



## Convention on Biological Diversity

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### COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fifth meeting

Kuala Lumpur, 19-21 November 2008

### REPORT OF THE COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY ON THE WORK OF ITS FIFTH 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 pursuant to Article 34 of the Protocol.
2. The Committee held its fourth meeting from 21 to 23 November 2007, in Montreal. The Committee forwarded to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) a consolidated report of its two meetings held since the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol which included an annex containing the recommendations of the Committee for the consideration of the Parties.
3. At their fourth meeting, the Parties to the Protocol considered the report of the Committee (UNEP/CBD/BS/COP-MOP/4/2). It took note of the information compiled by the Committee on the experience of other multilateral environmental agreements concerning measures against cases of repeated non-compliance. The Parties to the Protocol adopted decision BS-IV/1 on compliance at their fourth meeting. A number of recommendations from the Committee were also integrated into other decisions. Furthermore, the Parties to the Protocol elected five new members to the Committee to replace outgoing members and re-elected five current members to serve another term.
4. At its fourth meeting, the Compliance Committee had agreed to hold its next meeting in the last quarter of 2008. Accordingly, the Secretariat made the necessary arrangements. The fifth meeting of the Compliance Committee under the Cartagena Protocol on Biosafety took place in Kuala Lumpur, from 19 to 21 November 2008, following the generous offer made by the Government of Malaysia.

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## **B. Attendance**

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

### ***Africa:***

Mr. Bather Kone  
Ms. Mary Fosi Mbantekhu  
Mr. Tewolde Berhan Gebre Egziabher

### ***Asia and the Pacific:***

Mr. Nematollah Khansari  
Mr. Gurdial Singh Nijar  
Mr. Paul Damien Roughan

### ***Central and Eastern Europe***

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

### ***Latin America and Caribbean***

Mr. Lionel Michael  
Mr. Victor Villalobos Arámbula

### ***Western Europe and Others Group***

Ms. Jane Bulmer  
Mr. Veit Koester (Chair)

6. Following agreement at its fourth meeting, the Committee conducted its fifth meeting in an open session. The decision to have an open session was announced on the Secretariat's web page four weeks prior to the date of the meeting (UNEP/CBD/BS/CC/5/INF/1). The Secretariat had received requests from two non-governmental organizations to be represented at the meeting as observers, but only one of them was actually in attendance, i.e. a representative from the Third World Network, an international non-governmental organization based in Malaysia.

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

7. Mr. Veit Koester, Chair of the Committee, opened the meeting at 9.30 a.m. on 19 November 2008. He welcomed participants and thanked the Government of Malaysia for hosting the meeting, the University of Malaya for the organization, and the Secretariat for the documentation and for facilitating the organization of the meeting. He noted that the meeting was attended by all members of the Committee, except Mr. Jürg Bally who was not able to attend due to other unavoidable commitments. The ex-member from the Latin American and Caribbean region who resigned in August 2006 has not been replaced. After Mr. Koester's remarks, Mr. Gurdial Singh Nijar, the Committee member from Malaysia, also welcomed participants and informed them of the logistical arrangements.

## **ITEM 2. ORGANIZATIONAL MATTERS**

### ***2.1. Adoption of the agenda***

8. The Committee adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/BS/CC/5/1) prepared by the Secretariat under the guidance of the Chair of the Committee:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1 Adoption of the agenda;
  - 2.2 Organization of work.
3. 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 relating to compliance.
4. Review of general issues of compliance based on the revised analysis of the first national reports.
5. Other matters.

6. Adoption of the report.
7. Closure of the meeting.

## 2.2. *Organization of work*

9. 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/5/1/Add.1).

### **ITEM 3. 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 RELATING TO COMPLIANCE**

10. Introducing the item, the representative of the Secretariat referred to the 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 Compliance Committee (UNEP/CBD/BS/CC/5/INF/2). The document had been prepared by the Chair in July 2008, with the assistance of the Secretariat and had been circulated to members accompanied with a letter dated 17 July 2008, for their comments. The representative of the Secretariat recalled the contents of the document, which included a review of how the recommendations from the Committee had been considered under the different agenda items of the fourth meeting of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety; a proposed work plan for the Committee for its fifth, sixth and seventh meetings; and a review of the election of members of the Committee that took place during the fourth meeting of the Parties to the Protocol; and information on the new composition of the Committee as of the beginning of next year.

11. The Committee started its discussions on the basis of the table annexed to the document on the 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. The table showed the extent to which the recommendations of the Committee had been taken into account by the Parties to the Protocol in taking its decisions under the different items of its agenda. Overall, members felt that their recommendations were received favourably and appropriately integrated into the various decisions of the Parties.

12. With regards to the decision taken in relation to the reporting obligation of each Party (paragraphs 1, 2 and 3 of decision BS-IV/14), the Committee reiterated its strong belief that failure to fulfil such an obligation still constitutes a state of non-compliance with the Protocol. The Committee believed that reaching such a general conclusion was not only consistent with the functions of the Committee specified in section III, paragraph (d) to the annex to decision BS-I/7, but was also within the scope of decision BS-III/14, on monitoring and reporting.

13. The Committee suggested that the Chairperson of the Committee should always be given the opportunity to be present during all sessions of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety that consider recommendations from the Committee so as to provide information, as necessary, to Parties regarding the nature and implications of any compliance-related recommendation under consideration.

14. The Committee also agreed to adopt the proposed work plan for the sixth and seventh meetings of the Committee without implying any restriction on members to make adjustments in the future based on new developments. According to the work plan, the Committee is expected to address the following items:

- (a) At its 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;
  - (ii) Any other issues that may be pending or may arise;

- (b) At its 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 the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety at its fifth meeting.

15. Also, in accordance with the agreement specified in paragraph 22 below, there would be a standing agenda item on review of general issues of compliance.

16. Finally, members took note of the new composition of the Committee for the coming biennium 2009-2010) following the elections held during the fourth meeting of the Parties to the Protocol.

#### **ITEM 4. REVIEW OF GENERAL ISSUES OF COMPLIANCE BASED ON THE REVISED ANALYSIS OF THE FIRST NATIONAL REPORTS**

17. The representative of the Secretariat introduced the note by the Executive Secretary on the revised analysis of information contained in the first national reports (UNEP/CBD/BS/CC/5/2). The revised analysis had been prepared as a result of a request from the fourth meeting of the Parties to the Protocol, in paragraph 4 of decision BS-IV/14. The revised analysis was now based on reports received from 78 Parties and other Governments by 20 August 2008, in a format and/or language that allowed their analysis. The general issues of compliance considered by the Committee at its fourth meeting were updated and expanded based on the revised analysis of the first national reports (UNEP/CBD/BS/CC/5/3). The issues considered were the reporting rate; the introduction of legal, administrative and other measures necessary for the implementation of the Protocol; risk assessments under the advance informed agreement procedure; illegal transboundary movements of living modified organisms; and the obligation to promote public awareness and participation.

18. The Committee enquired why the Secretariat did not include in the analysis those national reports submitted in Arabic and Russian, which are both United Nations languages. In this regard, members referred to decision BS-I/9, which requested Parties to submit their national reports in one of the official languages of the United Nations. In this respect, the representative of the Secretariat stated both financial and technical reasons. He mentioned, as constraints, the financial resources that were needed to translate the reports as well as the fact that the current online analyser could not handle the non-Latin scripts. He, however, informed the Committee that the Secretariat would do all it could in the future to include in its analysis information contained in national reports submitted in all the United Nations official languages.

19. As seen from the revised analysis of the first national reports (UNEP/CBD/BS/CC/5/3), the trends in general issues of compliance remained unchanged. The Committee was encouraged to see an improvement in the reporting rate. However, it also noted that the number is still low as compared to the number of Parties to the Protocol and the reporting rate under the Convention on Biological Diversity. The Committee emphasized the importance of information that Parties provide periodically through their national reports to measure progress and identify impediments in the implementation of the Protocol. It was also noted that national reports are useful to share best practices. In that vein, the Committee agreed that the Secretariat should continue urging Parties that had not yet done so to submit their national reports and comply with one of their obligations under the Protocol.

20. The Committee further requested the Secretariat to seek information from Parties that had not yet done so on the reasons that they had not been able to submit their national reports and to make that information available together with the information on the reporting rates under other multilateral environmental agreements, which the Committee requested the Secretariat, at its fourth meeting, to compile and make available to it at a later stage. Under the work plan of the Committee drawn up for the next biennium, the information on the rate of reporting under other multilateral environmental agreements is scheduled to be considered by the Committee at its sixth meeting.

21. The Committee recalled its suggestions from its third and fourth meetings regarding the reporting format and its specific suggestions that the reporting format should include questions: (i) relating to Article 14 (Bilateral, regional and multilateral agreements and arrangements) seeking specific information on the nature and scope of any such arrangements (paragraph 30 of the report of its third meeting (UNEP/CBD/BS/CC/3/3)); and (ii) on the possible origin of living modified organisms deemed to be illegal transboundary movements, the nature of the living modified organism, where known, and require explanations, where available, as to why such movements occurred or were illegal (paragraph 22 of the report of its fourth meeting (UNEP/CBD/BS/CC/4/3)). The representative of the Secretariat stated that those suggestions would be taken into consideration, in accordance with paragraph 5 of decision BS-IV/14 as it prepared the reporting format for the second national reports to be presented to the Parties to the Protocol at their fifth meeting, in 2010.

22. The Committee considered the list of conclusions in paragraph 98 of the revised analysis of information contained in the first national reports (UNEP/CBD/BS/CC/5/2) and agreed to use, as appropriate, some of the elements of these conclusions to measure progress in reviewing general issues of compliance based on information that maybe made available through the second national reports.

23. The Committee agreed to have a standing agenda item on 'review of general issues of compliance' at its subsequent meetings.

#### **ITEM 5. OTHER MATTERS**

24. The Chair recalled the information received from a group of non-governmental organizations alleging non-compliance of a certain Party with its obligations under the Protocol. He further recalled the response given to the organizations informing them that the Committee lacked the mandate to consider their submissions as provided for in the relevant rules of procedure of decision BS-I/7, including paragraph 1 of section III. Members of the Committee as well as the Party concerned were informed about the submissions and the subsequent response. Some members had suggested that the Committee should have a chance to further consider how to handle similar submissions in the future.

25. Accordingly, the Committee discussed, in a closed session, and agreed that in the event of allegations received from non-Party sources concerning the state of compliance of a Party, the Committee may invite the Party concerned to indicate, if the Party so wishes, to the Committee to consider the information received with a view to providing advice and assistance to that Party, as appropriate.

26. The Chair invited members of the Committee to raise any other items that they wished the Committee to consider. In that context, the Committee considered when to hold its sixth meeting. The Chair recalled paragraph 5 of decision BS-IV/1 where the Committee was encouraged to meet less than twice per year and within the budget adopted by the fourth meeting of the Parties to the Protocol. He also recalled the fact that some new members were due to join the Committee from the beginning of 2009. Taking these circumstances into account, it was agreed that the dates of the next meeting of the Committee may be determined by the Secretariat after consultation with members.

#### **ITEM 6. ADOPTION OF THE REPORT**

27. At the 4th session of the meeting, the Chair introduced the draft report of the meeting, which was adopted as orally amended.

#### **ITEM 7. CLOSURE OF THE MEETING**

28. In closing, the Chair expressed his gratitude, once again to the Government of Malaysia and to the University of Malaya for hosting the meeting and for their warm reception. He thanked members of the Committee for their valuable contributions to the meeting. He also paid tribute to those outgoing members for the outstanding contribution they had made to the Protocol process during the past four years. He wished those members who are continuing and those who are joining the Committee a very successful and fruitful work over the coming years. Finally, he thanked the Secretariat for the documentation and for the overall facilitation of the work of the Committee.

29. Members of the Committee also paid tribute to Mr. Veit Koester, who was among those leaving the Committee, for the outstanding guidance he had provided over the last four years as the first chairperson of the Committee.

30. After the exchange of courtesies, the meeting was declared closed at 12.30 p.m. on Friday, 21 November 2008.

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