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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Thirteenth meeting

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UPDATED INFORMATION ON EXPERIENCE OF COMPLIANCE MECHANISMS UNDER OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS

Note by the Executive Secretary

I. INTRODUCTION

1. At its twelfth meeting, held from 13 to 15 May 2015, the Compliance Committee discussed its role in assisting Parties in implementing the Cartagena Protocol on Biosafety effectively. In that context, the Committee requested that the Secretariat update previously compiled information related to the experience of compliance mechanisms under other multilateral environmental agreements (MEAs). This information should contribute to further identifying the types of assistance that the Committee might provide and the means by which that assistance might be made available to Parties.¹

2. On a number of occasions, the Secretariat compiled information pertaining to compliance procedures and mechanisms under MEAs and experience in their application. At the first meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP),² held from 11 to 15 December 2000, a document entitled “Development of compliance procedures and mechanisms under the Cartagena Protocol on Biosafety” was presented by the Executive Secretary to ICCP.³ In this document, the Secretariat provided a review of compliance regimes in MEAs as well as initiatives in other processes. ICCP considered the document in its deliberations on the development of draft procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety.

3. At the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP), the Secretariat prepared a note entitled “Measures in cases of repeated non-compliance”. The note provided a summary of experiences gained in the context of compliance mechanisms of other MEAs in addressing cases of serious, repeated or frequent non-compliance.⁴ Upon consideration of the document, in decision BS-III/1, Parties decided to address the issue of repeated cases of non-compliance at COP-MOP 4 and requested that the Committee compile further information on the matter. In order to assist the Committee in fulfilling this request, the Secretariat compiled this information in a document entitled “Information and experience regarding repeated cases of non-compliance under the compliance mechanisms of other multilateral environmental agreements”, which was submitted to the Committee at its third meeting. This document provided a more extensive and complete overview of the earlier document prepared for COP-MOP 3. An updated and expanded version, including a more elaborate introduction and description of recent developments in certain MEAs, entitled “Further

¹ UNEP/CBD/BS/CC/12/5, para. 12.

² ICCP was established by the Conference of the Parties at its Extraordinary Meeting to undertake the preparations necessary for the first meeting of the Parties to the Cartagena Protocol on Biosafety, in decision EM-1/3.

³ UNEP/CBD/ICCP/1/7.

⁴ UNEP/CBD/COP-MOP/3/2/Add.1.

information and experience regarding repeated cases of non-compliance under the compliance mechanisms of other multilateral environmental agreements”, was presented to COP-MOP 4.⁵

4. In the framework of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), the Secretariat prepared a similar overview of compliance procedures and mechanisms established under other MEAs. The document was presented to the first meeting of the Open-Ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol in June 2011.⁶

5. The present document provides an update of the previously compiled information, largely following the format and outline of the document presented to COP-MOP 4.⁷ An overview of the compliance mechanism of the Cartagena Protocol is provided in document UNEP/CBD/BS/CC/13/INF/1 and will not be repeated in this document.

II. EXPERIENCES FROM OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS REGARDING NON-COMPLIANCE

6. The information presented below has been drawn from the text of the multilateral environmental agreements, the rules applying to the respective compliance mechanisms, as well as from documentation made available through the compliance mechanisms, as the case may be. The compliance mechanisms are presented in chronological order, based on the date of adoption of the principle instrument under which they have been established.

A. The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

7. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted in 1973 and entered into force in 1975. The Convention does not explicitly refer to compliance, but requires, among others, that the Secretariat communicate with the Management Authority of the Party concerned on implementation issues and that the Party concerned inform the Secretariat of relevant facts and remedial action taken, where appropriate. This information is to be submitted to the Conference of the Parties, which may propose any recommendation it deems appropriate.⁸

8. On the basis of the Convention text and through resolutions and decisions of the Conference of the Parties, as well as decisions and recommendations of CITES subsidiary bodies and historical practice, a compliance regime has evolved over the past decades.⁹

9. A Working Group on Compliance produced a draft guide to CITES Compliance procedures, which was adopted at the 14th meeting of the Conference of the Parties by way of Conference Resolution 14.3.¹⁰

10. The guide serves to facilitate consistent and effective handling of compliance matters relating to obligations under the Convention, taking into account relevant Resolutions and Decisions.¹¹ It provides for a supportive and non-adversarial compliance mechanism, with the aim of ensuring long-term compliance.¹²

⁵ UNEP/CBD/COP-MOP/4/2/Add.1. Taking note of the document, COP-MOP 4 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, in decision BS-IV/1.

⁶ UNEP/CBD/ICNP/1/INF/1.

⁷ Information was compiled and verified between October and December 2015.

⁸ Article XIII CITES.

⁹ “Compliance with the Convention”, 12th meeting of the Conference of the Parties, 3-15 November 2002, Convention on International Trade in Endangered Species of Wild Fauna and Flora, CoP12 Doc. 26, para. 8.

¹⁰ COP Resolution Conf. 14.3, Annex (2007), “Guide to CITES Compliance Procedures”.

¹¹ Guide to CITES Compliance Procedures, para. 1.

¹² Guide to CITES Compliance Procedures, para. 4.

11. The CITES Standing Committee acts as the administrative body that handles general and specific compliance matters.¹³

12. The Standing Committee is tasked with monitoring overall compliance with the Convention, advising and assisting Parties in complying, verifying information and taking compliance measures. In addition, the Animals and Plants Committees advise and assist the Standing Committee and the Conference of the Parties by undertaking reviews, consultations and reporting on matters related to the Review of Significant Trade.¹⁴

13. The compliance procedure can be initiated by (a) any Party over matters related to another Party;¹⁵ (b) a Party regarding itself;¹⁶ and (c) the Secretariat through the examination of reports, legislative texts as well as through other special responses to information requests.¹⁷

14. The Secretariat provides the Party concerned with the information it receives and communicates about the matter. Parties are given every opportunity to correct compliance matters within reasonable time limits, if necessary with the assistance of the Secretariat.¹⁸ If the Party does not take remedial action within reasonable time limits, the Secretariat brings the matter to the attention of the Standing Committee.¹⁹

15. If a compliance issue has not been resolved, the Standing Committee may take one or more of the following measures:²⁰

(a) Provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;

(b) Request special reporting from the Party concerned;

(c) Issue a written caution, requesting a response and offering assistance;

(d) Recommend specific capacity-building actions to be undertaken by the Party concerned;

(e) Provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned;

(f) Send a public notification of a compliance matter through the Secretariat to all Parties, advising that compliance matters have been brought to the attention of a Party, and that up to that time, there has been no satisfactory response or action;

(g) Issue a warning to the Party concerned that it is in non-compliance, for example, in relation to national reporting and/or the National Legislation Project; and/or

(h) Request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.

16. When deciding on the measures to be taken, the Standing Committee takes into account the capacity of the Party concerned, as well as the cause, type, degree and frequency of the compliance

¹³ Guide to CITES Compliance Procedures, para. 12.

¹⁴ Mechanisms to provide remedial action when there is reason to believe that certain listed species (in appendix II) are being traded at significant levels without adequate implementation of CITES provisions.

¹⁵ Guide to CITES Compliance Procedures, para. 18.

¹⁶ Guide to CITES Compliance Procedures, para. 19.

¹⁷ Guide to CITES Compliance Procedures, para. 15.

¹⁸ Guide to CITES Compliance Procedures, paras. 16 and 20.

¹⁹ Guide to CITES Compliance Procedures, para. 21.

²⁰ Guide to CITES Compliance Procedures, para. 29. Para. 31 indicates that the list of measures is not necessarily an exhaustive list of measures applied to date.

matter, the appropriateness of the measures in relation to the gravity of the compliance matter, and the possible impact on conservation and sustainable use.²¹

17. In cases of repeated non-compliance, the Standing Committee may decide to recommend to the Conference of the Parties the suspension of trade in specimens of one or more CITES-listed species.²²

18. The Standing Committee, with the assistance of the Secretariat, is to monitor the actions taken by the Party concerned to implement the measures taken. The Standing Committee may request progress reports from the Party concerned and arrange for an in-country technical assessment and verification mission, upon the invitation of the Party concerned. It also decides whether to adjust the measures it has taken or to take other measures.²³

19. Existing recommendations to suspend trade are generally reviewed at each meeting of the Standing Committee and are monitored by the Secretariat.²⁴ A recommendation to suspend trade is withdrawn as soon as the compliance matter has been resolved or sufficient progress has been made.

Experience

20. The CITES Standing Committee has addressed compliance in the context of its consideration of national reports and national legislation as well as under its Review of Significant Trade. The issues addressed include for each of these items, highlighted in bold, the following:

(a) *National reports*: the Standing Committee has considered cases of Parties potentially subject to a recommendation to suspend trade for failing to submit annual reports for three consecutive years;²⁵

(b) *National legislation*: the Standing Committee has determined which Parties have failed to comply with Conference Resolution 8.4 by not adopting appropriate measures for effective implementation of the Convention — in particular the development of national legislation — and recommending suspension of trade in accordance with Conference Resolution 14.3;²⁶

(c) *Review of Significant Trade*: the Standing Committee has considered concerns in respect of Parties about failure to implement the Convention effectively in the context of the implementation of recommendations regarding certain Appendix II species.²⁷

21. Recommendations to suspend trade provide for a period of time in which the concerned Party can address the compliance issue, for example by making progress in enacting adequate legislation, combating and reducing illegal trade, submitting missing annual reports or responding to specific recommendations of the Standing Committee in the context of the Review of Significant Trade.

22. As of March 2015, trade suspensions are in place for 31 countries:

²¹ Guide to CITES Compliance Procedures, para. 32.

²² Guide to CITES Compliance Procedures, para. 30. The Guide provides that “such a recommendation may be made in cases where a Party’s compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance or a State not a Party is not issuing the documentation referred to in Article X of the Convention. Such a recommendation is always specifically and explicitly based on the Convention and on any applicable Resolutions and Decisions of the Conference of the Parties”

²³ Guide to CITES Compliance Procedures, para. 33.

²⁴ Guide to CITES Compliance Procedures, para. 34.

²⁵ Resolution Conf. 11.17 (Rev. CoP14).

²⁶ Resolution Conf. 8.4 (Rev. CoP16). The Conference of the Parties has consistently directed the Standing Committee to recommend a suspension of commercial trade in specimen of CITES-listed species with those Parties that have failed to adopt appropriate measures (national legal frameworks) for the effective implementation of the Convention, e.g. Decision (COP) 16.37 (2013); Decision (COP) 15.41 (2010) and Decision (COP) 14.26 (2007). The Standing Committee, at its 62nd session (2012), recommended the suspension of trade in affected species with four countries (SC summary record, para. 29).

²⁷ Resolution Conf. 12.8 (Rev. CoP13) paragraph s, enables the Standing Committee to take appropriate action in cases of insufficient implementation of a recommendation regarding a certain Appendix II species, which may include, as a last resort, a suspension of trade in the affected species with the State concerned.

- (a) Three are based on insufficient progress to adopt national legislation to implement the Convention;
- (b) One is due to failure to submit a specific action plan as requested by the Conference of the Parties;
- (c) Three regard failure to submit annual reports;
- (d) One relates to insufficient implementation of the Convention and lack of progress in addressing recommendations to addressing these shortcomings;²⁸
- (e) Twenty-four trade suspensions have been adopted within the context of the Review of Significant Trade.²⁹

B. 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and the 1995 Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean

23. The Barcelona Convention was adopted in 1976 and entered into force in February 1978. The Convention was revised in 1995 and re-named the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. The amended text entered into force in 2004.

24. Article 27 of the revised Convention addresses compliance and requires that meetings of the Contracting Parties, based on reports submitted by Parties, assess compliance with the Barcelona Convention and its Protocols as well as with measures and recommendations. The Meeting of the Parties is to recommend, where appropriate, the necessary steps to bring about full compliance and promote the implementation of the decisions and recommendations.

25. The Parties, at their fifteenth meeting, held in 2008, adopted Procedures and Mechanisms on Compliance, in which the Compliance Committee was established.³⁰ The objective of the Committee is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols.³¹ The Meeting of the Parties adopted Rules of Procedure at their sixteenth meeting,³² which were amended at their eighteenth meeting.³³

26. The role of the Compliance Committee is to consider specific cases of non-compliance and, at the request of the Meeting of the Parties, general compliance issues, and other issues.³⁴

27. The Committee considers submissions by Parties in respect of themselves and by Parties in respect of another Party's non-compliance. It also addresses cases of compliance of which the Secretariat has become aware through the periodic reports submitted in accordance with article 26, if they cannot be resolved within the given terms.³⁵ The Compliance Committee may furthermore consider cases of which it has become aware at its own initiative.³⁶ After an assessment of the case, in accordance with the principle of 'due process' in order to ensure fairness and transparency, a report is prepared and adopted.³⁷

²⁸ Notification 2013/17 (2013).

²⁹ See: http://www.cites.org/eng/disc/trade_suspension.shtml.

³⁰ Decision IG 17/2 (2008), Annex, Procedures and Mechanisms on Compliance (hereinafter: Procedures and Mechanisms on Compliance), para. 2.

³¹ Procedures and Mechanisms on Compliance, para. 1.

³² Decision IG 19/1 (2009).

³³ Decision IG 21/1 (2013).

³⁴ Procedures and Mechanisms on Compliance, para. 17.

³⁵ Procedures and Mechanisms on Compliance, para. 23.

³⁶ Procedures and Mechanisms on Compliance, paras. 18-23*bis*.

³⁷ Procedures and Mechanisms on Compliance, paras. 25-31. Rule 21 of the Rules of Procedure specify that the Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. As a last resort, findings, measures and recommendations shall be adopted by at least six members present and voting. The Rules of Procedure also provide that in case of conflict between the Rules of Procedure and the Convention, or decision 17/2, the Convention and, as the case may be, decision 17/2 prevail (Rule 33).

The report may include recommendations and one or more of the following measures, taking into consideration the capacity of the Party concerned:

- (a) Provide advice and facilitate assistance;
- (b) Request the Party to develop or assist in developing a time-bound action plan;
- (c) Invite the Party to submit progress reports;
- (d) Make recommendations to the Meeting of the Parties on cases of non-compliance, if it finds that such cases should be dealt with by the Meeting of the Contracting Parties.³⁸

28. Upon consideration of the report, the Meeting of the Contracting Parties may decide on appropriate measures, such as:

- (a) Facilitating implementation of advice and assistance, including capacity-building;
- (b) Making recommendations to the Party concerned;
- (c) Requesting the Party to submit progress reports;
- (d) Publishing cases of non-compliance.³⁹

29. In the event of a 'serious, ongoing or repeated situation of non-compliance', the Meeting of the Contracting Parties may issue a caution, issue a report of non-compliance, or consider and undertake any additional action that may be required for the achievement of the purposes of the Convention and its Protocols.⁴⁰

Experience

30. The Compliance Committee meets twice a year and much of the focus of its work in relation to compliance of individual Parties has focused on compliance with the reporting obligation under the Convention, in particular by urging individual Parties to submit such reports. In view of limited improvement on reporting rates, the Committee, at its ninth meeting, decided to address a letter to the concerned Contracting Parties informing them of the measures the Committee would take with a view to promoting compliance and addressing these cases of non-compliance. The Committee indicated that such measures may include the organization of hearings of representatives of those Parties at the occasion of the next meeting of the Committee back to enquire about initiatives envisaged by the Parties to comply and the assistance they might need to fulfil their reporting obligation.⁴¹ The Committee furthermore has also requested the Secretariat to address a letter to those Contracting Parties that had not submitted their reports.⁴²

C. The 1979 Convention on Long-Range Transboundary Air Pollution

31. The Convention on Long-Range Transboundary Air Pollution was concluded under the auspices of the United Nations Economic Commission for Europe in 1979 and entered into force in 1983. Eight protocols have been adopted under the Protocol that identify specific measures to be taken by Parties to reduce their emissions of air pollutants.

32. The text of the Convention does not provide for the establishment of a compliance mechanism but does require the Executive Body (EB) of the Convention to review implementation.⁴³ In this context, the EB established an Implementation Committee and adopted rules pertaining to the structure, functions

³⁸ Procedures and Mechanisms on Compliance, para. 32.

³⁹ Procedures and Mechanisms on Compliance, para. 33.

⁴⁰ Procedures and Mechanisms on Compliance, para. 34.

⁴¹ UNEP(DEPI)/MED CC.10/5, adoption of the draft Report of the Ninth Meeting of the Compliance Committee, para. 26.

⁴² UNEP(DEPI)/MED CC.10/5, adoption of the draft Report of the Ninth Meeting of the Compliance Committee, para. 38.

⁴³ Article 10(2)(a) of the Convention.

and procedures of the Committee,⁴⁴ which were subsequently amended and superseded through decision 2006/2 and again through decision 2012/25.⁴⁵

33. The functions of the Implementation Committee include:⁴⁶

- (a) Reviewing compliance by Parties with the reporting requirements of the Protocols under the Convention;
- (b) Considering submissions and referrals related to potential cases of non-compliance;
- (c) Providing, if deemed necessary, for the evaluation of the quality of data reported by a Party, by a relevant technical body or expert;
- (d) Considering systemic issues of non-compliance;
- (e) Preparing reports on compliance with the obligations in a given Protocol.

34. Cases of potential non-compliance may be submitted to the Implementation Committee by: (1) one or more Parties regarding another Party's implementation of its obligations,⁴⁷ or (2) a Party with respect to itself.⁴⁸ Cases may also be brought before the Committee through referral by the Secretariat when it becomes aware of possible non-compliance by any Party, in particular upon reviewing reports submitted by Parties in accordance with the reporting requirements, or on receipt of information from a technical body or centre under the Convention.⁴⁹ The Implementation Committee can also activate the Secretariat referral mechanism by informing the Secretariat of cases of possible non-compliance by a Party that have not been identified by the Secretariat. In these cases, the Secretariat must follow the referral procedure.⁵⁰

35. The Committee has powers in relation to access to information and information gathering.⁵¹ Parties in respect of which a submission or referral is made are entitled to participate in the consideration by the Committee of the submission or referral, but may not take part in the preparation and adoption of the report or recommendations.⁵²

36. The Committee reports at least annually to the EB on its activities and makes such recommendations, as it considers appropriate.⁵³ The EB may decide upon measures of non-discriminatory nature to bring about full compliance, including measures to assist the Party's compliance. Such decisions are taken by consensus and only by the Parties to the protocol in relation to which the case of non-compliance was raised.⁵⁴

Experience

37. To date, the EB has taken decisions on the basis of the reports of the Implementation Committee in relation to about 23 cases of non-compliance with obligations under the various protocols.⁵⁵ In addition, the EB has taken decisions on failure to comply with reporting obligations under different protocols in relation to a number of Parties.

⁴⁴ Decision 1997/2, para. 1. The rules are provided in the Annex to decision 1997/2.

⁴⁵ Decision 2012/25, para. 8. The rules are provided in the Annex to decision 2012/25 (hereinafter: Structure and Functions and Procedures for Review).

⁴⁶ Structure and Functions and Procedures for Review, para. 3.

⁴⁷ Ibid., para. 4(a).

⁴⁸ Ibid., para. 4(b).

⁴⁹ Ibid., para. 5.

⁵⁰ Ibid., para. 5 bis.

⁵¹ Ibid., para. 6.

⁵² Ibid., para. 8.

⁵³ Ibid., para. 9.

⁵⁴ Ibid., paras. 10 and 11.

⁵⁵ Some of these cases have been closed.

38. The Committee and the Executive Body have used different nuances of language in their reports. For instance, their recommendations “express disappointment”, “note with concern”, “remain concerned”, “urge” or “strongly urge” in order gradually to increase the pressure on Parties in breach.⁵⁶ Beyond using language to increase pressure on Parties in continuous non-compliance, Parties found in breach are called on to report by a specified date on the steps taken to achieve compliance. Steps taken by Parties to achieve compliance are reviewed each year by the Implementation Committee and followed up by decisions from the EB.

D. The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer to the 1985 Vienna Convention on the Protection of the Ozone Layer

39. The Montreal Protocol on Substances that Deplete the Ozone Layer was adopted in 1987 and entered into force in 1989. Article 8 of the Montreal Protocol required Parties at their first meeting to “consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance”. Pursuant to Article 8, the Meeting of the Parties, at its fourth session, held in 1992, adopted a non-compliance procedure.⁵⁷ The procedure was amended in 1998.⁵⁸

40. The non-compliance procedure is administered by an Implementation Committee, which was established by Decision IV/5. The functions of the Implementation Committee are to:

- (a) Receive, consider and report on any submissions to it regarding non-compliance;
- (b) Receive, consider and report on any information or observations forwarded to it by the Secretariat in relation to, in particular, data reporting;
- (c) Request, where it considers necessary, through the Secretariat, further information on matters under its consideration;
- (d) Identify the facts and possible causes relating to individual cases of non-compliance referred to it and make recommendations to the Meeting of the Parties;
- (e) Gather, upon the invitation of the Party concerned, information in the territory of that Party;
- (f) Maintain contact and exchange information with the Executive Committee of the Multilateral Fund related to the provisions of financial and technical cooperation, in particular for purposes of drawing up its recommendations.⁵⁹

41. The non-compliance procedure can be triggered by:

- (a) One or more Parties regarding another Party’s implementation of its obligations;⁶⁰
- (b) A Party with respect to itself; or⁶¹
- (c) The Secretariat when it becomes aware of possible non-compliance by any Party during the course of preparing its report on data submitted by Parties according to the reporting obligations.⁶²

42. The submissions by Parties are to be sent to the Secretariat, which transmits them to the Implementation Committee.⁶³ The Implementation Committee considers the submissions, related

⁵⁶ Tuomas Kuokkanen, “Practice of the Implementation Committee under the Convention on Long-range Transboundary Air Pollution” in Ulrich Beyerlin, Peter-Tobias Stoll & Rüdiger Wolfrum, eds., *Ensuring Compliance with Multilateral Environmental Agreements* (Leiden: Martinus Nijhoff Publishers, 2006) p. 45-46.

⁵⁷ Decision IV/5 of the Meeting of the Parties to the Montreal Protocol.

⁵⁸ The amendments were adopted in Decision X/10.

⁵⁹ Non Compliance Procedure, as amended, para. 7.

⁶⁰ Non Compliance Procedure, as amended, para. 1.

⁶¹ Non Compliance Procedure, as amended, para. 4.

⁶² Non Compliance Procedure, as amended, para. 3.

information and observations with a view to securing an amicable solution of the matter and reports to the Meeting of the Parties, which may include any recommendations it considers appropriate.⁶⁴

43. The Meeting of the Parties may, taking into consideration the circumstances of the matter, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Parties' compliance with the Protocol.⁶⁵ Pending development of recommendations, the Meeting of the Parties may issue an interim call or recommendations.⁶⁶

44. At its fourth Meeting, the Parties adopted an indicative list of measures that the Meeting of the Parties may take in respect of non-compliance with the Protocol, which comprises:⁶⁷

(a) Appropriate assistance, including assistance for collecting and reporting data, technical assistance, technology transfer and financial assistance, information transfer and training;

(b) Issuance of cautions; and/or

(c) Suspension of specific rights and privileges under the Protocol, including those concerned with industrial rationalisation, production, consumption, trade, transfer of technology, the financial mechanism and institutional arrangements.⁶⁸

Experience

45. Pursuant to article 10 of the Protocol, a Multilateral Fund was established and is administered by an Executive Committee, which, among others, is mandated to consider and approve country programmes for compliance with the Protocol.⁶⁹ In its decisions pertaining to non-compliance, the Meeting of the Parties generally refers to the status of the country in question and the funding it may have received to enable the country to comply with the obligations of the Protocol, including funding from the Multilateral Fund.

46. The Meeting of the Parties has taken decisions in relation to non-compliance of seventy-one individual Contracting Parties.⁷⁰ The Meeting of the Parties has requested Contracting Parties to submit to the Implementation Committee a plan of action with time-specific benchmarks. The Meeting of the Parties has also cautioned the Contracting Party concerned that further measures related to suspension of rights and privileges may be taken, should the Party fail to return to compliance in a timely manner.⁷¹

47. Trade restrictions for repeated non-compliance to date have been applied only to one country.

48. In the context of finding an amicable solution to issues of compliance, the Implementation Committee has taken a number of different measures. At its fifty-fourth meeting, the Implementation Committee considered the issue of persistent incompleteness of reports of certain Contracting Parties. It recalled that the Secretariat had requested the concerned Parties to provide the missing information, and that the Implementation Committee had previously made a recommendation to the Meeting of the Parties, which had adopted a decision on the matter. In view of the lack of progress in addressing the issue, the Implementation Committee then requested the Secretariat to list the concerned Parties and encouraged the

⁶³ Non Compliance Procedure, as amended, paras. 2 and 4.

⁶⁴ Non Compliance Procedure, as amended, para. 8.

⁶⁵ Non Compliance Procedure, as amended, para. 9.

⁶⁶ Non Compliance Procedure, as amended, para. 13.

⁶⁷ Decision IV/5 of the Meeting of the Parties, and Annex IV of the report of the Fourth Meeting of the Parties, 1992.

⁶⁸ "Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol", annex V of the report of the Fourth Meeting of the Parties. Document UNEP/OzL.Pro.4/15 (1992).

⁶⁹ An interim financial mechanism was established by Decision II/8, which became permanent by way of Decision IV/18 in 1992. Its Terms of Reference were adopted at the ninth Meeting of the Parties by Decision IX/16 and amended by the Sixteenth and Nineteenth Meeting of the Parties in respectively Decision XVI/38, and Decision XIX/11.

⁷⁰ Pursuant to article 5 of the Protocol, developing countries of the Protocol are not bound by the same time frame for control measures as other countries.

⁷¹ An overview of decisions of the Meetings of the Party in relation to compliance is available at: <http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/63>

implementing agencies of the Multilateral Fund to liaise with the concerned Parties on the matter. The Implementation Committee also decided to revisit the issue at its next meeting and, if necessary, adopt a recommendation and draft decision, addressed to the Meeting of the Parties, possibly naming those Parties that continued to submit incomplete reports.⁷²

E. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

49. The Basel Convention was adopted in 1989 and entered into force in 1992. The text of the Basel Convention does not call for the development of a compliance mechanism, but charges the Meeting of Parties with inter alia the review of the implementation of and compliance with the Protocol.⁷³

50. At its sixth meeting, held in 2002, the Conference of the Parties adopted the Terms of Reference for a Mechanism for Promoting Implementation and Compliance.⁷⁴ The objective of the Mechanism is to assist Parties to comply with their obligations under the Basel Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.⁷⁵

51. Submissions under the compliance mechanism may be made to the Committee by:

- A Party in relation to its own compliance;⁷⁶
- A Party in relation to another Party, after having attempted to resolve the matter without involvement of the Committee;⁷⁷
- The Secretariat if it becomes aware of possible difficulties of a Party to comply with its obligations, provided the matter hasn't been resolved within three months of consultation.⁷⁸

52. Submissions by Parties are to be directed to the Secretariat.⁷⁹ Submissions by Parties relating to their own compliance are forwarded to the Committee.⁸⁰ Other submissions and Secretariat referrals are to be forwarded to the Committee, provided that the matter hasn't been resolved through consultations.⁸¹

53. The first stage after submission to the Committee is known as the facilitation procedure. Under the facilitation procedure, the Committee considers submissions by Parties made to it with a view to determining the facts and root causes of the matter of concern and assists in its resolution. The Committee may also provide the Party concerned with advice, non-binding recommendations and information.⁸²

54. If, after the facilitation procedure, the Committee considers it necessary to pursue further measures to address the Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider: (a) further support, including prioritized technical assistance, capacity-building and access to financial resources; and (b) issuing a cautionary statement and providing advice regarding future compliance.⁸³

⁷² Report of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol on the work of its fifty-fourth meeting. UNEP/OzL.Pro/ImpCom/54/4, para. 21.

⁷³ Article 24(4)(a) Basel Convention.

⁷⁴ Decision VI/12, Appendix, adopted by the Conference of the Parties to the Basel Convention at its sixth meeting, as amended by Decision BC-10/11, adopted by the COP of the Basel Convention at its tenth meeting.

⁷⁵ Terms of Reference, para. 1.

⁷⁶ Ibid., para. 9(a).

⁷⁷ Ibid., para. 9(b).

⁷⁸ Ibid., para. 9(c).

⁷⁹ Ibid., para. 10.

⁸⁰ Ibid., para. 11.

⁸¹ Ibid., paras. 9(b) and 9(c).

⁸² Ibid., para. 19.

⁸³ Ibid., para. 20.

55. The Terms of Reference assign a number of powers in relation to information gathering and consultation to the Committee.⁸⁴

56. In addition to reviewing individual cases, the Committee may also review general issues of compliance and implementation, as directed by the Conference of the Parties.

57. The Committee reports on its facilitation and recommendation activities, as well as on general review to the Conference of the Parties. It also reports on any conclusions and/or recommendations it has developed and on suggestions for any future work that may be required on general issues of compliance and implementation.⁸⁵

58. Committee decisions are taken by consensus or, as a last resort, by a two-thirds majority.⁸⁶

Experience

59. The Compliance Committee has consistently reviewed the status of submissions of national reports by Contracting Parties. Starting in 2011, at its eight meeting, the Compliance Committee has reviewed issues of compliance of fourteen individual Contracting Parties.⁸⁷ In these cases, the Compliance Committee has adopted a decision or, as required, a series of decisions in relation to each concerned Party. In its decisions, the Compliance Committee in relation to the concerned Party has inter alia requested the development of a compliance action plan, the submission of national reports, the designation of a national focal point and competent authorities. In subsequent decisions, the Compliance Committee has come back on earlier decisions and inter alia decided to request further action, to keep the matter under review, or to conclude that the matter has been resolved.

60. Currently, the Committee is considering the adoption of a decision in which it recommends that the Conference of the Parties issue a cautionary statement in respect of a Contracting Party.⁸⁸

F. The 1991 Convention on Environmental Impact Assessment in a Transboundary Context

61. The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was adopted in 1991 under auspices of the United Nations Economic Commission for Europe (UNECE). It entered into force in 1997. The Convention does not address compliance explicitly, although it requires that Parties keep the implementation of the Convention under continuous review and that they undertake a number of activities to this end (article 11(2)).

62. At the second meeting of the Parties, held in 2001, an Implementation Committee was established under the Convention, and procedures for review of compliance were adopted.⁸⁹ The Structure and Functions of the Implementation Committee and the Procedures for Review of Compliance were amended and substituted by those adopted at the third meeting of the Parties in 2004.⁹⁰ At their fourth meeting, the Parties adopted Operating Rules of the Implementation Committee, which provide more detail on the way in which the Committee should operate within its structure and functions.⁹¹ The Operating Rules were amended by the Parties at their fifth and sixth meetings, in 2011 and 2015

⁸⁴ Ibid., para. 22.

⁸⁵ Ibid., para. 23-24.

⁸⁶ Ibid., para. 25.

⁸⁷ In 12 instances, the Secretariat has made use of the possibility to make a submission to the Committee. In 2 instances, countries have made a submission regarding their own compliance. No submissions regarding compliance of other Parties have been made.

⁸⁸ Decision CC/11-7, adopted by the Committee at its eleventh meeting, held in September 2014.

⁸⁹ Report of the Second Meeting of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, annex IV, decision II/4, Appendix 'Structure and Functions of the Implementation Committee and Procedures for Review of Compliance.'

⁹⁰ Adopted by the third Meeting of the Parties, in decision III/2. The Procedures for Review of Compliance were amended by decision VI/2, adopted at the sixth Meeting of the Parties.

⁹¹ Decision IV/2, annex IV, adopted at the fourth Meeting of the Parties.

respectively.⁹² The amendments to the Procedures for Review and Operating Rules were inter alia intended to ensure their applicability to matters arising in the context of the Protocol on Strategic Environmental Assessment to the Convention that had been adopted in 2003.⁹³

63. Through decision III/7, the Parties proposed an amendment to the Convention, which has not yet entered into force. Once it enters into force, the amendment introduces Article 14 *bis*, which provides a formal base for the compliance procedure.

64. The Implementation Committee's functions are to assist Parties to comply fully with their obligations under the Convention.⁹⁴ Submissions may be brought before the Committee by one or more Parties with respect to another Party, or by a Party with respect to itself.⁹⁵ The Committee may also consider issues of compliance at its own initiative.⁹⁶ The Committee has the power to gather information,⁹⁷ and may invite a Party in respect of which a submission is made, or which makes a submission, to attend the Committee's session and present information.⁹⁸

65. The Committee first considers if the Party concerned is in compliance. If the Party is provisionally found not to be in compliance, the Committee considers and agrees upon possible recommendations to the meeting of the Parties. These recommendations may include:⁹⁹

- to provide advice in relation to legislative, procedural and institutional strengthening;
- to submit to the Committee a time-bound strategy to bring about compliance;
- to provide assistance to the Party;
- to issue a declaration of non-compliance, or a caution;
- in the case of persistent non-compliance, to suspend the rights and privileges accorded to the Party under the Convention or the Protocol, including the possibility to appoint a member to the Implementing Committee.

66. The draft report is distributed to the Parties involved, with the invitation to provide comments, after which the Commission considers them and finalizes the report for submission to the Meeting of the Parties.

67. The Committee reports on its activities at each meeting of the Parties and may make such recommendations as it considers appropriate. Upon consideration of the report, the Meeting of the Parties may decide on appropriate general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance.¹⁰⁰

68. The Parties shall make every effort to reach a decision by consensus and as a last resort by a three-fourths majority vote.¹⁰¹

Experience

69. The Implementation Committee has considered a number of specific compliance issues, many of which resulted in the Committee declaring its satisfaction with the clarifications provided by the

⁹² By decision V/4 and decision VI/2.

⁹³ The Protocol on Strategic Environmental Assessment to the UNECE Espoo Convention was adopted in 2003 by an Extraordinary Meeting of the Parties and entered into force in 2010.

⁹⁴ Structure and Functions of the Implementation Committee and Procedures for Review of Compliance, as amended, para. 4.

⁹⁵ Ibid., paras. 5(a) and 5(b).

⁹⁶ Ibid., para. 6.

⁹⁷ Ibid., para. 8.

⁹⁸ Ibid., para. 9.

⁹⁹ Operating Rules of the Implementation Committee, as amended, Rule 12.

¹⁰⁰ Structure and Functions of the Implementation Committee and Procedures for Review of Compliance, as amended, para. 11.

concerned Parties.¹⁰² In other cases, the Implementation Committee has requested Parties concerned to adopt legislation, and to report on progress made in that regard.¹⁰³ The Implementation Committee has also requested and encouraged Parties concerned to seek agreement bilaterally.¹⁰⁴

70. At its third meeting, the Parties requested the Implementation Committee to consider developing criteria for dealing with information other than submissions from Parties.¹⁰⁵ At its tenth meeting, the Implementation Committee agreed to include a proposal to this end in its draft operating rules.¹⁰⁶ Rule 15 of the Operating Rules of the Implementation Committee, related to procedures for Committee initiatives, provides that the sources through which the Committee might become aware of possible non-compliance could be Parties' work and 'any other sources', whereby specific quality criteria of the information are provided. So far, the Implementation Committee has considered six cases on the basis of this procedure.

G. The 1996 Protocol to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

71. The London Protocol was adopted under the London Convention in 1996 and entered into force in 2006. While the Convention does not address compliance, the Protocol requires in article 11 that the Meeting of Contracting Parties establish compliance procedures and mechanisms necessary to assess and promote compliance with the Protocol. Article 11 furthermore provides that the Meeting of the Contracting Parties may offer advice, assistance or cooperation, after full consideration of any information submitted pursuant to the Protocol. In 2006, the Parties to the Convention and the Protocol adopted the Compliance Procedures and Mechanisms, administered by the Compliance Group.¹⁰⁷

72. The Compliance Group was established pursuant to paragraph 1.4 of the Compliance Procedures and Mechanisms. The members of the Compliance Group must make every efforts to reach agreement on all matters by consensus, failing which, the Group may act as a last resort by a three-quarters majority vote.¹⁰⁸

73. While the Meeting of the Parties has the overall responsibility for compliance matters, the functions of the Compliance Group include:¹⁰⁹

- (a) Considering and assess cases of possible non-compliance;
- (b) Making recommendations to the Meeting of Contracting Parties on:
 - (i) Systemic compliance issues,
 - (ii) Individual situations of possible non-compliance;
 - (iii) On other activities to promote compliance;
- (c) Review the implementation of the recommendations provided in decisions of the Meeting of Contracting Parties;

¹⁰² Report of the Meeting of the Parties of its fifth session, Part II, decision V/4, I General Part, para. 2. Report of the Meeting of the Parties of its sixth session, decision VI/2, I General Part, para. 2.

¹⁰³ Report of the Meeting of the Parties of its fifth session, Part II, Decision V/4, I General Part, para. 2. Report of the Meeting of the Parties of its sixth session, Decision VI/2, II Follow up to Decision V/4, para.s 24-27; 31-33; 41-43.

¹⁰⁴ Report of the Meeting of the Parties of its fifth session, Part II, Decision V/4, I General Part, para. 2. Report of the Meeting of the Parties of its sixth session, Decision VI/2, II Follow up to Decision V/4, para.s 27; 37; 56-58.

¹⁰⁵ Report of the Meeting of the Parties of its third session, Decision III/2, para. 7. Report of the Meeting of the Parties of its sixth session, Decision.

¹⁰⁶ Report of the Tenth Meeting of the Implementation Committee, para. 7.

¹⁰⁷ Report of the Twenty-Ninth Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and Second Meeting of Contracting Parties to the 1996 Protocol to the Convention, Annex 7 'Compliance Procedures and Mechanisms Pursuant to Article 11 of the 1996 Protocol to the London Convention 1972' (hereinafter: 'Compliance Procedures and Mechanisms').

¹⁰⁸ Compliance Procedures and Mechanisms, paras. 3.9.

¹⁰⁹ Ibid., para. 2.2.

- (d) Review and provide advice to the Meeting of Contracting Parties on reports and records;
- (e) Request advice and information from the Scientific Group under the London Protocol;
- (f) Provide advice and guidance to a Party pending consideration by the Meeting of Contracting Parties, with a view to addressing compliance issues without delay.

74. Submissions of cases of possible non-compliance may be brought before the Compliance Group by the Meeting of the Contracting Parties, a Party regarding itself, or by a Party regarding another Party's compliance.¹¹⁰ Submissions are to be done in writing, following specific criteria as to their format. The submissions are brought before the Compliance Group, and to Parties concerned. The latter may provide its comments on the submission within three months to the Secretariat.¹¹¹

75. Following consideration and assessment of an issue regarding possible non-compliance, the Compliance Group can recommend to the Meeting of the Contracting Parties a number of measures, taking into account the capacity of the Party concerned and the cause, degree and frequency of non-compliance. Prior to making such recommendations, the Compliance Group shall share its conclusions and recommendations with the Party concerned for consideration and shall provide an opportunity to the Party to comment. These measures include:¹¹²

- The provision of advice and recommendations;
- The facilitation of cooperation and assistance;
- The elaboration, with the cooperation of the Party or Parties concerned, of compliance action plans, including targets and timelines;
- The issuance of a formal statement of concern regarding a Party's compliance situation.

76. The Compliance Group presents a report to each Meeting of the Parties, presenting its work concerning compliance of individual Parties and systematic compliance issues, including any recommendations made, as well as the Compliance Group's future work programme.¹¹³ The Meeting of the Parties makes the final decision regarding any measures proposed by the Compliance Group and may also consider additional measures within its mandate, as appropriate, to facilitate compliance by the Party concerned.¹¹⁴

Experience

77. In the absence of submissions in relation to specific cases of non-compliance, the Compliance Group has concentrated its efforts on improving compliance with the reporting requirements of Article VI (4) of the London Convention and Article 9.4 of the Protocol.

H. The 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change¹¹⁵

78. The Kyoto Protocol was adopted in 1997 under the United Nations Framework Convention on Climate Change. It entered into force in 2005. Article 18 of the Kyoto Protocol calls on the Conference of the Parties to the Convention on Climate Change serving as the meeting of the Parties to the Protocol to

¹¹⁰ Ibid., paras. 4.1.1, 4.1.2 and 4.1.3, respectively.

¹¹¹ Ibid., paras. 4.3-4.5.

¹¹² Ibid., para. 5.1.

¹¹³ Ibid., para. 6.6.

¹¹⁴ Ibid., para. 5.4. Para. 2.1 provides that the Meeting of the Parties may offer advice, assistance or cooperation to Contracting Parties and non-Contracting Parties, after full consideration of any information submitted pursuant to this Protocol and any recommendations made through these procedures and mechanism, and that it may undertake other activities, as appropriate, to promote compliance.

¹¹⁵ A compliance mechanism will be established under Article 15 of the Paris Agreement, which shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session.

approve, at its first session, procedures and mechanisms to determine and address cases of non-compliance with the Protocol. This should include the development of an indicative list of consequences and should take into account the cause, type, degree and frequency of non-compliance.

79. In anticipation of the entry into force of the Protocol, the Conference of the Parties adopted Procedures and Mechanisms, at its seventh session, held in 2001, by decision 24/CP.7. The decision was confirmed at the first session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) in the latter's decision 27/CMP.1.¹¹⁶ At its second session, the CMP approved rules of procedure for the Committee, which were subsequently amended.¹¹⁷

80. The objective of the compliance procedure is to facilitate, promote and enforce compliance with the commitments under the Protocol.¹¹⁸

81. A Compliance Committee administers the compliance procedure and mechanism.¹¹⁹ The Compliance Committee consists of a plenary, a bureau and two branches: the facilitative branch and the enforcement branch.¹²⁰ Each branch is composed of 10 members.¹²¹ The plenary comprises members of both branches. For each member of the Committee, the CMP elects an alternate member. Members and alternates serve in their individual capacities and are selected on the basis of their recognized competence in climate change.¹²²

82. Decisions taken by the Committee require a quorum of at least three fourths of the members present.¹²³ All efforts must be made to take decisions by consensus, failing which a three-fourths majority suffices, with stricter criteria applying to decisions taken by the enforcement branch.¹²⁴

83. The functions of the plenary of the Committee relate mainly to administrative and budgetary matters, reporting to the Conference of the Parties and the development of further rules of procedure.¹²⁵

84. Submissions in relation to possible cases of non-compliance can be brought before the Committee by (a) expert review teams¹²⁶ established under Article 8 of the Protocol, (b) by any Party with respect to itself, (c) or by a Party with respect to another Party.¹²⁷ Upon receipt of a submission, the bureau of the Committee allocates the submissions to the appropriate branch. The branch conducts a preliminary examination to decide whether to proceed the consideration of the submission and notifies the Party concerned of its decision.¹²⁸

85. The role of the facilitative branch is to provide advice and facilitation to Parties in implementing the Protocol, and for promoting compliance by Parties with their commitments under the Protocol.¹²⁹ The facilitative branch decides on the application of one or more of the following measures, referred to as

¹¹⁶ Procedures and mechanisms relating to compliance under the Kyoto Protocol, Adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol by decision 27/CMP.1, Annex.

¹¹⁷ Decision 4/CMP.2 (2006). The rules of procedure were amended by decision 4/CMP.4 (2008) and by decision 8/CMP.9 (2013)

¹¹⁸ Procedures and Mechanisms, Section I.

¹¹⁹ The Compliance Committee was established pursuant to Section II, para. 1 of the Procedures and Mechanisms.

¹²⁰ Procedures and Mechanisms, Section II, para. 2.

¹²¹ Ibid., para. 3.

¹²² Ibid., paras. 5 and 6. Rules of Procedure, Rule 4.1.

¹²³ Ibid., para. 8.

¹²⁴ Ibid., para. 9.

¹²⁵ Ibid., Section III.

¹²⁶ Groups of experts, nominated by Parties, who review national reports submitted by each Party included in annex I, pursuant to article 8 of the Protocol.

¹²⁷ Procedures and Mechanisms, Section VI, para. 1.

¹²⁸ Ibid., Section VII.

¹²⁹ Ibid., Section XIV.

‘consequences’: provision of advice or facilitation of assistance; (b) facilitation of financial and technical assistance; (c) formulation of recommendations.¹³⁰

86. The enforcement branch is responsible for determining whether a Party included in annex I of the Protocol does not comply with (a) its emissions targets; (b) the methodology and reporting requirements; and (c) the eligibility requirements to benefit from the flexibility mechanisms.¹³¹

87. After the preliminary examination, the submission is further dealt with by the branch to which it was allocated, according to the procedures that address among others: information on which deliberations may be based; sharing of information; opportunity to comment on preliminary decisions; hearings; and the possibility to provide views.¹³²

88. Following the consideration of the matter and following a decision made regarding the submission, the facilitative branch must decide on one or more of the following measures, referred to as ‘consequences’:¹³³

- Provision of advice and facilitation of assistance;
- Facilitation of financial and technical assistance, both from sources established under the Convention and the Protocol and from resources other than those;
- Formulation of recommendations.

89. Where the enforcement branch has determined that a Party is not in compliance, it must, taking into account the cause, type, degree and frequency of the non-compliance of the Party, issue a declaration of non-compliance and request the development of time-bound compliance plan.¹³⁴ The Party concerned must submit progress reports.¹³⁵ Eligibility of Parties found not to meet the eligibility criteria under articles 6, 12 and 17 of the Protocol will be suspended.¹³⁶ Where a Party is found to have exceeded its assigned amount of emissions, as provided for in Article 3 of the Protocol, the enforcement branch must declare that the Party is not in compliance and shall apply one of the following consequences:¹³⁷

- Deduction from the Party’s assigned amount;
- Development of a compliance action plan;
- Suspension of the eligibility to make transfers under article 17 of the Protocol.

90. A Party in respect of which a final decision has been taken may appeal to the COP-MOP against a decision of the enforcement branch relating to article 3, paragraph 1 of the Protocol, if the Party believes it has been denied due process.¹³⁸

91. The two branches of the Compliance Committee base their deliberations on reports from expert review teams, subsidiary bodies under the Protocol and the Convention, Parties and other official sources. Competent intergovernmental and non-governmental organizations may submit relevant factual and technical information to the relevant branch after the preliminary examination.¹³⁹

¹³⁰ Ibid., Section XIV.

¹³¹ Ibid., Section V, para. 4.

¹³² General Procedures are provided in Section VIII that apply to all submissions following a decision to proceed. Specific procedures applying to proceedings by the Enforcement Branch are provided in Section IX and X, the latter providing for expedited procedures.

¹³³ Procedures and Mechanisms, Section XIV.

¹³⁴ Ibid., Section XV, paras. 1 and 2.

¹³⁵ Ibid., para. 3.

¹³⁶ Ibid., para. 4. Article 6 relates to ‘joint implementation’, article 12 to the ‘Clean Development Mechanism’ and article 17 to ‘emission trading’.

¹³⁷ Procedures and Mechanisms, Section XV, para. 5.

¹³⁸ Ibid., Section XI, para. 1.

¹³⁹ Ibid., Section VIII, paras. 3 and 4.

Experience

92. To date, the facilitative branch has received only one substantive submission. This submission was done by South Africa in its capacity as chair of the G-77 and China regarding 15 other Parties.¹⁴⁰ The matter involved the late filing of reports on demonstrable progress by annex I Parties towards meeting their emission reduction targets. Since the compliance procedure does not provide for the possibility of submissions made by more than one Party, the branch could not agree on whether this submission could be considered properly filed, and it was not able to make a preliminary decision on how to proceed.

93. By lack of other submissions, the facilitative branch has so far focused its work on compliance issues coming to its attention through the review of national communications and through the expert review of national reports. To date this has resulted in the review of the need for early warning of four Contracting Parties, three of which three were considered on track.¹⁴¹

94. The enforcement branch has addressed eight referrals initiated by expert review teams. The enforcement branch has suspended the eligibility to participating the mechanisms of article 6, 12 and 17 of the Kyoto Protocol in respect of certain Contracting parties and has reinstated eligibility of some of these Contracting Parties after a process in which the issue of non-compliance was considered and steps were taken by the Contracting Parties to address the issue of non-compliance. Measures taken by the enforcement branch in most cases include the declaration of non-compliance of the Contracting Party, the requirement to submit a plan to address non-compliance within a set time-frame, and exclusion from eligibility to participate in the mechanisms of the Protocol provided for in articles 6, 12 and 17 of the Protocol.

I. The 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

95. The Rotterdam Convention was adopted in 1998 and entered into force in 2004.¹⁴² Article 17 of the Rotterdam Convention requires the Conference of the Parties to, “as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for the treatment of Parties found to be in non-compliance”.

96. At the first meeting of the Conference of the Parties, the Parties decided to convene an open-ended ad hoc working group on Article 17. The group prepared a draft text on the establishment of a compliance committee, which was considered further at the second, third, fourth and fifth meetings of the Conference of the Parties. At its sixth meeting, the Conference of the Parties adopted decision RC 6/9, which provide for draft procedures and mechanisms on compliance with the Rotterdam Convention. In its decision, the Conference of the Parties decided to further consider the matter at its seventh meeting and to take the draft text adopted at the sixth meeting as a basis for its further work on the procedures and mechanisms.

97. The draft procedures and mechanisms provide for the establishment of a Compliance Committee that consists of fifteen members, nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation.¹⁴³ The Committee is scheduled to meet as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention Bodies.¹⁴⁴

98. Submissions may be made by a Party in respect of itself and by a Party in respect of another Party where the former is directly affected by the latter’s alleged failure to comply with the obligations of the

¹⁴⁰ Report of the third meeting of the Facilitative Branch of the Compliance Committee, CC/FB/3/2006/2, para. 4.

¹⁴¹ Report of the 16th meeting of the Facilitative Branch of the Compliance Committee, CC/FB/16/2014/2, para. 9.

¹⁴² The Rotterdam Convention has been subject to subsequent revisions.

¹⁴³ Draft Procedures and Mechanisms on Compliance with the Rotterdam Convention, paras. 1 and 2.

¹⁴⁴ Ibid., para. 7.

Convention.¹⁴⁵ The provision that introduces the possibility for the Secretariat to refer cases to the Committee appears between brackets and has been subject to intense debate at the seventh meeting of the Conference of the Parties.¹⁴⁶ The Secretariat forwards submissions to the members of the Committee and to the Parties concerned, which are invited to respond and provide additional information.¹⁴⁷ The Committee considers each submission and may, in the context of a facilitation procedure, provide a Party with advice, non-binding recommendations, or any information required to assist the Party in developing a compliance plan.¹⁴⁸ After the facilitation procedure, the Committee may recommend that the Conference of the Parties consider the following measures:¹⁴⁹

- provide support, including facilitation, as appropriate, of access to financial resources, technical assistance and capacity building;
- provide advice regarding future non-compliance;
- issue a statement of concern regarding possible future or current non-compliance;
- request that the Executive Secretary make public cases of non-compliance;
- recommend that a non-compliance case be addressed by the non-compliant Party.

99. The Committee should monitor the consequences of action taken in the context of the facilitation procedure and the further measures it has recommended.¹⁵⁰

100. In addition to specific cases of non-compliance, the Committee may examine systemic issues of general compliance of interest to all parties, where the Conference of the Parties so requests, or where the Committee decides that there is such a need.¹⁵¹

101. The Committee reports to each ordinary meeting of the Conference of the Parties on the work it has undertaken, its conclusions and recommendations and on its future programme of work.¹⁵²

102. In relation to specific cases of non-compliance, the Committee may receive information, through the Secretariat, from Parties, other sources, the Convention clearing-house mechanism and relevant intergovernmental organizations. It may also request information from the Secretariat. For purposes of examining systemic issues of non-compliance, the Committee may request information from all Parties, from any reliable source and outside expert, and it may consult with the Secretariat and draw upon its experience and knowledge base.¹⁵³ The Committee shall make every effort to reach agreement on all matters of substance by consensus, and as a last resort be taken by a qualified majority.¹⁵⁴

Experience

103. Pending the adoption of the procedures and mechanisms and establishment of the Compliance Committee, there is no information available on experience.

¹⁴⁵ Ibid., para. 12.

¹⁴⁶ Earth Negotiations Bulletin, IISD Reporting Services, vol. 15, No. 221, 6 May 2015, p.1, available at: <http://www.iisd.ca/chemical/cops/2015/>

¹⁴⁷ Draft Procedures and Mechanisms on Compliance with the Rotterdam Convention, para. 13-16.

¹⁴⁸ Ibid., para. 18.

¹⁴⁹ Ibid., para. 19.

¹⁵⁰ Ibid., para. 24.

¹⁵¹ Ibid., para. 15.

¹⁵² Ibid., para. 26.

¹⁵³ Ibid., para. 21-22.

¹⁵⁴ The current draft Procedures and Mechanisms contain several options between brackets.

J. The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

104. The Aarhus Convention was adopted in 1998 and entered into force in 2001. Article 15 of the Convention requires that the Meeting of the Parties “establish optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention”. Article 15 provides that the arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to the Convention.

105. The Meeting of the Parties, at its first meeting, adopted decision I/7 by which the Compliance Committee was established, and by which the Structures and Functions of the Compliance Committee and Procedures for the Review of Compliance were adopted.¹⁵⁵ The Compliance Committee has held more than fifty meetings since it established. The Rules of Procedure of the Conference of the Parties apply *mutatis mutandis* to the Compliance Committee.¹⁵⁶

106. The Committee’s functions are the following:¹⁵⁷

- (a) To consider any submission, referral or communication;
- (b) To prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of the provisions of the Convention;
- (c) To monitor, assess and facilitate the implementation of and compliance with the reporting requirements.¹⁵⁸

107. Submissions may be brought before the Committee by (a) a Party in respect of its own compliance;¹⁵⁹ (b) one or more Parties regarding another Party’s compliance;¹⁶⁰ (c) the Secretariat through referrals to the Committee;¹⁶¹ and (d) by members of the public concerning a Party’s compliance.¹⁶² In addition, the Committee may examine compliance issues on its own initiative and make recommendations.¹⁶³

108. The Committee reports on its activities at each ordinary Meeting of the Parties and make such recommendations as it considers appropriate.¹⁶⁴ Based on the report and recommendations of the Committee and taking into account the cause, degree and frequency of the non-compliance, the Meeting of the Parties may decide to:¹⁶⁵

- (a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;

¹⁵⁵ Structure and Functions of the Compliance Committee and Procedures for the Review of Compliance, COP decision I/7, Annex (hereinafter: Structure and Functions), para. 1 of COP decision I/7 provides for the establishment of the Compliance Committee.

¹⁵⁶ Report of the first meeting of the Compliance Committee, MP/PP/C.1/2003/2, para. 11. At its first three meetings, the Committee focused on its operations and *modus operandi*.

¹⁵⁷ Structure and Functions, para. 13.

¹⁵⁸ Structure and Functions, para. 13.

¹⁵⁹ Structure and Functions, para. 16.

¹⁶⁰ Structure and Functions, para. 15.

¹⁶¹ Structure and Functions, para. 17.

¹⁶² Structure and Functions, para. 18. Additional criteria apply when considering submissions by the public. Submissions may not be considered if they are anonymous; constitute an abuse of right; are manifestly unreasonable; or incompatible with the provisions of decision I/7 or those of the Convention. Any available domestic remedy should be taken into account.

¹⁶³ Structure and Functions, para. 14.

¹⁶⁴ Structure and Functions, para. 35.

¹⁶⁵ Structure and Functions, para. 37.

- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;
- (f) Issue cautions;
- (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention; and/or
- (h) Take such other non-confrontational, non-judicial and consultative measures.

109. Pending consideration by the Meeting of the Parties, the Compliance Committee may provide advice and facilitate assistance in consultation with the Party concerned, and, subject to agreement by the Party concerned, make recommendations, request the submission of a strategy, and make recommendations to the Party in case of communications from the public.¹⁶⁶

Experience

110. As of November 2015, two submissions were made by a Party with regard to compliance by another Party.¹⁶⁷ To date, no referrals have been made. So far, 130 communications have been received from the public. In these cases, the Compliance Committee has among others recommended: that the Party concerned submit time-bound strategies; that it develop and adopt appropriate legislation; that it provide training to officials; that the Secretariat provide assistance to the Party concerned; that the Party concerned report on progress made to the Meeting of the Parties

111. The Compliance Committee reports have led to the adoption of 34 decisions by the Meeting of the Parties regarding the non-compliance of eighteen countries. The Compliance Committee has also provided advice at the request of one of the Contracting Parties on the interpretation of terms of the Convention. In this regard, the Meeting of the Parties, at its fifth meeting, adopted a procedure for addressing such requests, which foresees that the Secretariat prepares a draft response, in which the views expressed by the Bureau and the Compliance Committee are to be taken into account, after which the response is submitted to the Party. In case of serious differences of opinion, the Bureau is to report on the matter to the Parties, which could entrust the Bureau (or establish an ad hoc committee), with input from the Secretariat and the Compliance Committee, to prepare a proposal on the subject matter for consideration by the Meeting of the Parties.¹⁶⁸ Pursuant to this procedure, the Secretary to the Aarhus Convention a response to one of the Contracting Parties in November 2015.¹⁶⁹

K. The 1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

112. The Protocol on Water and Health was adopted in 1999 under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The Protocol entered into force in 2005.

¹⁶⁶ Structure and Functions, para. 36.

¹⁶⁷ One arose in 2004 and recommendations were formulated. The other case arose in 2015 and a report has not yet become available in which this case is considered.

¹⁶⁸ Report of the fifth Meeting of the Parties, ECE/MP.PP/2014/2, para. 53.

¹⁶⁹ Available at: http://www.unece.org/fileadmin/DAM/env/pp/compliance/Requests_for_Advice/ACCC-A-2014-1_Belarus/toPartyA1_20.11.2015.pdf

Article 15 of the Protocol requires that the Parties establish, at their first meeting, multilateral arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance that allow for appropriate public involvement.

113. At its first meeting, the Meeting of the Parties to the Protocol adopted a Compliance Procedure and established a Compliance Committee for the review of compliance by the Parties with their obligations under the Protocol.¹⁷⁰

114. The objective of the procedure is to facilitate, promote and aim to secure compliance with the obligations under the Protocol by addressing cases of non-compliance by Parties and by providing advice or assistance to Parties, where appropriate. The procedure is to be simple, facilitative, non-adversarial and cooperative in nature, and its operation shall be guided by the principles of transparency, fairness, expedition and predictability.¹⁷¹

115. The functions of the Committee are the following:¹⁷²

- Consider any submission, referral or communication relating to specific issues of compliance;
- Prepare, at the request of the Meeting of the Parties, a report on compliance with, or implementation of, specific provisions of the Protocol;
- Monitor, assess and facilitate the implementation of, and compliance with, the reporting requirements;
- Make recommendation or take measures if, and as, appropriate.¹⁷³

116. Submissions may be brought before the Committee (a) by a Party regarding its own compliance;¹⁷⁴ (b) by one or more Parties in respect of another Party's compliance;¹⁷⁵ (c) through referrals from the Secretariat¹⁷⁶ and (d) through communications from the public.¹⁷⁷

117. The Committee may consider any relevant information submitted to it, can request further information, may gather information in the territory of a Party upon invitation and seek the services of experts.¹⁷⁸

118. The Committee shall make every effort to adopt decisions and recommendations by consensus, and in the absence of agreement and after having exhausted all efforts to reach consensus, by a two-thirds majority.¹⁷⁹

119. The Committee may decide upon one or more of the following measures:¹⁸⁰

- Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate;

¹⁷⁰ Compliance Procedure, Decision I/2, Annex, adopted at the first Meeting of the Parties, 2002. The Compliance Committee was established pursuant to paragraph 1 of Decision I/2.

¹⁷¹ Compliance Procedure, paras. 1-2.

¹⁷² Compliance Procedure, para. 11.

¹⁷³ Compliance Procedure, para. 12.

¹⁷⁴ Compliance Procedure, para. 13.

¹⁷⁵ Compliance Procedure, para. 14.

¹⁷⁶ Compliance Procedure, para. 15.

¹⁷⁷ Compliance Procedure, para. 16. Paras. 18 and 19 provide that communications in the sense of para. 16 may not be considered if they are anonymous; constitute an abuse of right; are manifestly unreasonable; or incompatible with the provisions of the Compliance Procedure or with the Protocol. Any available domestic remedy should be taken into account.

¹⁷⁸ Compliance Procedure, para. 23.

¹⁷⁹ Compliance Procedure, para. 10.

¹⁸⁰ Compliance Procedure, para. 34.

- Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;
- Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol;
- Issue cautions;
- In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.

120. The Committee reports on its activity at each ordinary meeting of the Parties and makes such recommendations as it considers appropriate.¹⁸¹ Upon consideration of the Committee report and recommendations, and taking into account the cause, type, degree and frequency of the non-compliance, the Meeting of the Parties may decide upon one or more of the following measures:¹⁸²

- Take measures as recommended by the Committee;
- Recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;
- Facilitate financial assistance and provide technical assistance, training and other capacity-building measures, subject to financial approval, including, when appropriate, seeking support from specialized agencies and other competent bodies;
- Issue declarations of non-compliance;
- Give special publicity to cases of non-compliance;
- Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; and/or
- Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

Experience

121. To date, no submissions by Parties have been made. The Compliance Committee received one communication, which it considered at its eleventh meeting and which is to be further considered at its twelfth meeting.¹⁸³

122. In the light of the difficulty faced by a number of Parties in implementing the Protocol and in view of the initial absence of submissions and communications, the Committee started enhancing its facilitation and assistance functions and engaged in consultations with a number of Parties.¹⁸⁴ To formalize its consultative role, at its sixth meeting, the Compliance Committee adopted rules governing the consultation process.¹⁸⁵ The consultation process is intended to help Parties implement their obligations under the Protocol. The consultation process does not imply any recognition of non-

¹⁸¹ Compliance Procedure, para. 33.

¹⁸² Compliance Procedure, para. 35.

¹⁸³ Report of the Eleventh Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2015/2, paras 3-5.

¹⁸⁴ Report of the Fifth Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2010/4, para. 25.

¹⁸⁵ Consultation Process of the Compliance Committee under the Protocol on Water and Health, provided in: Report of the Sixth Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2011/2, annex.

compliance and is not linked to the initiation of a compliance procedure.¹⁸⁶ The terms of reference of the consultation process were amended by the Committee, at its tenth meeting.¹⁸⁷

123. The consultation process is not a compliance review procedure, but is guided by the same principles guiding the work of the Compliance Committee, and the rules of the Compliance Committee apply, *mutatis mutandis*.¹⁸⁸ The consultation process is triggered by a request by a Party. It is conducted mainly by means of dialogue with the Party concerned at an ordinary meeting of the Compliance Committee and/or, as appropriate, during a mission upon the invitation of the Party concerned.¹⁸⁹ The results of the consultation process may consist of assistance, recommendations, and assistance in seeking financial and technical support. The results of a consultation process will be reported to the Meeting of the Parties in general terms.¹⁹⁰

124. At its ninth meeting, the Committee decided that it might invite a Party or a small group of Parties having identical or almost identical implementation problems to engage in a consultation, and agreed that the Committee would consider whether the rules governing the Consultation Process would need to be amended accordingly at a later stage.¹⁹¹ At its tenth meeting, the Compliance Committee decided to invite a small group of countries to engage in the Consultation Process and invited a Party that had submitted a request for assistance to join the Process as observer.

L. The 2001 International Treaty on Plant Genetic Resources for Food and Agriculture

125. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) was adopted in 2001 and entered into force in 2004. Article 21 requires that the Governing Body of the International Treaty “consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance.”

126. At its first session, held in 2006, the Governing Body established the Compliance Committee.¹⁹² The Governing Body could not reach agreement on the procedures and mechanisms of the Compliance Committee at the time.¹⁹³ The Procedures and Operational Mechanisms were adopted at the fourth session of the Governing Body, held in March 2011.¹⁹⁴ Rules of Procedure were approved by the Governing Body in its Resolution 9/2013, adopted at its fifth session.

127. The objective of the compliance mechanism is to promote compliance with the provisions of the International Treaty and to address issues of non-compliance, including through monitoring and offering

¹⁸⁶ Report of the Seventh Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2011/4, para. 6.

¹⁸⁷ Provided in Report of the Tenth Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2014/2, Annex.

¹⁸⁸ Consultation Process of the Compliance Committee under the Protocol on Water and Health, as amended, para.s 4 and 7.

¹⁸⁹ Ibid., para. 9.

¹⁹⁰ Ibid., para. 15.

¹⁹¹ Report of the Ninth Meeting of the Compliance Committee of the Protocol on Water and Health of the Convention on Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WH/C.1/2013/2, para.s 28-29.

¹⁹² The Compliance Committee was established by GB Resolution 3/2006 (2006), adopted at the First Session of the Governing Body, para. 1.

¹⁹³ Compliance procedures have been under examination since the adoption of the ITPGRFA, first by the Commission on Genetic Resources for Food and Agriculture, acting as Interim Committee for the ITPGRFA. The issue was subsequently discussed by the Open-Ended Working Group on the Rules of Procedure and the Financial Rules of the Governing Body, Compliance and the Funding Strategy. More recently, the Ad-Hoc Working Group on Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance, established by GB Resolution 2/2009 (2009), considered the matter. Draft Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-Compliance were presented in an Annex to GB Resolution 2/2009 (2009), at the Third Session of the Governing Body. Contracting Parties and observers were invited to make submissions on the text for consideration by the Ad-Hoc Working Group.

¹⁹⁴ Procedures and Mechanisms to Promote Compliance and Address Issues of Non-Compliance, GB Resolution 2/2011, Annex, adopted at the Fourth Session of the Governing Body (2011).

legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.¹⁹⁵

128. The procedures and mechanisms must be simple, cost-effective, facilitative, non-adversarial, non-judicial, legally non-binding and cooperative in nature.¹⁹⁶

129. The functions of the Committee are the following:¹⁹⁷

- (a) Consider information submitted related to compliance and non-compliance;
- (b) Offer advice or assistance to any Party on compliance-related issues;
- (c) Assist the Governing Body in monitoring implementation of the Treaty on the basis of reports submitted by Parties;
- (d) Address issues of non-compliance;
- (e) Promote compliance by addressing statements and questions concerning implementation of the Treaty referred to the Committee by a Party regarding its own implementation or by a decision of the Governing Body;
- (f) Submit reports to the Governing Body.

130. Consideration of any question related to interpretation, implementation or compliance with the Standard Material Transfer Agreement by parties or potential parties is excluded from the functions of the Committee.¹⁹⁸

131. The Committee receives, through the Secretariat, submissions from (a) a Party in respect of itself; (b) a Party with regard to another Party; and (c) the Governing Body.¹⁹⁹ The Procedures and Mechanisms provide for the minimum requirements of the content of the submissions.²⁰⁰

132. With a view to promoting compliance, the Compliance Committee may:

- (a) Provide advice or facilitate assistance, including legal advice or legal assistance to the Party;
- (b) Request or assist, as appropriate, the Party concerned to develop an action plan within a time frame;
- (c) Invite the Party concerned to submit progress reports to the Committee.²⁰¹

133. The Committee shall consider relevant information from the Party concerned, the Party that had made the submissions, or the Governing Body, and may seek expert advice and receive information as may be provided by the Secretary and other relevant sources.²⁰²

134. The Committee must make every effort to adopt its decisions by consensus, unless by consensus another method of arriving at a decision is reached.²⁰³ The Committee submits a report to each regular session of the Governing Body reflecting the work it has undertaken, the conclusions and recommendations of the Committee, and the future programme of work of the Committee.²⁰⁴

135. The Governing Body may, upon recommendation of the Committee, decide:

¹⁹⁵ Procedures and Mechanisms, Section I.

¹⁹⁶ Procedures and Mechanisms, Section II, para. 1.

¹⁹⁷ Procedures and Mechanisms, Section IV, para. 1.

¹⁹⁸ Procedures and Mechanisms, Section IV, para. 2.

¹⁹⁹ Procedures and Mechanisms, Section VI, para. 1.

²⁰⁰ Procedures and Mechanisms, Section VI, para. 2. As further specified in the rules of procedure, rules XI-XIII.

²⁰¹ Procedures and Mechanisms, Section VII, para. 1.

²⁰² Procedures and Mechanisms, Section VIII.

²⁰³ Rules of Procedure, Rule 8.1, as provided in GB Resolution 9/2013, Annex 1.

²⁰⁴ Procedures and Mechanisms, Section IV, para. 1(g).

- (a) To provide assistance, including, legal, financial and technical assistance;
- (b) To take any other actions that it deems appropriate, including for capacity-building.²⁰⁵

136. In addition to considering specific issues of compliance, the Committee is also responsible for considering reports submitted by Contracting Parties on the measures taken to implement the obligations under the Treaty and to submit to the Governing Body a synthesis on the basis of the national reports. In this context, the Compliance Committee also conducts analyses based on the Governing Body's priorities and submits recommendations to the Governing Body resulting from these analyses.²⁰⁶

137. The Governing Body will review the effectiveness of the procedures six years after the adoption and periodically thereafter.

Experience and lessons learned

138. So far, no submissions have been received.

M. The 2001 Stockholm Convention on Persistent Organic Pollutants

139. The Stockholm Convention was adopted in 2001 to protect human health and the environment from persistent organic pollutants. It entered into force in 2004. Article 17 of the Convention requires the Conference of the Parties to, "as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for the treatment of Parties found to be in non-compliance".

140. The Conference of the Parties agreed to convene an open-ended ad hoc working group on non-compliance, which produced draft text on compliance that was considered at the third meeting of the Conference of the Parties, and further refined with the support of a Contact Group. At its subsequent meetings, the Conference of the Parties could not agree on a final text. At its seventh meeting, COP failed again to reach agreement on a number of outstanding issues and decided to further consider the matter at its eight meeting.²⁰⁷

141. The draft text on compliance, as considered at the seventh meeting of the Conference of the Parties, provides for the establishment of a Compliance Committee.²⁰⁸

142. Submissions may be made by: (a) a Party in respect of its own compliance; and (b) a Party that is affected or may be affected by another Party's difficulties in complying with the Convention's obligations.²⁰⁹ The option for Secretariat referrals and Committee initiatives appear between brackets.²¹⁰

143. The draft Procedures address sharing of submissions and opportunities to respond by Parties concerned.²¹¹ The Committee considers the matter and shares its draft conclusions and recommendations with the Party concerned, which has the opportunity to provide comments.²¹²

144. The Committee considers submissions made and may after consultation with the Party take any of the following measures, referred to as 'facilitation':²¹³

²⁰⁵ Procedures and Mechanisms, Section VII, para. 2. 1. In the final procedures and mechanisms only measures of a facilitative nature have been retained. Nevertheless, the Governing Body retains the possibility to take any other actions it deems appropriate considering the circumstances.

²⁰⁶ Procedures and Mechanisms, Section V.

²⁰⁷ Draft Procedures are provided in Decision SC-7/26, Annex, adopted at the seventh Meeting of the Conference of the Parties (2015).

²⁰⁸ Draft Procedures, para. 5.

²⁰⁹ Draft Procedures, para. 17(a) and 17(b), respectively.

²¹⁰ Draft Procedures, para. 17(c) applies to Secretariat referrals. Committee initiatives are addressed in the bracketed paragraphs: 17(c) alt and 17 alt bis.

²¹¹ Draft Procedures, paras 18-23.

²¹² Draft Procedures, para. 24.

²¹³ Draft Procedures, para. 26.

- Provide advice;
- Issue non-binding recommendations;
- Provide support, including access to financial resources and technical assistance, technology transfer, training and other capacity building measures;²¹⁴
- Provide advice regarding future compliance;²¹⁵
- Facilitate technical and financial assistance;
- Request the Party concerned to develop a voluntary compliance action plan, and report to the Conference of the Parties on progress made, where applicable;
- Provide assistance upon request;
- Provide recommendations to the financial mechanism.²¹⁶

145. If the Committee, after undertaking the facilitation procedure set out in paragraph 26, considers it necessary to pursue further action, it may recommend to the Conference of the Parties any of the following measures:²¹⁷

- Providing further support;
- Providing advice;
- In case of repeated or persistent non-compliance, issue a statement of concern regarding current non-compliance;²¹⁸
- Requesting the Executive Secretary to make public cases of non-compliance;²¹⁹
- In case of repeated or persistent non-compliance, as a last resort, suspending rights and privileges under the Convention;²²⁰
- Undertaking any additional action that may be required;²²¹

146. The Committee shall report to each ordinary meeting of the Conference of the Parties reflecting the work it has undertaken, its conclusions and recommendations as well as its future work programme.²²²

Experience

147. Pending the agreement on the text and adoption of the Procedures, there is no information available on experience.

148. The issues on which the Conference of the Parties has not been able to reach agreement include: the title of the procedures; whether to specify particular provisions of the Convention to which the procedures would apply; whether the procedures could be triggered by the Secretariat or by the compliance committee itself, and if so the scope of the provisions subject to such a trigger as well as whether the sources of information to be considered by the Committee would include national implementation plans; and the action to be taken by the Conference of the Parties in respect of a party in

²¹⁴ This clause appears between brackets.

²¹⁵ This clause appears between brackets.

²¹⁶ This clause appears between brackets.

²¹⁷ Draft Procedures, para. 27.

²¹⁸ This clause appears between brackets. Paragraph 28, which also appears in brackets, provides that this measure may not be taken in respect of a developing country or a country with an economy in transition, does not apply.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Draft Procedures, para. 33.

non-compliance, as well as the extent to which any such action would apply to developing country parties and parties with economies in transition.²²³

N. The 2013 Minamanta Convention on Mercury

149. The 2013 Minamata Convention was adopted in 2013 but has not yet entered into force. The objective of the Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

150. Article 15 of the Convention provides for the establishment of a mechanism to promote implementation of and review compliance with the Convention. The mechanism is facilitative in nature and particular attention is to be paid to the respective national capabilities and circumstances of Parties.

151. The mechanism comprises a Committee, which consists of 15 members nominated by Parties and elected by COP, considering equitable geographic representation. The Committee is to promote implementation of and compliance with the provisions of the Convention. It examines both individual and systemic issues of implementation and compliance and shall make recommendations, as appropriate, to the Conference of the Parties.²²⁴

152. The Committee may consider issues on the basis of submissions from a Party with respect to its own compliance and on the basis of national reports as well as at the request of COP.²²⁵

153. The Committee must make every effort to make recommendations on the basis of consensus. If that is unsuccessful, recommendations may be adopted by a three-fourths majority vote as a last resort.²²⁶ Article 23(5) provides that the Conference of the Parties shall consider among others the recommendations submitted to it by the Compliance Committee, and consider and undertake any additional action that may be required for the achievement of the objectives of the Convention.²²⁷

154. The Committee must elaborate its rules of procedure, which shall be subject to approval by the second meeting of COP. COP may adopt further terms of reference for the Committee.²²⁸

155. The Secretariat provides an assisting role, among others by, making available to the Parties periodic reports based on information received pursuant to Articles 15 (i.e. submissions, requests) and 21 (i.e. national reports) and other available information.²²⁹

Experience

156. Pending the entry into force of the Convention, there is no information available on experience.

III. CONCLUSIONS

157. This document provides updated information on compliance mechanisms of other multilateral environmental agreements to contribute to further identifying the types of assistance that the Committee might provide and the means by which that assistance might be made available to Parties.²³⁰ Reference is made to document UNEP/CBD/BS/CC/13/INF/1, in which an overview of the compliance mechanism of the Cartagena Protocol is provided.

²²³ Report of the seventh meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants, UNEP/POPS/COP.7/36, para. 233.

²²⁴ Minamata Convention, article 15(2). The text of the Convention neither excludes nor explicitly provides for the possibility of the Committee to make recommendations to Parties directly.

²²⁵ Ibid., article 15(4).

²²⁶ Ibid., article 15(6).

²²⁷ Ibid., article 23(5)(e) and 23(5)(f).

²²⁸ Ibid., article 15(5).

²²⁹ Ibid., article 24(2)(e).

²³⁰ UNEP/CBD/BS/CC/12/5, para. 12.

158. An overview of the measures that can be taken to address cases of non-compliance under the different MEAs is provided in annex I.

159. The Compliance Mechanisms reviewed in section II of this document show a number of recurrent characteristics, which have been summarized for each of the MEAs in annex II, including:

- Similarity in objective, nature and principles underlying the compliance mechanisms;
- The establishment of a body or the assignment of compliance matters to an existing body to administer the compliance procedure;
- The structure and functions of the compliance body are generally alike;
- The compliance mechanisms allow Parties to submit issues regarding their own compliance;
- Most mechanisms allow Parties to submit issues regarding compliance of other Parties;
- Most mechanisms allow facilitative measures to be taken by either the compliance body or the principle governing body of the MEA. The type of measures that can be taken or recommended show a high degree of similarity, although there is considerable disparity in the extent to which mechanisms allow for the application of measures other than facilitative measures (see below).
- Where sanctions are provided for, the compliance mechanisms generally require that they be applied by the principle governing body of the MEA, this is to a lesser degree also the case in respect of issuing warnings and declarations of caution and concern;

160. While there are many common features among the compliance mechanisms, a number of important differences is noted, in particular in relation to following features:

- The role of the Secretariat in referring cases of possible non-compliance to the compliance body;
- The role of the compliance body to consider issues of possible non-compliance at its own initiative;
- The role of the principle governing body in bringing possible cases of non-compliance before the compliance body (as provided for in the London Protocol);
- The role of the public in bringing possible cases of non-compliance before the compliance body (as provided for in the Aarhus Convention and the Protocol on Water and Health);
- The extent to which the compliance body can adopt measures. In only one instance can corrective (sanctions) measures be taken by the compliance body (Kyoto Protocol), in some cases may the adopt cautionary measures (CITES and the Protocol on water and Health), while in most cases it can only adopt facilitative measures (CITES; Barcelona; Basel; Kyoto Protocol; Rotterdam; Aarhus; Protocol on Water and Health; ITPGRFA; Stockholm);
- The extent to which the governing body can adopt corrective measures (provided for in following MEAs: CITES; LRTAP; Montreal; Espoo; London Protocol; Aarhus; Protocol on Water and Health; ITPGRFA; and potentially Stockholm).

161. The practice under many MEAs shows that relatively few cases have been submitted by individual Parties in relation to compliance of other Parties. Most cases seem to have been brought to the attention of the compliance body, at the initiative of the compliance body itself or by referral of the Secretariat.

162. In many cases, the interventions of the compliance body remain restricted to communications, either directly or through the Secretariat, with the concerned Party, to clarify potential cases of non-compliance. In many cases, this process has led to a settlement of the issue. In some cases other facilitative measures are taken, which may include the request to prepare compliance action plans, or the imposing of time-frames by which certain measures must be taken. Some compliance mechanisms have facilitated the provision of advice on interpretation of terms used in the MEA. Under other compliance mechanisms, Parties have been invited for hearings on specific matters. While many compliance mechanisms allow the taking of punitive measures under certain circumstances, such measures have been imposed in very few cases.

*Annex I***MEASURES THAT MAY BE TAKEN UNDER THE DIFFERENT MULTILATERAL ENVIRONMENTAL AGREEMENTS**

	MEA	Measures that may be taken
A	CITES	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned; • Request special reporting from the Party concerned; • Issue a written caution, requesting a response and offering assistance; • Recommend specific capacity-building actions to be undertaken by the Party concerned; • Provide in-country assistance, technical assessment and a verification mission, upon the invitation of the Party concerned; • Send a public notification of a compliance matter through the Secretariat to all Parties, advising that compliance matters have been brought to the attention of a Party, and that up to that time, there has been no satisfactory response or action; • Issue a warning to the Party concerned that it is in non-compliance, for example, in relation to national reporting and/or the National Legislation Project; and/or • Request a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion. <p>Governing body:</p> <ul style="list-style-type: none"> • Suspension of trade in specimens of one or more CITES-listed species.
B	Barcelona	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice and facilitate assistance; • Request the Party to develop or assist in developing a time-bound action plan; • Invite the Party to submit progress reports; <p>Governing body:</p> <ul style="list-style-type: none"> • Facilitate implementation of advice and assistance, including capacity building; • Make recommendations to the Party concerned; • Request the Party to submit progress reports; • Publish cases of non-compliance.

	MEA	Measures that may be taken
C	LRTAP	<p>Governing body:</p> <ul style="list-style-type: none"> • EB may decide upon measures of non-discriminatory nature to bring about full compliance, including measures to assist the Party's compliance.
D	Montreal	<p>Governing body:</p> <ul style="list-style-type: none"> • Provide appropriate assistance, including assistance for collecting and reporting data, technical assistance, technology transfer and financial assistance, information transfer and training; • Issue cautions; and/or • Suspend specific rights and privileges under the Protocol, including those concerned with industrial rationalisation, production, consumption, trade, transfer of technology, the financial mechanism and institutional arrangements.
E	Basel	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide the Party concerned with advice, non-binding recommendations and information <p>Governing body:</p> <ul style="list-style-type: none"> • Provide further support, including prioritized technical assistance, capacity building and access to financial resources; and • Issue a cautionary statement and providing advice regarding future compliance.
F	Espoo	<p>Governing body:</p> <ul style="list-style-type: none"> • Provide advice in relation to legislative, procedural and institutional strengthening; • Submit to the Committee a time-bound strategy to bring about compliance; • Provide assistance to the Party; • Issue a declaration of non-compliance, or a caution; • In the case of persistent non-compliance, suspend the rights and privileges accorded to the Party under the Convention or the Protocol, including the possibility to appoint a member to the Implementing Committee; • Apply appropriate general measures to bring about compliance with the Convention and measures to assist an individual Party's compliance.

	MEA	Measures that may be taken
G	London Protocol	<p>Governing body:</p> <ul style="list-style-type: none"> • Provide advice and recommendations; • Facilitate cooperation and assistance; • Elaborate, with the cooperation of the Party or Parties concerned, compliance action plans, including targets and timelines; • Issue a formal statement of concern regarding a Party's compliance situation; • Take additional measures within its mandate, as appropriate, to facilitate compliance by the Party concerned.
H	Kyoto Protocol	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice and facilitation of assistance; • Facilitate financial and technical assistance, both from sources established under the Convention and the Protocol and from resources other than those; • Formulate recommendations; • issue a declaration of non-compliance and request the development of time-bound compliance plan; • suspend eligibility of Parties found not to meet the eligibility criteria under articles 6, 12 and 17 of the Protocol; • declare that the Party is not in compliance with article 3 of the Protocol; • Deduct emissions from the Party's assigned amount; • Develop a compliance action plan; • Suspend eligibility to make transfers under article 17 of the Protocol.
I*	Rotterdam	<p>Compliance body</p> <ul style="list-style-type: none"> • Provide a Party with advice, non-binding recommendations, or any information required to assist the Party in developing a compliance plan; <p>Governing body:</p> <ul style="list-style-type: none"> • Provide support, including facilitation, as appropriate, of access to financial resources, technical assistance and capacity-building; • Provide advice regarding future non-compliance; • Issue a statement of concern regarding possible future or current non-compliance; • Request that the Executive Secretary make public cases of non-compliance; • Recommend that a non-compliance case be addressed by the non-compliant Party.

	MEA	Measures that may be taken
J	Aarhus	<p>Compliance body:</p> <ul style="list-style-type: none"> • Pending consideration by the Meeting of the Parties of measures, the Compliance Committee may provide: <ul style="list-style-type: none"> ○ advice and facilitate assistance in consultation with the Party concerned, and; ○ subject to agreement by the Party concerned, make recommendations; ○ request the submission of a strategy, and; ○ make recommendations to the Party in case of communications from the public <p>Governing body:</p> <ul style="list-style-type: none"> • Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention; • Make recommendations to the Party concerned; • Request the Party concerned to submit a strategy, including a time schedule, and to report on the implementation of this strategy; • In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public; • Issue declarations of non-compliance; • Issue cautions; • Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention; and/or • Take such other non-confrontational, non-judicial and consultative measures as may be necessary.

	MEA	Measures that may be taken
K	Water & Health Protocol	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate; • Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned; • Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol; • Issue cautions; • In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public. <p>Governing body:</p> <ul style="list-style-type: none"> • Take measures as recommended by the Committee; • Recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer; • Facilitate financial assistance and provide technical assistance, training and other capacity-building measures, subject to financial approval, including, when appropriate, seeking support from specialized agencies and other competent bodies; • Issue declarations of non-compliance; • Give special publicity to cases of non-compliance; • Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; and/or • Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

	MEA	Measures that may be taken
L	ITPGRFA	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice or facilitate assistance, including legal advice or legal assistance to the Party; • Request or assist, as appropriate, the Party concerned to develop an action plan within a time frame; and • Invite the Party concerned to submit progress report to the Committee. <p>Governing body:</p> <ul style="list-style-type: none"> • Provide assistance, including, legal, financial and technical assistance; • Take any other actions that it deems appropriate, including for capacity-building.
M*	Stockholm	<p>Compliance body:</p> <ul style="list-style-type: none"> • Provide advice; • Issue non-binding recommendations; • Provide support, including access to financial resources and technical assistance, technology transfer, training and other capacity building measures;²³¹ • Provide advice regarding future compliance;²³² • Facilitate technical and financial assistance; • Request the Party concerned to develop a voluntary compliance action plan, and report to the Conference of the Parties on progress made, where applicable; • Provide assistance upon request; • Provide recommendations to the financial mechanism. <p>Governing body:</p> <ul style="list-style-type: none"> • Providing further support; • Providing advice; • In case of repeated or persistent non-compliance, issue a statement of concern regarding current non-compliance;²³³ • Requesting the Executive Secretary to make public cases of non-compliance;²³⁴ • In case of repeated or persistent non-compliance, as a last resort, suspending rights and privileges under the Convention;²³⁵ • Undertaking any additional action that may be required.²³⁶

²³¹ This clause appears between brackets.

²³² This clause appears between brackets.

²³³ This clause appears between brackets. Paragraph 28, which also appears in brackets, provides that this measure may not be taken in respect of a developing country or a country with an economy in transition, does not apply.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

	MEA	Measures that may be taken
N	Minamata (pending entry into force)	Governing body <ul style="list-style-type: none"> Consider recommendations submitted by the Compliance Committee and consider and apply any additional action that may be required for the achievement of the objectives of the Convention.

* Grey fields indicate that the compliance mechanism has not been adopted.

Annex II

COMPARATIVE TABLE OF CHARACTERISTICS OF COMPLIANCE MECHANISMS UNDER MEAS

<div> <div>MEA</div> <div>Compliance elements</div> </div>	A	B	C	D	E	F	G	H	I ¹	J	K	L	M ²	N
	CITES	Barcelona	LRTAP	Montreal	Basel	Espoo	London Protocol	Kyoto Protocol	Rotterdam	Aarhus	Water & Health Protocol	ITPGREA	Stockholm	Minamata
1) Compliance body established or identified	12 G ³	2 P ⁴	1997/2, 1 ⁵	5 N ⁶	VI/12, 1 ⁷	II/4, 1 ⁸	1.4 C ⁹	II.1 Pr ¹⁰	1 D ¹¹	I/7, 1 ¹²	I/2, 1 ¹³	3/2006, 1 ¹⁴	1 DP ¹⁵	15 MC ¹⁶
2a) Self-submission by Party	19 G	18(a) P	4(b) I ¹⁷	4 N	9(a) T ¹⁸	5(b) S ¹⁹	4.1.2 C	VI.1 Pr	12(a) D	16 St ²⁰	13 CP ²¹	VI.1(a) PM ²²	17(a) DP	15(4)(a) MC
2b) Party to Party submission	18 G	18(b) P	4(a) I	1 N	9(b) T	5(a) S	4.1.3 C	VI.1 Pr	12(b) D	15 St	14 CP	VI.1(b) PM	17(b) DP	-
2c) Secretariat referral	14-16 G	23 P	5 I	3 N	9(c) T	-	-	-	12 XXX D ²³	17 St	15 CP	-	17(c) DP ²⁴	-
2d) Compliance body's own initiative	-	-	5 bis I	-	-	6 S	-	-	-	14 St	14 CP	-	17(c) alt, 17(c) alt bis DP ²⁵	-
Other procedures for submission	-	-	-	-	-	-	4.1.1. ²⁶	VI.1 Pr ²⁷	-	18 St ²⁸	16 CP ²⁹	VI.1(c) ³⁰ PM	-	15(4)(b) ³¹ 15(4)(c) MC ³²
3a) Compliance body facilitative measures	29 G	32 P	-	-	19 T	-	-	XIV Pr	18 D	36 St ³³	34 CP	VII.1 PM	26 DP	* ³⁴
3b) Compliance body warnings/caution	29 G	-	-	-	-	-	-	-	-	-	34 CP	-	-	*
3c) Compliance body can issue sanctions	-	-	-	-	-	-	-	XV Pr	-	-	-	-	-	*
4a) Governing body facilitative measures	-	32 P	11 I	9 N	20 T	12 R ³⁵	5.1 C	-	19 D	37 St	35 CP	VII.2(a) PM	27 DP	*
4b) Governing body warnings/caution/concern	-	-	11 I	9 N	20 T	12 R	5.1 C	-	19 D	37 St	35 CP	VII.2(b) PM	27 DP ³⁶	*
4c) Governing body can issue sanctions	30 G	-	11 I	9 N	-	12 R	5.4 C ³⁷	-	-	37 St	35 CP	VII.2(b) PM	27 DP ³⁸	*

¹ The compliance mechanism of the Rotterdam Convention is under negotiation and has not been adopted yet. The information provided for the Rotterdam Convention is based on the latest draft procedures and mechanisms.

² The compliance mechanism of the Stockholm Convention is under negotiation and has not been adopted yet. The information provided for the Stockholm Convention is based on the latest draft procedures.

³ 'G' stands for: Guide to CITES Compliance Procedures, Resolution Conf. 14.3, Annex.

⁴ ‘P’ stands for: Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, Decision IG 17/2.

⁵ Decision 1997/2, paragraph 1.

⁶ ‘N’ stands for: Non-Compliance Procedure, adopted by Decision IV/5, and amended by Decision X/10.

⁷ Decision VI/12, paragraph 1.

⁸ Decision II/4, paragraph 1.

⁹ ‘C’ stands for Compliance Procedures and Mechanisms Pursuant to Article 11 of the 1996 Protocol to the London Convention 1972, adopted by the Twenty-Ninth Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and Second Meeting of Contracting Parties to the 1996 Protocol to the Convention, Report of the meetings, paragraph 5.24.1 and Annex 7.

¹⁰ ‘Pr’ stands for: Procedures and mechanisms relating to compliance under the Kyoto Protocol, Adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol by decision 27/CMP.1, Annex (hereinafter: Procedures and Mechanisms)

¹¹ ‘D’ stands for: Draft Procedures and Mechanisms on Compliance with the Rotterdam Convention.

¹² Decision I/7, paragraph 1.

¹³ Decision I/2, paragraph 1.

¹⁴ GB Resolution 3/2006, paragraph 1.

¹⁵ ‘DP’ stands for: Draft Procedures provided in Decision SC-7/26, Annex, adopted at the seventh Meeting of the Conference of the Parties (2015).

¹⁶ ‘MC’ stands for: Minamata Convention

¹⁷ Implementation Committee, its structure and functions and procedures for review, provided in Decision 2025/25, Annex.

¹⁸ ‘T’ stands for: Terms of Reference for a Mechanism for Promoting Implementation and Compliance, Decision VI/12, Appendix.

¹⁹ ‘S’ stands for: Structure and Functions of the Implementation Committee and Procedures for Review of Compliance, adopted by decision III/2, as amended by decision VI/2.

²⁰ ‘St’ stands for: Structure and Functions of the Compliance Committee and Procedures for the Review of Compliance, COP decision I/7, Annex

²¹ ‘CP’ stands for: Compliance Procedure, Decision I/2, Annex, adopted at the first Meeting of the Parties, 2002

²² ‘PM’ stands for: Procedures and Mechanisms to Promote Compliance and Address Issues of Non-Compliance, GB Resolution 2/2011, Annex, adopted at the Fourth Session of the Governing Body (2011)

²³ Paragraph 12 XXX appears between brackets in the current draft.

²⁴ This clause appears between brackets in the current draft.

²⁵ These clauses appear between brackets in the current draft.

²⁶ The Compliance Procedures and Mechanisms provide that the Meeting of Contracting Parties may raise an issue of possible non-compliance (not the Compliance Group itself)

²⁷ Section VI, paragraph 1 provides that Committee shall receive, through the secretariat, questions of implementation indicated in reports of expert review teams under Article 8 of the Protocol.

²⁸ Paragraph 18 provides that communications may be brought before the Committee by members of the public concerning a Party’s compliance with the Convention.

²⁹ Paragraph 16 provides that communications may be brought before the Committee by one or more members of the public concerning a Party’s compliance with the Protocol.

³⁰ The Governing Body of the Treaty may make submissions through the Secretariat to the Committee.

³¹ Article 15(4)(c) provides that the Committee may consider issues on the basis of national reports in accordance with article 21 of the Convention. Article 21 provides that Parties report through the Secretariat to the Conference of the Parties.

³² Article 15(4)(c) provides that the Committee may consider issues at the request of the Conference of the Parties.

³³ Paragraph 36 and 37 relate to measures that may be taken pending adoption of measures by the Conference of the Parties.

³⁴ * The text of the Convention neither excludes nor explicitly provides for the possibility of the Committee to make recommendations to Parties directly. The Committee shall promote implementation of and compliance with the Convention and shall make recommendations, as appropriate to the Conference of the Parties (article 15(2)). The Conference of the Parties shall consider any recommendations submitted to it by the Committee and consider and undertake any additional action that may be required for the achievement of the objectives of this Convention (article 23(5)(d)-(e)).

³⁵ ‘R’ stands for: Operating Rules of the Implementation Committee, adopted by decision as amended,

³⁶ This clause appears between brackets in the current draft.

³⁷ The Compliance Procedures and Mechanisms provide that the Meeting of Contracting Parties may also consider additional measures within its mandate, as appropriate, to facilitate compliance by the Party concerned. It is not clear whether this would allow for imposing sanctions.

³⁸ This clause appears between brackets in the current draft.