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COMPLIANCE COMMITTEE UNDER THE  
CARTAGENA PROTOCOL ON BIOSAFETY  
Third meeting  
Kuala Lumpur, 5-7 March 2007

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

### INTRODUCTION

#### *A. Background*

1. The Compliance Committee under the Cartagena Protocol on Biosafety was established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) pursuant to Article 34 of the Protocol.
2. The first meeting of the Committee took place in Montreal from 14 to 16 March 2005. At that meeting, the Committee developed, among other things, rules of procedure for the meetings of the Committee which were later approved by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, as decision BS-II/1.
3. The second meeting of the Committee took place in Montreal from 6 to 8 February 2006. At that meeting, the Committee considered the implementation of the rules of procedure of the Committee as approved by Conference of the Parties serving as the meeting of the Parties to the Protocol, reviewed general issues of compliance on the basis of analysis of interim national reports and information obtained in the Biosafety Clearing-House, and forwarded its recommendations to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, which was held in Curitiba, Brazil, from 13 to 17 March 2006.
4. The third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol adopted decision BS-III/1 on compliance. A number of recommendations from the Committee were also integrated into other decisions of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Furthermore, the Conference of the Parties serving as the meeting of the Parties to the Protocol elected four new members to the Committee to replace outgoing members and members who had resigned.
5. At its second meeting, the Compliance Committee had agreed to have its third meeting in the last quarter of 2006 or the first quarter of 2007. Accordingly, the Secretariat made the necessary arrangements, and the meeting took place from 5 to 7 March 2007 in Kuala Lumpur, following the gracious offer made by the Government of Malaysia to host it.

## **B. Attendance**

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

***Africa:***

Mr. Bather Kone  
Mrs. Mary Fosi Mbantekhu (V/Chair)  
Dr. Tewolde Birhan Gebre Egziabher

***Latin America and Caribbean***

Mr. Lionel Michael

***Asia and the Pacific:***

Mr. Gurdial Singh Nijar  
Dr. Nematollah Khansari

***Western Europe and Others Group***

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

***Central and Eastern Europe***

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

7. Following prior consultations and agreement among Committee members, the third meeting of the Committee was conducted in an open session. The decision to have an open session was announced on the Secretariat's web page three weeks prior to the date of the meeting. Accordingly, the Third World Network, a Malaysian based international non-governmental organization was represented as observer.

### **ITEM 1. OPENING OF THE MEETING**

8. Mr. Veit Koester, Chairman of the Committee, opened the meeting at 10.30 a.m. on 5 March 2007. After his opening remarks, he invited the representative of the Secretariat to report on the attendance of the meeting.

9. The representative of the Secretariat reported that two members of the Committee, Mr. Victor Villalobos Arámbula, from the Latin America and Caribbean Group and Mr. Paul D. Roughn, from the Asia and Pacific region, respectively, were not able to attend the meeting. He also recalled the resignation of Mr. Alvaro Jose Rodriguez, another ex-member from the Latin America and Caribbean region. He mentioned that the Secretariat has notified, through a letter dated 15 August 2006, the President and members of the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol to take measures, in accordance with paragraph 2 of the rules of procedure of the Committee, to replace Mr. Rodriguez. However, the new appointment has not yet been effected. He confirmed that 12 members of the Committee were present and thus there was a quorum for the meeting to proceed in accordance with rule 16 of the rules of procedure.

### **ITEM 2. ORGANIZATIONAL MATTERS**

#### ***2.1. Election of officers***

10. At the 1st session of its first meeting, held on 14 March 2005, the Committee had elected Mr. Veit Koester as Chairperson and Ms. Mary Fosi Mbantekhu as Vice-Chairperson. They were elected for a term of two years commencing from 1 January 2005 in accordance with paragraph 1 of rule 12 and paragraph 1 of rule 10 of the rules of procedure for meetings of the Committee. After the end of the two-year term on 31 December 2006, the Chairperson and the Vice-Chairperson continued to serve in those capacities until new election took place as specified in paragraph 1 of rule 12 of the rules of procedure.

11. The present meeting was the first opportunity for the Committee to conduct the election of its officers for the second time. Accordingly, the Committee re-elected both Mr. Viet Koester and Ms. Mary

Fosi Mbantekhu as Chairperson and Vice-Chairperson respectively, for another two year term, in accordance with paragraph 2 of rule 12 of the rules of procedure.

## **2.2. Adoption of the agenda**

12. The Committee adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/BS/CC/3/1) prepared by the Chairperson of the Committee in consultation with other members, and with the assistance of the Secretariat:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1 Election of officers
  - 2.2 Adoption of the agenda;
  - 2.3 Organization of work.
3. Information and experience regarding repeated cases of non-compliance under the compliance mechanisms of other multilateral environmental agreements
4. Follow-up on issues arising from the second meeting of the Committee:
  - 4.1 Rule 11 of the rules of procedure, on conflict of interest;
  - 4.2 Reviewing general issues of compliance and possible lessons learnt from analysing the interim national reports;
  - 4.3 Attendance of members of the Committee at meetings of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Protocol.
5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

## **2.3. Organization of work**

13. The Committee agreed on the organization of its work as proposed by the Chairman, including the schedule of its sessions, as specified in annex I to the annotations to the provisional agenda (UNEP/CBD/BS/CC/3/1/Add.1).

### **ITEM 3. INFORMATION AND EXPERIENCE REGARDING CASES OF REPEATED NON-COMPLIANCE UNDER THE COMPLIANCE MECHANISMS OF OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS**

14. The representative of the Secretariat introduced the working document relevant to the item. He introduced the note by the Executive Secretary on information and experience regarding repeated cases of non compliance under the compliance mechanisms of other multilateral environmental agreements (UNEP/CBD/BS/CC/3/2), which summarized the experiences of ten other multilateral environmental agreements regarding cases of repeated non-compliance. The document included a set of five

observations based on the reviewed experiences. He noted that the Conference of the Parties serving as the meeting of the Parties to the Protocol, in its decision BS-III/1, agreed to address the issue of measures concerning cases of repeated non-compliance at its fourth meeting within the framework of the overall evaluation of the effectiveness of the Protocol, and requested the Compliance Committee to compile further information on experience of other multilateral environmental agreements on the issue. The representative of the Secretariat mentioned that the document was, therefore, prepared to assist the Committee in responding to the request made to it by the Parties.

15. The Committee reviewed the information contained in the note by the Executive Secretary (UNEP/CBD/BS/CC/3/2) and made the following comments:

(a) The document needs to be updated in order to include recent developments as regards compliance issues and compliance mechanisms under other multilateral environmental agreements, before it is submitted to the next meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(b) The Secretariat should review some more international instruments such as: the Convention on Environmental Impact Assessment in a Transboundary Context (1991 Espoo Convention), the United Nations Economic Commission for Europe (UNECE)/World Health Organization (WHO) Protocol on Water and Health to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and also the International Whaling Commission, for information and experiences, if any, relating to measures regarding cases of non-compliance or cases of repeated non-compliance;

(c) The Secretariat, in updating the working document, should provide some explanatory notes regarding the structure and presentation of the information gathered from the review of relevant multilateral environmental agreements.

16. As regards the observations in section III of the note by the Executive Secretary (UNEP/CBD/BS/CC/3/2), the Committee agreed:

(a) To include statements referring to the fact that the review was only illustrative, and that each of the regimes was negotiated and adopted under specific circumstances, justifying the existence or use of different response measures for similar situations such as measures prescribed in cases of repeated non-compliance;

(b) That it should be made clear that there are exceptions for the trend in the application of graduated measures as specified in paragraph 48 (b) of the note;

(c) To add an observation point relating to the fact that stringent measures that exist in most of the compliance systems that have been reviewed have not been invoked or applied, and that could be due to the mere existence of such measures resulting in preventing cases of non-compliance. In that respect, the Committee tends to believe that the inclusion of stringent measures in compliance mechanisms may provide a strong incentive for Parties to comply;

(d) To reflect the fact that stringent measures are also part of compliance mechanisms under some multilateral environmental agreements which are not directly regulating trade in certain goods or substances.

17. The Committee noted that no case of non-compliance was brought to its attention since it officially began its functions, and it might, therefore, be helpful to consider the question of cases of repeated non-compliance in that context.

18. Some members have suggested that there was a need to clarify that a transboundary movement by a Party with a non-Party in a manner not consistent with the objective of the Protocol constitutes a case of non-compliance. The Committee took note of the suggestion and made reference to Article 24 of the Protocol and decision BS-I/11, in which the Parties provided guidance on the transboundary movement of living modified organisms between Parties and non Parties.

19. After extensive discussion, the Committee agreed that a report that it would prepare for submission to the Conference of the Parties serving as the meeting of the Parties to the Protocol should include conclusions and observations. In this regard, the Committee agreed to propose, for the consideration of Conference of the Parties serving as the meeting of the Parties to the Protocol, an indicative list of measures that may be taken in cases of repeated non-compliance. Such proposals could include measures such as suspension of trade, and/or suspension of some rights or privileges accorded to the Party. However, any proposal that might be made needs to be based on the findings of the review of relevant experience under other multilateral environmental agreements with references to the relevant multilateral environmental agreement that adopts a particular measure, as an example. Furthermore the Committee agreed to include an indicative list of elements that might be taken into account when considering whether: (i) one or more measures would be applicable to the case of repeated non-compliance; (ii) the non-compliance has been persistent; (iii) the Party concerned has not demonstrated any efforts to comply; and (iv) applying the measures should not be pursued in the event the Party concerned has been working towards compliance.

#### **ITEM 4. FOLLOW-UP ON ISSUES ARISING FROM THE SECOND MEETING OF THE COMMITTEE**

##### ***4.1. Rule 11 of the rules of procedure, on conflict of interest***

20. The Committee took up this agenda item at the 2nd session of the meeting.

21. It was recalled that, at its second meeting, the Compliance Committee agreed to consider the invitation from the second meeting of Conference of the Parties serving as the meeting of the Parties to the Protocol to give “further consideration to the issue of conflicts of interest as set out in rule 11 of the rules of procedure for the meetings of the Compliance Committee” at its next meeting.

22. The Committee noted that it would be almost impossible to foresee the different circumstances under which conflict of interest could possibly arise, and that there were limited experiences of compliance mechanisms under other international instruments in elaborating what constitutes conflict of interest, or in handling practical cases of conflicts of interest.

23. The Chair referred to the experience of the Compliance Committee under the UNECE Aarhus Convention where it was indicated that in 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. It was noted that this requirement was premised on two basic understandings. On the one hand, normal principle of conflict of interest apply for the Committee, and “being a citizen of the State whose compliance was to be discussed would not in itself be considered as a conflict of interest” on the other. The Committee took note of the experience in the Aarhus Convention

24. The Committee referred to paragraph 3, section II of the procedures and mechanism on compliance (decision BS-I/7, annex), which requires members to serve objectively and in a personal capacity. The Committee believed that this requirement taken together with rule 11 of the rules of procedure provide general guidance to members of the Committee with respect to conflict of interest. Therefore, it was decided that there was no need, at the moment, for the Committee to do anything as regards the rule. However, the Committee agreed to keep the issue under review in its future work.

#### **4.2 *Reviewing general issues of compliance and possible lessons learned from analysing the interim national reports***

25. The Chairperson drew the attention of members to paragraph 3 of decision BS-III/15 of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, which requested the Committee “to prepare a report on general issues of compliance by Parties with their obligations under the Protocol, in accordance with paragraph 1 (d) of section III of the compliance procedures and mechanisms contained in the annex to decision BS-I/7, and make this report available six months prior to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol”.

26. It was generally assumed that the report on general issues of compliance that had been requested by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting was similar to the review that the Committee had undertaken at its second meeting, based on analysis of the interim national reports and information in the Biosafety Clearing-House. The Committee noted that the information that may be obtained from the first national reports and the Biosafety Clearing-House would similarly constitute the primary basis for the coming review of general issues of compliance. The Committee, however, explored whether the review that it was requested to undertake could also use information from other sources such as media reports, pertinent reports by non-governmental organizations on situations or incidents that allegedly impeded the effective compliance of Parties to the requirements of the Biosafety Protocol.

27. The Committee recognized the limited nature of sources of information that it was expected to use in undertaking its functions. It was agreed that, at this stage, review of general issues of compliance by the Committee should take into account only the information provided in national reports and in the Biosafety Clearing-House, in accordance with paragraph (d), section III of the annex to decision BS-I/7 and paragraph 3 of decision BS-III/15.

28. The Committee emphasized the need to encourage Parties to prepare and submit their first national reports in time. It was noted that the deadline for submission of the first national reports was 11 September 2007. In that regard, the Committee requested the Secretariat to issue notifications in the coming months urging Parties to submit their national reports, and to include, in such notifications, a strong message from the Committee reminding Parties that fulfilling the requirement of national reporting was not only an important input for planning future work by the Conference of the Parties serving as the meeting of the Parties to the Protocol, but also an essential compliance issue in itself, as well as a basis for fulfilling its mandate regarding a review of general issues of compliance, in particular by identifying general issues of compliance by the Committee.

29. Members discussed extensively on possible reasons why so many Parties failed to fulfil their reporting obligations as seen from past experience with regard to interim national reports, where only one third of the 126 Parties at the time had submitted their reports. Some members identified lack of or limited capacity at national level as major problem while others felt that capacity could not be a serious factor as the reporting format was so simplified that no significant amount of capacity was really needed.

30. Some members have suggested some modifications relating to the formulation of some of the questionnaire in the reporting format such as the one on Article 14- bilateral, regional and multilateral agreements and arrangements. The Committee noted the suggestions and agreed to consider any specific suggestion on the reporting format at its next meeting in the context of the analysis of the first national reports.

#### **4.3 *Attendance of members of the Committee at meetings of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Protocol***

31. The Chairperson reminded members of their discussion of this issue at their previous meeting. It was recalled that members agreed that in the event a member of the Compliance Committee is funded by the Secretariat to attend any meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in the capacity of his/her membership to the Compliance Committee, such a member shall not also be a member of a national delegation. The suggestion that the funds available for the Committee to hold a second meeting in a year (which, to date, has not been the case) be allocated to support the participation of some of the members of the Committee in a meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol was also recalled.

32. The Committee agreed to set aside the consideration of this matter because of the need already identified for having another meeting before the end of the year in order to fulfil some time bound requests of the Conference of the Parties serving as the meeting of the Parties to the Protocol, and also the likely persistence of similar situations that may require the convening of more than one meeting a year in the future. In this connection, the Committee recalled its recommendation to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as regards the need for including a budget line to cover costs of participation of a Party in respect of which a submission is made or which makes a submission. The recommendation was not considered by the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee suggested that as and when submission is made and in the event funds are available out of the budget allocated for two meetings of the Committee, the Executive Secretary may be allowed to use, in a flexible manner, the balance of such budget for the purpose of covering the costs of participation of the concerned Party/Parties in order to enable them to be represented at the Committee meeting considering the submission. This and other suggestions, referred to earlier, would form, as appropriate, part of the recommendations that the Committee would develop at its next meeting for submission to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

#### ITEM 5. OTHER MATTERS

33. At the 3rd session of the meeting, the Committee addressed item 5 of its agenda, on other matters. The Chairperson invited members of the Committee to raise any other item that may be relevant to the work of the Committee than those specifically addressed under the preceding agenda items of the meeting.

34. Accordingly, the following items were raised and addressed by the Committee:

***(a) Evaluation of effectiveness of the compliance procedures and mechanism by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its fourth meeting***

35. The Chairperson drew the attention of members to decisions BS-III/1 and BS-III/15, where the Conference of the Parties serving as the meeting of the Parties to the Protocol decided to undertake the review of the effectiveness of the procedures and mechanisms on compliance at its fourth meeting within the framework of the overall evaluation of the effectiveness of the Protocol, as provided under Article 35 of the Protocol. He noted that the Compliance Committee had been in existence only for a limited time and therefore its experience had been limited. Nevertheless, the Committee had been effective as seen from the positive response to its recommendations received at the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Almost all of the recommendations the Committee forwarded, for the first time, to the Conference of the Parties serving as the meeting of the Parties to the Protocol had been accepted and incorporated into various decisions.

36. He suggested that the Committee might contribute to the process of evaluation by bringing to the attention of the Conference of the Parties serving as the meeting of the Parties to the Protocol some of the perceived limitations of the procedures and rules adopted in relation to compliance. The Committee recalled its second report to the Conference of the Parties serving as the meeting of the Parties to the

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

37. The Committee also considered paragraph 2 of rule 12 in the rules of procedure which specifies how replacement of a member of the Committee who has resigned or is unable to complete his or her term of office should take place. The Committee noted that although a number of former Committee members had resigned inter-sessionally, no replacement could have taken place before the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee noted that any reduction in the number of members from time to time would not only affect the effectiveness of the Committee, but might also result, one day, in lack of quorum thereby potentially paralyzing the Committee until the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

38. Members explored several possible ways and means that they thought would make the system work in this regard. These include urging regional group representatives in the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol to act promptly upon receiving information from the Secretariat regarding the resignation or the non-availability of a member, by initiating consultation among members of the regional group and getting nomination for replacement. The Committee also invited each regional group to consider, at the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, mechanisms that would best suit their respective region and enable them to replace, expeditiously, members of the Compliance Committee as the need arose inter-sessionally.

39. The Committee also tried to understand the reasons why members do resign from the Committee once elected. In that regard, it noted that as each member is serving in his/her personal capacity in accordance with the procedures and mechanisms of compliance (decision BS-I/7, annex), no member should necessarily resign as a result of leaving government office or because of some change in his/her occupation.

**(b) Rule 14 on open or closed session**

40. It was recalled that the Committee decided, after prior consultation among members, to have its present meeting in an open session. The reason for the Committee to decide to have an open session was to gain experience on how potential observers would respond to such invitations.

41. The Committee noted the positive experience it observed by having its third meeting in an open session. It decided to conduct its next (fourth) meeting too in an open session in order to gain further experience.

42. The Committee agreed to review, based on the experience of the next meeting, the application of rule 14 of the rules of procedure with a view to consider and decide, as appropriate, on whether to conduct its future meetings in open session, as a general rule, with closed session on exceptional basis in response to specific circumstances.

**(c) Rule 18 on voting**

43. The Committee reiterated its recommendation in favour of removing the square brackets around rule 18 on voting.

*(d) Date and venue of the fourth meeting of the Committee*

44. The Chairperson reminded members of the dates of the next meeting as specified in the calendar of meetings issued by the Secretariat according to which the fourth meeting of the Compliance Committee was scheduled for 28-30 January 2008 in Montreal. However, the Chairperson recalled paragraph 3 of decision BS-III/15 of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, where the Committee was requested to prepare a report on general issues of compliance and to make the report available six months prior to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, which would take place from 12 to 16 May 2008. He suggested that in order to fulfil the request the next meeting of the Committee needed to be convened in the last quarter of the current year. Accordingly, the Committee agreed to have its next meeting in the first week of December 2007 in Montreal unless future circumstances demanded otherwise.

**ITEM 6. ADOPTION OF THE REPORT**

45. At the 4th session of the meeting, the Chairperson introduced the draft report of the third meeting of the Compliance Committee, which was adopted as orally amended.

**ITEM 7. CLOSURE OF THE MEETING**

46. The Chairperson expressed, on behalf of all members of the Committee, his gratitude to the Government of Malaysia for hosting the meeting. He thanked the University of Malaya for providing the venue and the support facilities. He also thanked the Ministry of Environment and Natural Resources, in collaboration with the Centre of Excellence for Biodiversity Law, Law Faculty, University of Malaya, for organizing the meeting and for their cordial hospitality. The Chairperson also expressed his gratitude to members of the Committee for their valuable contributions, and the Secretariat for the preparation of documents and facilitation of the meeting. He declared the meeting closed at 12.30 p.m. on Wednesday, 7 March 2007.

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