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COMPLIANCE COMMITTEE UNDER THE  
CARTAGENA PROTOCOL ON BIOSAFETY  
Thirteenth meeting  
Montreal, Canada, 24-26 February 2016

### REVIEW OF THE ASSISTANCE PROVIDED BY THE COMPLIANCE COMMITTEE TO PARTIES IN ITS WORK TO DATE

#### I. INTRODUCTION

1. At its twelfth meeting, the Compliance Committee reviewed the specific outcomes of the seventh meeting of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol (COP-MOP) that were relevant to compliance (see UNEP/CBD/BS/COP-MOP/7/16). It noted that COP-MOP had once again encouraged Parties facing difficulties complying with one or more of their obligations under the Protocol to seek assistance from the Compliance Committee or the Secretariat.<sup>1</sup> In that regard, members discussed what assistance the Committee could provide to Parties and agreed on a brief information note, to be made available online, intended to raise awareness of the role of the Committee and to explain the kinds of assistance that the Committee is able to provide to Parties.<sup>2</sup>

2. In order to support further discussions on this issue, the Committee requested the Secretariat to compile information on any assistance provided by the Committee in its previous work and to make the information available to members.<sup>3</sup>

3. Section II of the present document describes the work of the Committee in its earlier meetings, in particular its consideration of Parties' compliance with reporting obligations and its consideration of general issues of compliance. It also notes the challenges experienced by the Committee when addressing compliance matters within the constraints of its limited mandate prior to the adoption of decision BS-V/1, which strengthened the facilitative and supportive role of the Committee. Section III covers the changes introduced as a result of decision BS-V/1 and reviews the assistance provided by the Committee to Parties pursuant to that decision.

4. In reviewing the outcomes of COP-MOP at its seventh meeting, the Committee also discussed its role in the upcoming third assessment and review of the Protocol and the mid-term evaluation of the Strategic Plan, in

<sup>1</sup> See decision BS-VII/1, para. 4. Parties have also been encouraged to use the procedures and mechanisms on compliance and/or to seek assistance from the Committee in decisions BS-VI/1, paras. 4 and 6, and BS-V/1, para. 3.

<sup>2</sup> The information note was published as an annex to the report of the Compliance Committee on its twelfth meeting. Pursuant to the request of the Committee, the information note was published by the Secretariat on its website at [https://bch.cbd.int/protocol/cpb\\_art34\\_cchelp.shtml](https://bch.cbd.int/protocol/cpb_art34_cchelp.shtml).

<sup>3</sup> The Committee also requested the Secretariat to update information it had previously compiled on the experience of the compliance mechanisms under other multilateral environmental agreements. This update is provided in document UNEP/CBD/BS/CC/13/INF/2.

response to the request by COP-MOP to provide an input into this process (decision BS-VII/3). In that context, the Committee noted that it had been requested to provide an input in the form of an evaluation of the status of implementation of the Protocol in meeting its objectives. The Committee decided to focus its input therefore on the review of matters relevant to compliance that can add value to the third assessment and review and mid-term evaluation of the Strategic Plan, including the experience gained by the Committee in implementing its supportive role as specified in decision BS-V/1.<sup>4</sup> The present document provides a contribution to this process and some of its content has been integrated into the related note by the Executive Secretary (UNEP/CBD/BS/CC/13/3).

## **II. PROCEDURES AND MECHANISMS ON COMPLIANCE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY AND THE ROLE OF THE COMMITTEE IN ASSISTING PARTIES UNTIL COP-MOP 5**

5. In decision BS-I/7, COP-MOP established the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety.<sup>5</sup> The procedures and mechanisms are simple, facilitative, non-adversarial and cooperative in nature.<sup>6</sup> Its objectives are to promote compliance with the Protocol, to address cases of non-compliance by Parties, and to provide advice or assistance, where appropriate.<sup>7</sup>

6. Pursuant to the procedures and mechanisms, the Committee is charged with addressing general issues of compliance and individual cases of non-compliance. Individual cases of non-compliance must be brought before the Committee by a Party with respect to itself, or by a Party in relation to another Party. The Committee may take a number of measures or make recommendations of a facilitative nature to improve support to Parties in improving their compliance. For ease of reference, relevant sections of the procedures and mechanisms contained in the annex to decision BS-I/7 are provided in annex I to the present document.

7. The Committee first reviewed general issues of compliance at its second meeting, taking into account the number of interim national reports received and analysing relevant responses in the reports and the mandatory information submitted by Parties to the Biosafety Clearing-House (BCH). Several issues were identified and specific recommendations were submitted to the third meeting of COP-MOP, with a view to better promoting compliance with the Protocol.<sup>8</sup> The recommendations submitted to COP-MOP included: (a) requesting Parties to fulfil their reporting obligations and make information concerning transboundary movements of living modified organisms (LMOs) available on the BCH; (b) calling upon Parties to give attention to the development of national biosafety frameworks and urge those Parties that have duly completed their frameworks to take measures necessary to make these frameworks effective; and (c) requesting the Global Environment Facility (GEF) to expedite support to eligible Parties for the implementation of their national biosafety frameworks. Many of these issues have remained relevant to subsequent discussions of the Committee and have been repeated in recommendations to COP-MOP at subsequent meetings.

8. The practice of considering the Committee's recommendations under the relevant agenda item at COP-MOP and their integration into the various decisions began at the third meeting of COP-MOP. Almost all recommendations the Committee submitted to COP-MOP 3, were well received by the Parties. COP-MOP also requested that the Committee submit a report on general issues of compliance by Parties with their obligations under the Protocol, in accordance with section III, paragraph 1(d), of the procedures and mechanisms, to COP-

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<sup>4</sup> See the report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its twelfth meeting (UNEP/CBD/BS/CC/12/5), para. 29.

<sup>5</sup> Decision BS-I/7, annex.

<sup>6</sup> Ibid, section I, para. 2.

<sup>7</sup> Ibid, section I, para. 1.

<sup>8</sup> UNEP/CBD/BS/COP-MOP/3/2, para. 40.

MOP at its next meeting.<sup>9</sup> The Committee agreed that the report should primarily draw on the responses from the first national reports, which were due six months later, and the information available in the BCH.

9. At its *third meeting*, therefore, the Committee emphasized the need to encourage Parties to prepare and submit their first national reports in time and, in that regard, requested the Secretariat to issue notifications 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.<sup>10</sup>

10. Despite these efforts, few reports were received by the reporting deadline.<sup>11</sup> The Committee noted the low reporting rate and considered this, in itself, a general issue of compliance. It discussed the possible reasons for the low rate of reporting, particularly when compared to the relatively high level of reporting under the Convention on Biological Diversity. In that respect, it noted the importance of allowing eligible Parties to access resources from GEF for activities related to the implementation of the Biosafety Protocol, including the preparation of national reports, as was the case under the Convention.<sup>12</sup> The Committee recommended that COP-MOP request the Executive Secretary to include biosafety funding within the scope of the dialogue session with GEF as proposed by the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention at its second meeting.<sup>13</sup>

11. The Committee at its *fourth meeting* continued its consideration of the challenges faced by Parties in complying with their reporting obligations. It requested the Secretariat to seek information from Parties that had not yet done so on the reasons why they had not been able to submit their national reports and to make that information available together with information on the reporting rates under other multilateral environmental agreements.<sup>14</sup>

12. The Committee reviewed first national reports received under general issues of compliance at its *fourth meeting*. In addition to the continued existence of significant gaps regarding the obligation to put in place at the national level the necessary legal, administrative and other measures required to implement the Protocol already identified in the previous review of interim reports,<sup>15</sup> the Committee noted the unsatisfactory level of compliance with the obligation to promote public awareness and participation.<sup>16</sup> It also noted the challenges in implementing the requirement to adopt national measures addressing illegal transboundary movements of LMOs, including the need for capacity-building for developing country Parties, in the area of sampling and detection of LMOs in relation to illegal transboundary movements and reporting the occurrence of such movements to the Biosafety Clearing-House.<sup>17</sup> A recommendation on the issue of illegal transboundary movements was forwarded to COP-MOP<sup>18</sup> and subsequently integrated into decision BS-IV/1.

13. The Committee met three times during the intersessional period (fifth, sixth and seventh meetings). It reviewed general issues of compliance on the basis of first national reports once again at its *fifth meeting*, based

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<sup>9</sup> Decision BS-III/15, para. 3.

<sup>10</sup> UNEP/CBD/BS/CC/3/3, para. 28.

<sup>11</sup> As of 16 October 2007, 50 Parties to the Cartagena Protocol on Biosafety (35% of the 141 Parties at that date) had submitted a first national report.

<sup>12</sup> UNEP/CBD/BS/COP-MOP/4/2, paras. 10, 11 and 12.

<sup>13</sup> UNEP/CBD/BS/COP-MOP/4/2, annex, para 2.

<sup>14</sup> UNEP/CBD/BS/CC/5/4, para.20.

<sup>15</sup> UNEP/CBD/BS/CC/4/3, para 19.

<sup>16</sup> UNEP/CBD/BS/COP-MOP/4/2, para. 17.

<sup>17</sup> UNEP/CBD/BS/COP-MOP/4/2, paras. 18 and 19.

<sup>18</sup> UNEP/CBD/BS/COP-MOP/4/2, annex, paras. 3 and 4.

on a revised analysis incorporating additional reports received after the conclusion of the first analysis,<sup>19</sup> and noted that the trends in general issues of compliance remained unchanged.<sup>20</sup>

14. At its *fifth meeting*, the Committee also agreed to have a standing agenda item entitled “review of general issues of compliance” at its subsequent meetings.<sup>21</sup>

15. At its *sixth meeting*, the Committee discussed the status of implementation of the obligation to make information available to the BCH as a general issue of compliance. It noted several gaps and inconsistencies in the information made available by Parties to the BCH.<sup>22</sup> Accordingly, the Committee recommended that COP-MOP request Parties to provide, in a timely manner, to the Biosafety Clearing-House information regarding their domestic decisions approving LMOs and the risk assessment reports associated with such decisions. The Committee also recommended that COP-MOP request Parties to take the necessary measures to ensure the accuracy and completeness of information that they make available to the Biosafety Clearing-House and to cooperate fully with the Secretariat in its efforts to maintain complete information in the Biosafety Clearing-House.<sup>23</sup>

16. Discussions on national reporting obligations also continued over the course of the Compliance Committee meetings leading to COP-MOP 5, based on the rate of reports received in the second reporting cycle and the Committee’s consideration of reporting rates under other multilateral agreements and the Convention. At its *sixth* and *seventh meetings*, the Committee made several specific suggestions on ways to encourage and assist Parties to comply with reporting obligations.<sup>24</sup>

17. The Committee adopted recommendations to COP-MOP with regard to supporting Parties in their national reporting obligations. The recommendations submitted to COP-MOP included: (a) encouraging Parties that encounter difficulty in the timely completion of their reporting obligations to seek assistance from the Secretariat or the Compliance Committee, and making use, as appropriate, of national experts and experts from the roster of experts; (b) requesting the Executive Secretary to send confidential reminders to the national focal points of individual Parties that had not submitted their national report of their obligation to do so; (c) urging Parties to give priority to national reporting when seeking funding from GEF; and (d) requesting the Executive Secretary to organize regional or subregional information meetings or workshops on national reporting to encourage and assist Parties in the preparation of their national reports and exchange of best practices and experience on the fulfilment of the monitoring and reporting obligations under the Protocol.<sup>25</sup>

18. During the first seven meetings of the Compliance Committee, the work of the Committee with regard to supporting Parties with their obligations under the Protocol was limited to the consideration of the rate of submission of national reports and the review of general issues of compliance with Parties’ obligations under the Protocol on the basis of information contained in national reports and information submitted to the BCH. Apart from general reminders sent out by the Secretariat on timely reporting and the need to submit information to the BCH, issues were only brought to the attention of Parties through recommendations of the Committee submitted to COP-MOP, on the basis of which decisions were accordingly adopted. The Compliance Committee

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<sup>19</sup> The revised analysis (UNEP/CBD/BS/CC/5/2) of first national reports was considered by the Committee at its fifth meeting. The revision 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 and was now based on reports received from 78 Parties.

<sup>20</sup> UNEP/CBD/BS/CC/5/4, para. 19.

<sup>21</sup> UNEP/CBD/BS/CC/5/4 para. 23.

<sup>22</sup> UNEP/CBD/BS/CC/6/4, para. 18.

<sup>23</sup> UNEP/CBD/BS/COP-MOP/5/2, annex, para. 9.

<sup>24</sup> UNEP/CBD/BS/CC/6/4, para 14 and UNEP/CBD/BS/CC/7/3, paras. 17 and 18.

<sup>25</sup> UNEP/CBD/BS/COP-MOP/5/2, Annex, paras.3, 6, 7 and 8.

did not have the mandate to take the initiative to identify individual cases of non-compliance by Parties and to take appropriate action.

19. At its *third and fourth meetings*, the Committee began to discuss the absence of submissions relating to compliance since it officially began its functions.<sup>26</sup> It agreed to recommend that, at their fourth meeting, COP-MOP request Parties and other Governments to submit views and information on the lack of submissions by Parties with respect to themselves under section IV of the annex to decision BS-I/7, and to request the Committee to make observations and suggestions, on the basis of the views and information submitted, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol. Accordingly, in decision BS-IV/1, paragraph 6, Parties were invited to submit views on how the supportive role of the Compliance Committee could be improved.

20. At its *seventh meeting*, the Committee continued its discussion and finalized its recommendations to COP-MOP regarding the effectiveness of the procedures and mechanism on compliance, including the limitations faced by the absence of submissions from Parties relating to compliance and how the Committee could contribute to building confidence in the compliance procedures and mechanisms and be enabled to play a more proactive and supportive role in assisting Parties to comply with the Protocol. The Committee's consideration of this issue took into account the synthesis of views received from Parties on how the supportive role of the Committee could be improved. Discussions were further facilitated by a note by the Executive Secretary providing a compilation of the work of the Committee concerning the trigger mechanism of the compliance procedures under the Protocol (UNEP/CBD/BS/CC/7/2), presenting a chronological review of the Committee's previous relevant discussions on the limitations imposed on the Committee by the current trigger mechanism. Sections of the chronological review are reproduced in annex II to the present document.

### **III. THE ROLE OF THE COMPLIANCE COMMITTEE IN ASSISTING PARTIES FOLLOWING THE ADOPTION OF DECISION BS-V/1**

21. COP-MOP 5 considered the recommendations of the Compliance Committee and adopted decision BS-V/1. It clarified that in the event of a submission relating to compliance by any Party with respect to itself, the Committee may only consider taking those measures specified in paragraphs 1(a) and (b) of section VI of the compliance Procedures and Mechanisms. These measures relate to the provision of advice or assistance to the Party concerned and/or making recommendations to COP-MOP regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures. COP-MOP also enlarged the scope of intervention of the Committee by deciding that the Committee may also consider taking the measures provided in paragraph 1(a) and (b) of section VI of the compliance Procedures and Mechanisms if a Party fails to submit its national report, or where information has been received through a national report or through the Secretariat, based on information from the Biosafety Clearing-House, that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol.<sup>27</sup> In decision BS-V/1, COP-MOP also requested that the Committee carry out its supportive role in confidence and with the cooperation of the concerned Party when dealing with cases of non-compliance.<sup>28</sup>

22. At its *eighth meeting*, the Committee agreed on an approach to guide its functions in the context of decision BS-V/1.<sup>29</sup> According to this approach, the Secretariat, in order to identify any possible difficulty hindering the compliance of a Party, will review national reports and information in the BCH and will informally contact the Party concerned unless the issue is found to be *de minimis*. If no response is received, the Secretariat will refer the issue to the Compliance Committee for its consideration. If a response is received and

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<sup>26</sup> UNEP/CBD/BS/CC/3/3 at para. 17 and UNEP/CBD/BS/COP-MOP/4/2 at para. 21.

<sup>27</sup> Decision BS-V/1, para. 1(b).

<sup>28</sup> Decision BS-V/1, para. 2.

<sup>29</sup> Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its eighth meeting (UNEP/CBD/BS/CC/8/3), para. 15 and figure 1.

the issue is resolved or found to be *de minimis*, no further action will be necessary. However, if the issue is not resolved, it will be forwarded to the Committee. Members agreed that any consideration of an issue by the Committee would be undertaken with the cooperation of the Party concerned, as provided for in paragraph 2 of decision BS-V/1.

23. In the light of the potential increase in the number of cases that the Committee may need to consider on the basis of decision BS-V/1, and considering the limited resources available, the Committee decided to structure the steps and schedule of its consideration of issues according to a pre-determined workplan spanning the four-year reporting cycle.<sup>30</sup>

24. The workplan of the Committee includes the consideration of the following issues during its meetings over a four-year cycle: a review of compliance with the obligation to submit national reports and verification of completeness of the reports; a review of compliance on the basis of national reports; a review of compliance on the basis of information available in the BCH; and a review of consistency between the information in national reports and the BCH.

25. The various activities of the Compliance Committee identified in the workplan are presented below.

#### **A. Submission of duly completed national reports**

26. At its *ninth meeting*, the Compliance Committee considered the rate of submission of second national reports and completeness of those reports. It welcomed the high rate of reporting and noted the contribution of the financial resources made available by the GEF in achieving the high rate of reporting and the importance of maintaining such support in the future.<sup>31</sup>

27. It requested the Secretariat to contact the Parties that submitted incomplete reports where questions referring to obligations under the Protocol had not been answered, draw their attention to the information gap in their reports, and seek the necessary information. All Parties responded well to the request of the Secretariat to complete missing information in their reports. The Committee took no further action in this regard.

28. In considering the number of reports received, the Committee noted that 17 Parties had not submitted their second national reports, including 7 that had never submitted any report to that date (interim, first and second reports). The Committee requested the Secretariat to contact the 17 Parties with a view to seeking information on the difficulties that may have prevented them from submitting a report and offering assistance, as appropriate, and to remind them of the need to submit their report without further delay. Additionally, the Chair of the Committee, through the Secretariat, sent letters to the seven Parties that had not submitted any reports and had not responded to any reminder, with a view to (a) urging them to complete the format for the second national report (b) seeking an explanation of the situation that may have prevented them from submitting national reports and (c) offering them any advice or assistance, as appropriate, that they might wish to receive from the Committee.

29. By COP-MOP 6, 14 Parties had still not submitted their second national reports, including 5 Parties that had never fulfilled their reporting obligations under Article 33 of the Protocol. These Parties were urged to submit their national reports at the earliest opportunity.<sup>32</sup>

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<sup>30</sup> *Ibid.*, para. 17, and figure 2.

<sup>31</sup> See UNEP/CBD/BS/CC/9/4, para. 10. In its decisions BS-IV/5, paragraph 4(b), and BS-V/5, paragraph 4(c), the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) urged the Conference of the Parties to the Convention on Biological Diversity (COP), in its further guidance to the financial mechanism, to request GEF to make available, in a timely manner, financial resources to eligible Parties to enable them prepare their second national reports under the Protocol. COP communicated this request to GEF in its decisions IX/31 C (para. 5(c)) and X/25 (para. 20(c)) and GEF agreed to set aside funds for eligible Parties to prepare their second national reports.

<sup>32</sup> Decision BS-VI/14, para. 3.

30. In response to the Committee's request<sup>33</sup> and in keeping with decision BS-VI/14, the Executive Secretary sent a letter to the national focal points of the Parties that were still required to submit a second national report and had not responded to previous communications from the Secretariat. The Executive Secretary sought information from the Parties on the difficulties that may have prevented them from submitting a report, reminded them of the need for the submission of their report without further delay, and offered assistance.

31. At the *tenth meeting* of the Compliance Committee, the Secretariat was able to inform members that an additional report had been received and therefore, reports were now due from 13 Parties. The Committee decided that the Chair of the Committee should send a letter, in some cases a follow-up letter, to the concerned Parties.<sup>34</sup>

32. As of the date of the present report, only eight Parties have not fulfilled their obligation to submit the second national report.<sup>35</sup>

### **B. Review of compliance on the basis of information provided in national reports**

33. In decision BS-VI/1, COP-MOP recognized that the fulfilment by each Party of the obligation to introduce legal, administrative and other measures necessary for the implementation of the Protocol, as required in Article 2, paragraph 1, of the Protocol, is the topmost priority in the domestic implementation of the Protocol. Parties experiencing difficulties putting in place legal, administrative and other measures necessary for the implementation of the Protocol were reminded that they could inform the Compliance Committee of their difficulties and seek assistance.<sup>36</sup>

34. At the tenth meeting of the Committee, the Secretariat informed members that 38 Parties had been identified, based on the responses they had provided through their second national reports, for follow-up pursuant to the decision of COP-MOP at its sixth meeting. The Secretariat informed the Committee that letters had been sent to the 38 Parties and that 13 responses had been received. A table summarizing the individual responses received was made available to the Committee.<sup>37</sup> At the Committee's request, the Secretariat sent another letter to the 25 Parties that had not responded to the first letter. Responses were received from 5 Parties. The Chair of the Committee then sent an additional letter to the national focal points of the 20 remaining Parties with a copy to their respective ministry of foreign affairs inquiring as to why they had been unable to fulfil their obligation and offering the assistance of the Compliance Committee. Four more responses were received.<sup>38</sup> A total of 16 Parties have never responded to the communications sent.

35. The clarifications provided by the Parties show that most of the Parties concerned have draft national biosafety frameworks and that they are making efforts to update, officially adopt and implement them. In this regard, members of the Committee recognized the various challenges faced by Parties in finalizing and operationalizing their national biosafety frameworks, as well as the difficulty in obtaining access to GEF funding to assist them in doing so.<sup>39</sup>

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<sup>33</sup> See the report of the Compliance Committee on its ninth meeting (UNEP/CBD/BS/CC/9/4), para. 11(e).

<sup>34</sup> A second national report was received from one of the 13 Parties before the letters were sent; thus, letters were sent to 12 Parties.

<sup>35</sup> Second national reports were never received from the Bahamas, Barbados, Greece, Luxembourg, the Marshall Islands, Montenegro, Nicaragua and Turkmenistan. With the exception of Barbados, which had submitted a first national report in 2007, none of these Parties had yet submitted a national report. It may further be noted, however, that the Bahamas has now submitted a third national report under the current cycle.

<sup>36</sup> Decision BS-VI/1, para 4.

<sup>37</sup> The table of responses is available in paragraph 9 of UNEP/CBD/BS/CC/10/3.

<sup>38</sup> The additional nine comments received are summarized in a table annexed to UNEP/CBD/BS/CC/11/2.

<sup>39</sup> Para. 27 of the report of the tenth meeting of the Compliance Committee (UNEP/CBD/BS/CC/10/5) and para. 10 of the reports of the eleventh meeting of the Compliance Committee (UNEP/CBD/BS/CC/11/4).

36. At its twelfth meeting, the Committee reviewed the decision of COP-MOP 7 regarding guidance to the financial mechanism. Some members expressed concern that the recommendation to make GEF funds available through a focal area set-aside had been limited to national reporting.

37. The Committee is expected to review the status of implementation of national biosafety frameworks on the basis of relevant responses in the third national reports, which were due late 2015.

### **C. Compliance with regard to information submitted to the BCH**

38. In order to improve the completeness and accuracy of information provided in the BCH, established pursuant to article 20 of the Protocol, the Secretariat reviews some of the data submitted by Parties to the BCH.

39. The Secretariat's review focuses in particular on information on decisions and risk assessments, as referred to in paragraph 1 of decision BS-V/2, in order to strive for completeness of information on decisions regarding LMOs. In this regard, the Secretariat compares the information available in the BCH with information available through other channels and databases.<sup>40</sup> It also periodically reviews BCH records on decisions for which mandatory risk assessments have not been submitted.

40. As necessary, the Secretariat contacts the BCH national focal points of the Parties identified in order to draw their attention to the apparent gap, and to the need to either submit the relevant decisions that they have taken regarding LMOs and the corresponding risk assessments as required under Article 20 of the Protocol and subsequent COP-MOP decisions, or to provide clarification of the apparently incomplete data. A review of the completeness of the data of the BCH was conducted in 2013 and in 2015. Biosafety Clearing-House Focal points were offered assistance to upload the required information and most Parties corrected the gaps or provided clarifications as to why this was not possible or, in some cases, necessary.

41. The Committee has encouraged its members to liaise with Parties, including through the UNEP-GEF BCH regional advisers, as appropriate, with a view to facilitating support to Parties with difficulties in making information available to the BCH.

42. The Compliance Committee has reviewed and discussed the results of these exercises but has taken no further direct action that would have a bearing on Parties. The Chair may communicate, as necessary, with Parties identified as repeatedly having missing or incomplete records in the BCH in order to encourage them to continue to respond to communications from the Secretariat and to endeavour to complete missing information and update records as indicated or to seek assistance from the Secretariat.<sup>41</sup>

### **D. Consistency between information provided to the BCH and information provided in national reports**

43. An in-depth review and analysis was carried out by the Secretariat in 2014 comparing information available in the BCH with answers in the second national reports.<sup>42</sup> It covered a wide spectrum of mandatory information (i.e. laws and guidelines, decisions, risk assessments corresponding to decisions, agreements and illegal and unintentional movements). It was found that, in most cases, the information in second national reports had become outdated and the BCH contained more up-to date information. Where this was the case, the Secretariat contacted individual Parties with a detailed assessment of the discrepancies and gaps found in their

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<sup>40</sup> The Biotradestatus database ([www.biotradestatus.com](http://www.biotradestatus.com)), but also the databases of: (i) the Organization for Economic Co-operation and Development (OECD) (<http://www2.oecd.org/biotech/>); the International Portal on Food Safety, Animal and Plant Health (IPFSAPH) (<http://www.ipfsaph.org/En/default.jsp>); (ii) the European Food Safety Authority (EFSA) (<http://registerofquestions.efsa.europa.eu/roqFrontend/login>); and national biosafety clearing-houses, where applicable, have been used as references to identify gaps in the decisions published. The International Service for the Acquisition of Agri-biotech Applications (ISAAA) database is now also consulted.

<sup>41</sup> UNEP/CBD/BS/CC/12/5, para. 26.

<sup>42</sup> Results are available in document UNEP/CBD/BS/CC/11/3.



records. The discrepancies identified were addressed in most cases, and the Committee has refrained from taking any direct action.

44. Through the review of responses to second national reports and information submitted to the BCH, the Compliance Committee noted that Parties have different approaches in understanding and addressing the matter of illegal and unintentional transboundary movements of LMOs.<sup>43</sup> In that regard, COP-MOP took into account the Committee's concerns and invited Parties to submit views on the matter so that the Committee might provide COP-MOP 8 with suggested clarifications on what constitutes an unintentional transboundary movement in contrast with an illegal transboundary movement.<sup>44</sup>

45. An updated review of the consistency of information between third national reports and the BCH is expected for the fifteenth meeting of the Compliance Committee, pursuant to the reporting cycle agreed at the eighth meeting.

#### IV. CONCLUSION

46. Due to the absence of submissions by Parties regarding individual cases of non-compliance, the role of the Committee was initially limited to reviewing general issues of compliance. Decision BS-V/1 broadened the scope for intervention by allowing the Committee to take certain measures on its own initiative, in cooperation with the Party concerned and in confidence.

47. The Compliance Committee has subsequently identified and contacted individual Parties experiencing difficulties fulfilling their obligations under the Protocol to encourage these Parties to take action, request clarifications and offer assistance. In parallel, the Secretariat continues to liaise with Parties periodically to assist them in fulfilling their obligations. The Compliance Committee has identified and taken measures in respect of Parties based on their failure to submit a national report, the review of information in BCH records and their responses to specific questions in national reports.

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<sup>43</sup> See the report of the Compliance Committee on its eleventh meeting (UNEP/CBD/BS/CC/11/4), para. 24.

<sup>44</sup> See decision BS-VII/10, para. 5 (e).

*Annex I*

**(From the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety –  
Decision BS-I/7, annex)**

**III. Functions of the Committee**

1. The Committee shall, with a view to promoting compliance and addressing cases of non-compliance, and under the overall guidance of the Conference of the Parties serving as the meeting of the Parties to the Protocol, have the following functions:

- (a) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;
- (b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;
- (c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Protocol;
- (d) Review general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with Article 33 of the Protocol and also through the Biosafety Clearing-House;
- (e) Take measures, as appropriate, or make recommendations, to the Conference of the Parties serving as the meeting of the Parties to the Protocol;
- (f) Carry out any other functions as may be assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

**IV. Procedures**

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from:

- (a) Any Party with respect to itself;
- (b) Any Party, which is affected or likely to be affected, with respect to another Party.

The Committee may reject to consider any submission made pursuant to paragraph 1(b) of this section that is de minimis or ill-founded, bearing in mind the objectives of the Protocol.

[...]

**VI. Measures to promote compliance and address cases of non-compliance**

1. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance:

- (a) Provide advice or assistance to the Party concerned, as appropriate;
- (b) Make recommendations to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
- (c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Protocol within a timeframe to be agreed upon between the Committee and the Party concerned; and

(d) Invite the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Protocol;

(e) Pursuant to paragraph 1(c) and (d) above, report to the Conference of the Parties serving as the meeting of the Parties on efforts made by Parties in non-compliance to return to compliance and maintain this as an agenda item of the Committee until adequately resolved.

[...]

*Annex II*

**(From the compilation of the work of the Committee concerning the trigger mechanism of the compliance procedures under the Protocol as recorded in the reports of its previous meetings - UNEP/CBD/BS/CC/7/2)**

**A. Second meeting of the Committee**

1. The Committee had, for the first time, briefly considered at its second meeting, issues related to the procedures on making submissions relating to compliance. That consideration came as a result of information submitted to the Committee by the Secretariat regarding receipt by the latter of an interim national report from a Party which requested that its report be brought to the attention of the Committee. Accordingly, the Committee:

“..... took note of this information but stressed that its mandate does not include scrutinizing, out of its own initiative, individual national reports with a view to identifying possible cases of non-compliance.”

*(Paragraph 46, UNEP/CBD/BS/COP-MOP/3/2, report of the second meeting of the Compliance Committee under the Cartagena Protocol on Biosafety)*

**B. Third meeting**

2. Following the decision of the Conference of the Parties serving as the meeting of the Parties to the Protocol 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 in accordance with Article 35 (paragraph 1, decision BS-III/1), the Chairman of the Committee at that time suggested at the third meeting of the Committee “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.” In that context:

“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.”

*(Paragraph 36, UNEP/CBD/BS/CC/3/3, report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its third meeting)*

**C. Fourth meeting**

3. The Committee continued, at its fourth meeting, its consideration of the issue of the review of the effectiveness of the procedures and mechanism on compliance to be undertaken at the fourth meeting of the Parties to the Protocol within the framework of the overall evaluation of the effectiveness of the Protocol, as

provided under Article 35 of the Protocol. Following extensive discussions, and “taking into account the difficulty of Parties in effectively implementing the Protocol, the Committee agreed to recommend to the fourth meeting of the Parties to the Protocol that it request Parties and other Governments to submit views and information on the lack of submissions by Parties with respect to themselves under section IV of the annex to decision BS-I/7, and to request 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 compliance mechanisms under other multilateral environmental agreements.” Accordingly, the Committee included the following in the recommendations it submitted to the fourth meeting of Conference of the Parties serving as the meeting of the Parties, suggesting that the latter:

*“Request 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 further request 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;”*

*(Paragraph 5, annex, UNEP/CBD/BS/CC/4/3, report of the Compliance Committee on the work of its fourth meeting. The same is also available in paragraph 5, annex, document UNEP/CBD/BS/COP-MOP/4/2 – consolidated report of the Committee on the work of its third and fourth meetings submitted to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol)*

4. The Conference of the Parties serving as the meeting of the Parties to the Protocol considered, at its fourth meeting, the recommendation of the Committee referred to above. It recognized “the absence of any submissions relating to compliance to the Compliance Committee to date”. It however, decided to invite:

*“...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 requests 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.”*

*(Paragraph 6, Decision BS-IV/1)*

#### **D. Fifth meeting**

5. In his review of the outcomes of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as they relate to the work of the compliance committee, Mr. Veit Koester, the then chairman of the Committee, indicated that paragraph 6 of decision BS-IV/1 had not fully captured the real concern of the Compliance Committee, namely why the compliance procedures were not being triggered by Parties facing difficulties fulfilling their obligations (UNEP/CBD/BS/CC/5/INF/2, para. 19).

6. The Chairman of the Committee at that time reported to members about information received from a group of non-governmental organizations alleging the non-compliance of a certain Party with its obligations under the Protocol. It was the first case of its kind. The submission was received by the Secretariat immediately

after the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Chairman recalled that members of the Committee were informed of the submission as well as the response given by him to the organizations. He also recalled that the organizations were informed 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” and the same was communicated to the concerned Party. Some members had suggested that the Committee should further consider how to handle similar submissions in the future. Accordingly, the Committee discussed the matter 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.”

*(Paragraph 25, UNEP/CBD/BS/CC/5/4, report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its fifth meeting)*

#### **E. Sixth meeting**

7. At its sixth meeting, the Committee once again had before it a submission from a non-governmental organization alleging non-compliance of a Party with its obligations under the Protocol. The organization appealed to the Committee to consider the submission with a view to seeking a solution in accordance with paragraph 25 of the report of the Committee at its fifth meeting, wherein the latter had indicated its intention to receive such submissions from non-Party sources and to invite the Party concerned to consider the information received, if the Party so wished, with the view to providing advice and assistance to the Party. The Committee considered whether it had a mandate to receive and consider the submission, and:

“...recalled paragraph 1 of section IV of decision BS-I/7 which mandates the Committee to receive and consider submissions relating to compliance only from Parties. In that regard, the Committee concluded that it was unable to consider the submission.

It also noted that the submission was made on the basis of paragraph 25 of the report of its fifth meeting, which stated that the Committee may invite a Party to indicate, if it so wishes, to the Committee to consider the information received from a non-Party source alleging non-compliance. However, the Committee decided not to invite the Party concerned to indicate whether it wished the Committee to consider the submission.”

*(Paragraphs 20 and 21, UNEP/CBD/BS/CC/6/4, Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its sixth meeting)*

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