RULE 2

The rules of procedure for meetings of the Conference of the Parties to the Convention on Biological Diversity, as applied *mutatis mutandis* to the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, shall apply, *mutatis mutandis*, to any meeting of the Compliance Committee under the Cartagena Protocol on Biosafety, except as otherwise provided in the rules set out herein and in decision BS-I/7, and provided that Rules 16 to 20 on representation and credentials of the rules of procedure for the meetings of the Conference of the Parties to the Convention on Biological Diversity shall not apply.

II. DEFINITION

RULE 3

For the purposes of these rules:

- (a) “Protocol” means the Cartagena Protocol on Biosafety to the Convention on Biological Diversity adopted in Montreal on 29 January 2000;
- (b) “Parties” means Parties to the Protocol;
- (c) “Conference of the Parties serving as the meeting of the Parties to the Protocol” means the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on biosafety established under Article 29 of the Protocol;
- (d) “Committee” means the Compliance Committee established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol;
- (e) “Chair” means the chairperson elected in accordance with rule ..., of the present rules of procedure;
- (f) “Secretariat” means the Secretariat referred to in Article 31 of the Protocol.
- (g) “The Compliance Procedures” means the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety adopted by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and set out in the annex to decision BS-I/7.

III. DATES AND NOTICE OF MEETINGS

RULE 4

At each meeting, the Committee shall decide on the dates and duration of its next meeting.

RULE 5

The Secretariat shall notify all members of the Committee of the dates and venue of a meeting at least six weeks before the meeting is due to commence.

IV. AGENDA

RULE 6

The agenda of the Committee shall include items arising from its functions as specified in section III of the Compliance Procedures and other matters related thereto.

RULE 7

The provisional agenda, together with supporting documents shall be distributed by the Secretariat to all members of the Committee at least four weeks before the opening of the meeting.

V. DISTRIBUTION AND CONSIDERATION OF INFORMATION

RULE 8

1. The information received in accordance with paragraphs 1 and 2 of section V shall be distributed by the Secretariat as soon as practicable to the members of the Committee. The information received in accordance with paragraph 1 of section V shall be considered in the context of the agenda item to which it relates. With respect to the information received under paragraph 2 of section V, the Committee may first determine the relevance of the information before placing it under the relevant agenda item for consideration.

2. Any information to be considered by the Committee shall, as soon as possible, be made available to the Party concerned.

VI. PUBLICATION OF DOCUMENTS AND INFORMATION

RULE 9

The provisional agenda, reports of meetings, official documents and, subject to Rule 8 and paragraph 4 of section V of the Compliance Procedures, any other information documents shall be made available to the public.

VII. MEMBERS

RULE 10

1. The term of office of a member shall commence on 1 January of the calendar year immediately following his or her election and end on 31 December, two or four years thereafter, as applicable.

2. If a member of the Committee resigns or otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate a replacement to

serve for the remainder of that member's mandate, subject to the approval of the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

RULE 11

Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Any interest that may constitute a conflict of interest shall be disclosed as soon as possible to the Secretariat which shall forthwith notify the members of the Committee. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to such matter.

VIII. OFFICERS

RULE 12

The Committee shall elect a Chair and a Vice-chair for a term of two years. No officers shall serve for more than two consecutive terms.

IX. PARTICIPATION IN PROCEEDINGS OF THE COMMITTEE

RULE 13

A Party, in respect of which a submission is made or which makes a submission as referred to in paragraph 1 of section IV of the Compliance Procedures, shall be invited to participate in the deliberation of the Committee. The Party concerned shall be given an opportunity to comment in writing on any recommendation of the Committee. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Protocol

X. CONDUCT OF BUSINESS

RULE 14

The Committee shall meet in closed session unless it decides otherwise. The Party concerned and any person invited by the Committee shall be present at the meetings of the Committee.

RULE 15

Ten members of the Committee shall constitute a quorum.

RULE 16

Electronic means of communication may be used by the members of the Committee for the purpose of conducting informal consultations on issues under consideration. Electronic means of communication shall not be used for making decisions on matters of substance.

XI. VOTING

RULE 17

Each member of the Committee shall have one vote.

RULE 18

1. The Committee shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, any

decision shall, as a last resort, be taken by a two-thirds majority of the members present and voting or by eight members, whichever is the greater. Where the consensus is not possible, the report shall reflect the views of the all the members of the Committee

2. For purpose of these rules, the phrase “members present and voting” means members present at the session at which voting takes place and casting an affirmative or negative vote. Members abstaining from voting shall be considered as not voting.

XII. LANGUAGE

RULE 19

The working language of the Committee shall be English.

RULE 20

The submissions from the Party concerned, the response and the information, as referred to in section IV of the Compliance Procedures, shall be made in one of the six official languages of the United Nations. The Secretariat shall make arrangements to translate them into English if they are submitted in one of the languages of the United Nations other than English.

XIII. AMENDMENTS TO RULES OF PROCEDURE

RULE 21

Amendments to these rules of procedure shall be adopted by consensus by the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and approval.

XIV. OVERRIDING AUTHORITY OF THE PROTOCOL AND DECISION BS-I/7

RULE 22

In the event of a conflict between any provision in these rules and any provision in the Protocol or decision BS-I/7, the provisions of the Protocol or, as the case may be, decision BS-I/7 shall prevail.
