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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fifth meeting

Kuala Lumpur, 19-21 November 2008

REVIEW OF THE OUTCOMES OF THE FOURTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY AS THEY RELATE TO THE WORK OF THE COMPLIANCE COMMITTEE

(From Veit Koester, Chairman of the Committee, with the assistance of the Secretariat, July 2008)

I. INTRODUCTION

1. The fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP-4) met in Bonn, Germany from 12 to 16 May 2008. The meeting produced a number of outcomes that touch on the work of the Compliance Committee. The review in this document is intended to trace the recommendations made by the Compliance Committee to COP-MOP-4 and how they were or were not incorporated into the decisions taken by the Parties, to highlight the relevant outcomes of COP-MOP-4 and to indicate how the Committee may wish to carry out its tasks in the next biennium.

2. Section II examines the decisions that were taken at COP-MOP-4. This is a sort of stock-taking of the recommendations that the Committee had proposed in its report to COP-MOP and the actual decisions taken by COP-MOP-4. For ease of reference, a table is provided, as an annex to this assessment, showing how and to what extent the recommendations of the Compliance Committee have been integrated in the decisions of the COP-MOP. Section III proposes a work plan for the Committee for the next biennium; and section IV presents the list of members of the Compliance Committee including those that were elected or re-elected at COP-MOP-4. Section V contains few concluding remarks.

II. CONSIDERATION OF THE RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE BY COP-MOP AND ITS DECISIONS

3. At its fourth meeting in November 2007, the Compliance Committee agreed that a consolidated report of the two meetings that it held during the intersessional period between COP-MOP-3 and COP-MOP-4 would be prepared for the consideration of the Parties at COP-MOP-4. Accordingly, document UNEP/CBD/BS/COP-MOP/4/2 was prepared. The document includes an annex with the recommendations of the Compliance Committee for submission to COP-MOP-4.

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4. Following the practice that was adopted during COP-MOP-3, the different recommendations were considered under the COP-MOP-4 agenda items to which they most closely related. Accordingly, the recommendations were divided up as follows:

- Recommendation 1 was considered under the agenda item on monitoring and reporting (item 14);
- Recommendation 2 was considered under the item on the financial mechanism (item 7);
- Recommendations 3 and 7 stayed under the item on compliance (item 4);
- Recommendation 4 was considered under the item on Article 18 (handling, transport, packaging and identification) (item 10);
- Recommendation 5 was considered under the item on assessment and review (item 15); and
- Recommendation 6 was considered under the item on budget (item 9).

5. In addition, in decision BS-III/1, the Parties had requested the Compliance Committee to compile further information on repeated cases of non-compliance for consideration at COP-MOP-4. In the same decision, the Parties also decided to include the issues of measures concerning repeated cases of non-compliance as well as rule 18 of the Committee's rules of procedure in the review of the effectiveness of the procedures and mechanisms on compliance as provided for in section VII of decision BS-I/7. This review was to be considered at COP-MOP-4 under the agenda item on assessment and review. It was agreed during the opening plenary of COP-MOP-4 that both repeated cases of non-compliance and rule 18 would instead be considered under the agenda item on compliance. The review of the effectiveness of the procedures and mechanisms on compliance remained under the agenda item on assessment and review. As a result, there are a number of decisions from COP-MOP-4 that concern the work of the Compliance Committee. The discussion below follows the order of the decisions.

A. *BS-IV/1. Report of the Compliance Committee*

6. Paragraph 1 of this decision directly incorporates the Committee's recommendation 3 on Parties' obligation to adopt measures addressing illegal transboundary movements and to report the occurrence of such movements to the Biosafety Clearing-House.

7. Paragraph 2 is derived from the Committee's seventh recommendation concerning the replacement of members of the Committee who may resign during an intersessional period or who are unable to complete their term of office. Paragraph 2(a) of the decision adds to the Committee's recommendation by calling upon each regional group to consider and apply mechanisms to ensure that nominees to the Committee are willing and able to attend and fully participate in the meetings of the Committee. Paragraph 2(b) of the decision has the same wording as recommendation 7. Membership in the Committee for the upcoming biennium is discussed in more detail in section IV, below.

8. As mentioned above, the Compliance Committee had, over the course of its third and fourth meetings, compiled further information on repeated cases of non-compliance. The document on this matter that was submitted to COP-MOP-4 (document UNEP/CBD/BS/COP-MOP/4/2/Add.1) contained, amongst other things, a number of observations as well as an indicative list of measures that may be taken in cases of repeated non-compliance. It did not contain any recommendations or a draft decision. The Committee also noted that no case of non-compliance had been brought to its attention to date and that it might, therefore, be helpful to consider the question of repeated cases of non-compliance in that context. In paragraph 3 of decision BS-IV/1, the Parties decided to defer consideration or, as appropriate, adoption of measures on repeated cases of non-compliance until such time as experience may justify the need for developing and adopting such measures.

9. In paragraph 27 of its report to COP-MOP-4, the Committee reiterated its recommendation in favour of removing the square brackets around rule 18 (voting) of the rules of procedure of the Committee (decision BS-II/1). The Committee did not include a specific recommendation to this effect in the set of recommendations contained in the annex to its report to COP-MOP-4. In paragraph 4 of

decision BS-IV/1, the COP-MOP urges Parties to renew efforts to facilitate agreement on rule 18 of the rules of procedure for the meetings of the Compliance Committee.

10. Paragraph 5 of decision BS-IV/1 is apparently the response of the COP-MOP to the Committee's recommendation 6 concerning the use of the balance of any funds in the budget allocated for two meetings of the Committee in any given year for covering the costs of participation of an eligible Party or Parties concerned in the consideration of any submission regarding their compliance before the Committee. Views were divided on this matter. COP-MOP decided to cut the budget of the Committee and "encourage the Committee to meet less than twice a year if it deems it sufficient and within the budget". The budget adopted by COP-MOP-4 in decision BS-IV/7 provides only for one meeting per year instead of two meetings as was the case so far. See also paragraph 13 below.

B. BS-IV/5. Financial mechanism and resources

11. The Committee's second recommendation was considered under the item on the financial mechanism but the language of the recommendation was not incorporated into the decision. Furthermore, the proposed dialogue session with the Global Environment Facility that was the subject of the recommendation did not take place. Language on funding for the preparation of national reports was, however, included in the decision on monitoring and reporting, discussed below.

C. BS-IV/7. Programme budget for the costs of the secretariat services for and the biosafety work programme of the Cartagena Protocol on Biosafety for the biennium 2009-2010

12. COP-MOP-4 approved a core programme budget as set out in table 1 contained in decision BS-IV/7. The budget provides only for one meeting per year of the Compliance Committee during the 2009-2010 biennium. This decision was certainly caused by budgetary constraints in general, inter alia due to the decreased value of the dollar. Nevertheless, one could also say that it was prompted by the Compliance Committee's suggestion to allow the Executive Secretary to re-allocate any surplus from the budget of the Committee at any given year.

D. BS-IV/9. Handling, transport, packaging and identification of living modified organisms: paragraph 2(a) of Article 18

13. In the sixth preambular paragraph to decision BS-IV/9, the Parties note, amongst other things, the Compliance Committee's recommendation regarding the need for exchanging experience and building capacities in the development and use of techniques for sampling and detection of living modified organisms.

14. Both paragraphs 2 and 3 of decision BS-IV/9 are derived from the Committee's fourth recommendation to COP-MOP-4. The recommendation concerned the implementation of paragraph 10 of decision BS-III/10 concerning the sampling and detection of living modified organisms for direct use as food, feed, or for processing. Paragraph 2 of the COP-MOP-4 decision captures the element of exchanging experiences with sampling and detection techniques as was contained in the recommendation. Paragraph 3 captures the element of capacity-building for sampling and detection. Neither paragraph, however, makes the link to facilitating the prevention, detection and reporting of illegal transboundary movements as was the context in the Committee's recommendation.

E. BS-IV/14. Monitoring and reporting under the Protocol

15. The final preambular paragraph of this decision states that, in taking the decision, the COP-MOP is taking into account the recommendation of the Compliance Committee. The first three paragraphs of

the decision are derived from the first recommendation of the Compliance Committee. Paragraph 1 of the decision incorporates the language from the first phrase in the first recommendation by reminding each Party of its obligation to submit a national report in accordance with Article 33 of the Protocol. Paragraph 2 contains very similar language to that included in the last phrase of the recommendation by urging Parties to respect relevant decisions on reporting, especially with regards to timeframes for the submission of national reports. The effect of the two paragraphs is to omit the language from the Committee's recommendation wherein it emphasized that failure to submit a national report constitutes non-compliance.

16. The first part of the third paragraph of the decision repeats the language contained in paragraph 4 of decision BS-III/4 concerning the continuation of the obligation to submit a national report even once the deadline has passed. The second part of the third paragraph contains a request to Parties that have not yet done so to submit their first regular national reports without further delay.

17. Paragraph 6 of the decision may also be derived from the Committee's second recommendation. In the paragraph, the COP-MOP urges the GEF to make financial resources available with a view to enabling eligible Parties to prepare their national report. This was forwarded to COP-9 where the Parties to the Convention, in adopting their guidance to the financial mechanism, incorporated it into paragraph 5(b) of part C of decision IX/31.

18. Finally, it should be noted that paragraph 5 of the decision requests the Executive Secretary to propose improvements in the reporting format based on, *inter alia*, the recommendations of the Compliance Committee. The Committee has already noted some suggestions for the improvement of the reporting format in the reports of its previous meetings.

F. BS-IV/15. Assessment and review

19. The Committee's fifth recommendation was considered under the item on assessment and review. The text that was finally agreed was, however, decided to be reflected under decision BS-IV/1 on the report of the Compliance Committee. Paragraph 6 of decision BS-IV/1 does not fully capture the real concern of the Compliance Committee, namely why the compliance procedures were not being triggered by Parties facing difficulties fulfilling their obligations. The decision invites Parties to make submissions of views on "how the supportive role of the Compliance Committee could be improved".

20. It might also be noted that paragraph 1 of this decision requests the Executive Secretary to develop a sound methodological approach to contribute to an effective second assessment and review of the Protocol, its annexes procedures and mechanisms on the basis of information contained in, amongst other things, the report of the Compliance Committee.

III. PROPOSED WORK PLAN FOR THE COMPLIANCE COMMITTEE BETWEEN NOW AND COP-MOP-5

21. While the outcomes from COP-MOP-4 do not contain any requests addressed specifically to the Compliance Committee, the decisions do contain certain activities in which the Compliance Committee could play a role in the next biennium. These are in addition to the usual functions and procedures of the Compliance Committee that are set out in the annex to decision BS-I/7 and that the Committee may be called upon to exercise at any of its meetings.

22. These activities are as follows:

- (i) The Parties are invited to submit to the Executive Secretary no later than six months prior to COP-MOP-5 their views on how the supportive role of the Compliance

Committee could be improved (paragraph 6 of decision BS-IV/1.) The Committee may wish to provide its views on this matter as well.

- (ii) The Executive Secretary is requested to repeat the analysis of the first national reports (paragraph 4 of decision BS-IV/14). The Compliance Committee may similarly wish to repeat its review of general issues of compliance based on this revised analysis. This activity would also be in accordance with paragraph 1(d) of section III of the Procedures and Mechanisms on Compliance as contained in decision BS-I/7.
- (iii) The Executive Secretary is requested to propose improvements to the reporting format for national reports based on, amongst other things, the recommendations of the Compliance Committee. The Committee may therefore wish to make further recommendations in this regard after its possible consideration of general issues of compliance based on the analysis of first national reports that may be received in accordance with the request of COP-MOP 4 referred to in (ii) above.

23. In addition to these activities, the Compliance Committee at its fourth meeting requested the Secretariat to compile experience on the reporting rates under other multilateral environmental agreements and to make that information available. The Committee may wish to review the information that will be compiled by the Secretariat.

24. At its fourth meeting, the Compliance Committee tentatively agreed to hold its fifth meeting from 24 to 26 September 2008.* This meeting would be the last one with the current chairmanship and composition of membership of the Committee.

25. The proposed work plan for the Compliance Committee in the biennium before COP-MOP-5 is thus as follows:

- (a) Fifth meeting (last quarter of 2008):
 - (i) Assessment of the outcomes of COP-MOP 4 relating to compliance and possible implications on the functions of the Committee;
 - (ii) Review of general issues of non-compliance, if any, based on the revised/further analysis of first national reports; and
 - (iii) any other issues that may arise;
- (b) Sixth meeting (last quarter of 2009):
 - (i) Consideration of the information compiled by the Secretariat on experience regarding the reporting rates under other multilateral environmental agreements; and
 - (ii) any other issues that may be pending or may arise;
- (c) Seventh meeting (second quarter of 2010):
 - (i) Consideration of responses of Parties on how the supportive role of the Committee could be improved;
 - (ii) any other issues that may be pending or may arise; and
 - (iii) Preparation and adoption of the report and the recommendations of the Committee for submission to COP-MOP-5.

IV. MEMBERSHIP

26. One further outcome from COP-MOP-4 that is of interest to the Compliance Committee is the election of new members or the re-election of current members to replace those whose terms will expire

* The Secretariat suggests 19 to 21 November 2008.

at the end of 2008. It is recalled that “members of the Committee shall have recognized competence in the field of biosafety or other relevant fields, including technical expertise, and serve objectively and in a personal capacity” (paragraph 3, section II, annex, decision BS-I/7).

27. In response to the recommendation of the Committee (paragraph 7, annex, UNEP/CBD/BS/COP-MOP/4/2), regional groups also nominated individuals who could serve as replacements in case one or more of the members from that region resigned or are unable to complete their term during the inter-sessional period. Accordingly, the fourth meeting of COP-MOP has elected the following:

(a) Africa

1. Ms. Mary Fosi Mbantenkhu (Cameroon) – (re-elected) *Replacement, if needed, Ms. Lonpo-Ouedrogo Zourita (Burkina-Faso).*
2. Mr. Tewolde Berhan Gebre Egziabher (Ethiopia) – (re-elected) *Replacement, if needed, Mr. Abisai Mafa (Zimbabwe)*

(b) Asia & Pacific

1. Mr. Sun Guoshun (China),.
2. Mr. Rai S. Rana (India).

Replacement, if needed, for either of the above: Mr. Banpot Napompeth (Thailand).

(c) GRULAC

1. Ambassador Raymundo Magno (Brazil) – *Replacement if needed, Mr. Pedro A.F.C. Andrade (Brazil).*
2. Mr. Lionel Michael (Antigua & Barbuda) – Re-elected for a half term (2009-2010). To be replaced/succeeded by Mr. Romy Montiel (Cuba) for 2011-2012.

(d) CEE

1. Ms. Angela Lozan (Moldova) – *Replacement, if needed, Ms. Dubravka Stepic (Croatia).*
2. Ms. Liina Eek-Piirsoo (Estonia) – (re-elected) *Replacement, if needed, Ms. Galya Tonkovska (Bulgaria).*

Also, replacement, if needed, for the third member of the Committee from the region, Mr. Sergyi Gubar: Ms. Natalya Minchenko (Belarus)

(e) WEOG

1. Mr. Jürg Bally (Switzerland) – (re-elected), *Replacement, if needed, is left to the discretion of the member,*
2. Mr. Ruben Dekker (Netherlands) –.

28. Accordingly, membership in the Committee for the coming biennium (2009-2010) will be as follows:

1. Mr. Bather Kone (Mali) (until 31 December 2010),
2. Mrs. Mary Fosi Mbantenkhu (Cameroon) (31 December 2012),
3. Dr. Tewolde Berhan Gebre Egziabher (Ethiopia) (31 December 2012),
4. Mr. Paul Damien Roughan (Solomon Islands) (31 December 2010),
5. Mr. Sun Guoshun (China) (31 December 2012),

6. Mr. Rai S. Rana (India) (31 December 2012),
7. Dr. Sergiy I. Gubar (Ukraine) (31 December 2010),
8. Ms. Liina Eek-Piirsoo (Estonia), (31 December 2012),
9. Ms. Angela Lozan (Moldova) (31 December 2012),
10. Dr. Victor Villabos Arámbula (Mexico) (31 December 2010),
11. Mr. Lionel Michael (Antigua & Barbuda) (31 December 2010),
12. Amb. Raymundo Magno (Brazil) (31 December 2012),
13. Ms. Jane Bulmer (United Kingdom of Great Britain and Northern Ireland) (31 December 2010),
14. Mr. Ruben Dekker (Netherlands) (31 December 2012), and
15. Mr. Jürg Bally (Switzerland) (31 December 2012).

V. CONCLUSION

29. Overall, the fourth meeting of the COP-MOP considered the recommendations of the Committee favourably. As seen from the table in the annex below, most of the recommendations were accepted and included in the decisions under the items to which they are relevant.

30. The COP-MOP has decided to encourage the Committee to meet only once a year, and the budget adopted covers only one meeting a year. This is a significant shift from decision BS-I/7 which requires the Committee to meet twice a year unless the Committee decides otherwise.

31. The Committee had included in its report submitted to COP-MOP (paragraph 26, UNEP/CBD/BS/COP-MOP/4/2) of its decision to conduct, as a general practice, its upcoming meetings in open sessions unless specific circumstances require otherwise. COP-MOP seemed to have implicitly accepted the decision. Similarly, the Committee's measured view regarding the absence of a justifiable need, at present, to dwell upon the issue of "conflict of interest" (paragraph 25, UNEP/CBD/BS/COP-MOP/4/2) seemed to have also been shared by the COP-MOP.

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Annex

**INTEGRATION OF THE RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE
INTO THE DECISIONS OF COP-MOP 4**

Recommendation of the Committee	Decision of COP-MOP 4	Remarks
<p>1. <i>Remind each Party of its obligation to submit national reports in accordance with Article 33 of the Protocol, emphasizing that failure to do so constitutes non-compliance, and urge Parties to respect relevant decisions on reporting including provisions on timeframes for the submission of national reports;</i></p>	<p><i>BS-IV/14. Monitoring and reporting under the Protocol</i></p> <p><i>Taking into account the recommendation of the Compliance Committee,</i></p> <p>1. <i>Reminds each Party of its obligation to submit national reports in accordance with Article 33 of the Protocol;</i></p> <p>2. <i>Urges Parties to observe relevant decisions on reporting, especially with regards to timeframes for the submission of national reports</i></p> <p>3. <i>Reminds Parties that not submitting a national report within the deadline does not absolve them from fulfilling their obligation for that reporting period and requests Parties that have not yet done so to submit, without further delay, to the Executive Secretary, their first regular national reports, covering the period between the entry into force of the Protocol for each Party and the reporting date;</i></p>	<p>You may wish to note that the concept of non-compliance is excluded in the decision of COP-MOP.</p>
<p>2. <i>Request the Executive Secretary to include biosafety funding within the scope of the dialogue session with the Global Environment Facility as proposed by the second meeting of the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention in paragraph 4 of its recommendation 2/3, with a view to facilitating the availability of funding for eligible Parties to undertake activities related to the implementation of the Protocol including the preparation of national reports, taking into account the simple procedure used to make funding available for the purpose of reporting under the Convention on Biological Diversity;</i></p>	<p><i>BS-IV/14. Monitoring and reporting under the Protocol</i></p> <p>6. <i>Urges the Global Environment Facility to make financial resources available with a view to enable eligible Parties to prepare their national report.</i></p>	<p>The dialogue session referred to in the recommendation of the Committee did not take place.</p>

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Recommendation of the Committee	Decision of COP-MOP 4	Remarks
<p>3. <i>Remind</i> each Party of its obligation to adopt national measures addressing illegal transboundary movements of living modified organisms and to report the occurrence of such movements to the Biosafety Clearing-House;</p>	<p>BS-IV/1. Report of the Compliance Committee</p> <p>1. <i>Reminds</i> each Party of its obligation to adopt appropriate domestic measures addressing illegal transboundary movements of living modified organisms and to report the occurrence of such movements to the Biosafety Clearing-House;</p>	
<p>4. <i>Encourage</i> Parties and other Governments to implement paragraph 10 of decision BS-III/10 relating to exchanging experiences and building capacities in the use and development of techniques for sampling and detecting living modified organisms with a view to, <i>inter alia</i>, facilitating the prevention, detection and reporting of illegal transboundary movements of living modified organisms, especially in developing country Parties, in particular the least developed and small island developing States among them, as well as in Parties with economies in transition;</p>	<p>BS-IV/9. Handling, transport, packaging and identification of living modified organisms: paragraph 2(a) of Article 18</p> <p>3. <i>Requests</i> Parties, and <i>encourages</i> other Governments, relevant international organizations as well as the Global Environment Facility, to cooperate with and support developing country Parties, in particular the least developed and small island developing States among them, and Parties with economies in transition, in their efforts to build their capacities in the area of sampling and detection of living modified organisms, including the setting up of laboratory facilities and training of local regulatory and scientific personnel;</p>	
<p>5. <i>Request</i> Parties to submit views and information on the lack of submissions relating to compliance by Parties with respect to themselves under section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex) and to <i>further request</i> the Committee to make observations and suggestions, on the basis of these views and information, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol, taking also into account experiences of the compliance mechanisms under other multilateral environmental agreements;</p>	<p>BS-IV/1. Report of the Compliance Committee</p> <p>6. <i>Invites</i> Parties to submit to the Executive Secretary no later than six months prior to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol their views on how the supportive role of the Compliance Committee could be improved, and <i>requests</i> the Executive Secretary to compile the views and make them available to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.</p>	

Recommendation of the Committee	Decision of COP-MOP 4	Remarks
<p>6. Authorize the Executive Secretary to use the balance of any funds that may be available in the budget allocated for two meetings of the Compliance Committee in any given year for covering the costs of participation of an eligible Party or Parties concerned in the consideration of any submission regarding their compliance before the Committee, as provided for in paragraph 4 of section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex);</p>	<p>BS-IV/1. Report of the Compliance Committee</p> <p>5. Encourages the Compliance Committee to meet less than twice a year if it deems it sufficient and within the budget adopted by the Conference of the Parties serving as the meeting of the Parties to the Protocol, notwithstanding the periodicity of meetings provided for in section II of the annex to decision BS-I/7;</p>	
<p>7. Call upon the members of each regional group to consider and apply mechanisms that would best suit and enable them to replace members of the Compliance Committee who resign during an inter-sessional period or who are unable to complete their term of office in accordance with rule 10 of the rules of procedure of the Compliance Committee and to do so in an expeditious manner.</p>	<p>BS-IV/1. Report of the Compliance Committee</p> <p>2. Calls upon each regional group to consider and apply mechanisms:</p> <p>(a) To ensure that nominees to the Compliance Committee are willing and able to attend and fully participate in the meetings of the Committee; and</p> <p>(b) That would best suit and enable them to replace members of the Compliance Committee who resign during an intersessional period or who are unable to complete their term of office in accordance with rule 10 of the rules of procedure of the Compliance Committee and to do so in an expeditious manner;</p>	Regions have already responded to this call by nominating replacements.
