



# CONVENTION ON BIOLOGICAL DIVERSITY

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## INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY

Second meeting

Nairobi, 1-5 October 2001

Item 4.8.5 of the provisional agenda\*

### COMPLIANCE (ARTICLE 34)

#### *Report of the Open-ended Meeting of Experts on a Compliance Regime under the Cartagena Protocol on Biosafety*

### INTRODUCTION

#### *A. Background*

1. At its first meeting, held in Montpellier, France, from 11 to 15 December 2000, the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) invited Parties and Governments to communicate their views regarding the elements and options for a compliance regime under the Cartagena Protocol on Biosafety. The Committee requested the Executive Secretary to compile the views submitted and prepare a synthesis report for the consideration of experts, who were to meet during the inter-sessional period. It also requested the Executive Secretary to organize, in consultation with the Bureau of ICCP, a three-day open-ended meeting of experts with relevant expertise, back to back with the second meeting of the ICCP, to review the synthesis report.

2. Accordingly, the Open-ended Meeting of Experts on a Compliance Regime under the Cartagena Protocol on Biosafety was held at the headquarters of the United Nations Environment Programme (UNEP), in Nairobi, from 26 to 28 September 2001.

#### *B. Attendance*

3. The meeting was attended by experts nominated by the following Parties to the Convention on Biological Diversity and other States: Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Bahamas, Belgium, Benin, Bhutan, Botswana, Brazil, Burkina Faso, Cameroon, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Dominica, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, European Community, France, Gambia, Georgia, Germany,

\* UNEP/CBD/ICCP/2/1.

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Guatemala, Guinea, Haiti, India, Indonesia, Iraq, Islamic Republic of Iran, Italy, Jamaica, Japan, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Lesotho, Madagascar, Malaysia, Maldives, Mali, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Palau, Paraguay, Peru, Poland, Republic of Korea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Seychelles, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Zimbabwe.

4. Representatives of the following United Nations bodies, Secretariat units and specialized agencies also participated: United Nations Environment Programme (UNEP), United Nations Office at Nairobi (UNON).

5. The following other organizations were also represented:

(a) *Intergovernmental organizations*: African Centre for Technology Studies (ACTS);

(b) *Non-governmental organizations*: The Edmonds Institute; Global Industry Coalition; Maasai Culture and Communication Centre.

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

6. The meeting was opened by Ambassador Philémon Yang (Cameroon), the Chair of the ICPC, at 10 a.m. on 26 September 2001.

7. In his opening statement, Ambassador Yang welcomed participants and expressed his thanks to those Governments that had provided financial support for the current meeting, to UNEP for hosting it, and to the Government of Kenya for its gracious hospitality. He wished to echo the view that the objective of the compliance mechanism was to encourage Parties to comply, and to offer them advice or assistance when they encountered difficulties in fulfilling their commitments, as occurrences of non-compliance, in particular persistent non-compliance, would not only affect other Parties, but would eventually result in harm to the environment and risks to human health. He considered that, in designing the compliance mechanism, it was important to ensure that the system would be transparent, fair, and credible. That would contribute greatly to its effectiveness in practice.

8. Opening statements were also made by Mr. Noah Katana Ngala, Minister of Environment of Kenya; Mr. Shafqat Kakakhel, Deputy Executive Director of UNEP, speaking on behalf of Mr. Klaus Töpfer, Executive Director of UNEP; and Mr. Hamdallah Zedan, Executive Secretary of the Convention on Biological Diversity.

9. In his statement, Mr. Ngala said that the strength of the Protocol would depend greatly on the willingness of members to institute a compliance regime that would meet the needs of Parties, recognize the interests of various groups and which would also strengthen the capacities of all Parties, especially the developing countries. He suggested that a monitoring process be instituted to ensure compliance with the Protocol. Stressing the importance of collaboration between Parties, particularly in information exchange, he pointed to the crucial role of the Biosafety Clearing-house in the provision of accurate information for all aspects of implementing the compliance regime. He believed that it was necessary to also consider the

concept of a legal requirement for the accuracy of information provided by domestic exporters of LMOs. Mechanisms to ensure compliance needed to be clearly stipulated and the factors leading to non-compliance should be investigated and measures taken to address them. All the obligations for Parties should also be clearly identified and considered in a holistic manner. Recalling that many developing countries did not yet have a legislative and regulatory framework covering safety in biotechnology, he underlined the need to encourage the development of such domestic frameworks so that the provisions of the international instruments could be incorporated in them.

10. Mr. Shafqat Kakakhel, conveyed heartfelt sympathy to the victims of the recent terrorist attack on the United States of America. After welcoming participants, he expressed gratitude for the decision to hold the current meeting and the upcoming second meeting of ICCP in Nairobi. He said that he fulfilment of the requirements of the Protocol entailed the development of, *inter alia*, five elements, and their integration into a functional national biosafety system capable of ensuring that the transboundary movement, transit, handling and use of LMOs were in compliance with the Protocol. Those elements comprised: formulating science-based regulations and implementing them in a consistent manner; building awareness of biosafety issues; reviewing applications for import or release of LMOs; instituting mechanisms for acquiring new scientific information; and invoking compliance and enforcement mechanisms. Capacity-building was the prime element of the highest priority for the effective implementation of the Parties' obligations under the Protocol. It was necessary to ensure the provision of adequate and timely financial and technical support for the creation and implementation of the national biosafety frameworks. UNEP accorded particular attention to the issue of compliance with and enforcement of multilateral environmental agreements, which was closely linked to the important subject of international environmental governance, a matter of great relevance to UNEP's current focus in the run up to the World Summit on Sustainable Development.

11. Mr. Zedan welcomed participants and expressed his gratitude to the Governments of Denmark, Italy, Japan, the Netherlands, New Zealand, Norway, the Republic of Korea, Sweden and Switzerland for providing financial support for the meeting, and to UNEP for hosting it. He informed the experts that, to date, the Protocol had been signed by 103 Parties to the Convention and ratified by five. The ICCP had considered the issue of compliance at its first meeting and had decided that an expert meeting would be convened for an in-depth consideration of this issue prior to the second meeting of ICCP. It had requested the Executive Secretary to prepare a synthesis report of the views submitted by Governments for consideration by the current meeting of experts. Written submissions had been received from a number of Parties and Governments, and he expressed his thanks for those comments. The Secretariat had prepared a synthesis report of the views (UNEP/CBD/BS/EM-COMP/1/2). The annex to that document also contained draft elements and options, prepared by the Secretariat on the basis of the outcome of the discussions on the matter at the first meeting of the ICCP and the written submissions by Parties and Governments. The current meeting was in a position to review the proposed elements and options and make concrete proposals to the ICCP at its second meeting during the following week.

## ITEM 2. ORGANIZATIONAL MATTERS

### 2.1. *Officers*

12. The Bureau of the ICCP served as the Bureau of the meeting. The Chair of the ICCP informed the Meeting that he was delegating authority to chair the meeting to Mr. Mohammed Reza Salamat

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(Islamic Republic of Iran), Vice-Chair of the Bureau of the ICCP, who had chaired Working Group II, which considered the question of compliance, at the first meeting of the ICCP.

13. In assuming the chair, Mr. Salamat expressed condolences to the families of the victims of the recent terrorist attacks in the United States of America, which had claimed the lives of thousands of innocent people. He thanked the speakers for their opening statements and expressed the hope that the meeting would build on the good discussions held in Working Group II at the first meeting of the ICCP.

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

14. At the opening session of the meeting, the following agenda was adopted on the basis of the provisional agenda circulated as document UNEP/CBD/BS/EM-COMP/1/1:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1 Officers;
  - 2.2 Adoption of the agenda;
  - 2.3 Organization of work.
3. Synthesis of views communicated by Parties and Governments regarding the elements and options for a compliance regime under the Cartagena Protocol on Biosafety.
4. Further consideration of the elements and options for a compliance regime.
5. Recommendations on draft procedures and mechanisms for a compliance regime under the Cartagena Protocol on Biosafety.
6. Other matters.
7. Adoption of the report.
8. Closure of the meeting.

## ***2.3 Organization of work***

15. At its opening session, the Meeting agreed on the organization of work on the basis of the proposals contained in annex I to the annotations to provisional agenda (UNEP/CBD/EM-COMP/1/1/Add.1). In doing so, it was decided that the meeting would be conducted entirely in plenary session, on the understanding that contact groups or drafting groups could be set up as the need arose, in order to further develop the discussions conducted in plenary on specific issues and present the plenary with draft recommendations for its consideration.

### **ITEM 3. SYNTHESIS OF VIEWS COMMUNICATED BY PARTIES AND GOVERNMENTS REGARDING THE ELEMENTS AND**

**OPTIONS FOR A COMPLIANCE REGIME UNDER THE  
CARTAGENA PROTOCOL ON BIOSAFETY**

*and*

**ITEM 4. FURTHER CONSIDERATION OF THE ELEMENTS AND OPTIONS  
FOR A COMPLIANCE REGIME**

16. In view of the interlinkages between item 3 and item 4, the Meeting agreed to take them up concurrently. Introducing the items, the Secretariat drew the Meeting's attention to the note by the Executive Secretary (UNEP/CBD/BS/EM-COMP/1/2) containing a synthesis of views communicated, as of 30 June 2001, by Parties and Governments regarding elements and options for a compliance regime under the Cartagena Protocol on Biosafety, based on a questionnaire previously developed and circulated by the Secretariat. The note also contained, in its annex, draft elements and options developed by the Executive Secretary on the basis of the discussions at the first ICCP meeting and the views communicated by Parties and Governments, to guide the discussions in the formulation of appropriate recommendations to be submitted to the second meeting of ICCP. The Secretariat also invited those Parties and other Governments that had not yet submitted their views to make them available for distribution at the meeting. The Meeting also had before it an information document containing the full text of the views submitted (UNEP/CBD/BS/EM-COMP/1/INF/1).

17. The Meeting decided to focus its discussion on the draft procedures and mechanisms for a compliance regime set out in the annex to the note by the Executive Secretary referred to above.

18. Following a lengthy discussion at the 1st, 2nd and 3rd sessions of the meeting, during which many experts made proposals for amendments, it was agreed that, based on the comments and proposals made, the Chair would prepare and propose a Chair's text for submission to the experts, with a view to facilitating discussion so that the Open-ended Meeting of Experts could make concrete recommendations to the ICCP at its second meeting.

19. At the 4th session of the meeting, on 27 September 2001, the experts took up the text prepared by the Chair following the discussion. The Meeting agreed that the Chair's text represented a very good basis for discussion of the compliance regime. A substantive discussion of the text took place at the 4th, 5th and 6th sessions of the meeting.

20. During the discussion, one expert requested that the report of the Meeting should reflect her view that the reference to the Biosafety Clearing-House in paragraph 2 (a) of section V of the text should be moved and placed under paragraph 1 of the same section. The same expert also expressed a preference for a shorter time-frame than that stipulated under Article 35 of the Protocol for the review of the procedures and mechanisms provided for under section VII of the text.

**ITEM 5. RECOMMENDATIONS ON DRAFT PROCEDURES AND  
MECHANISMS FOR A COMPLIANCE REGIME UNDER  
THE CARTAGENA PROTOCOL ON BIOSAFETY**

21. The Meeting agreed that the text, as annexed to the present report, with both its agreed and bracketed parts, would be forwarded to the second meeting of the ICCP for further discussion.

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#### **ITEM 6. OTHER MATTERS**

22. There were no other matters.

#### **ITEM 7. ADOPTION OF THE REPORT**

23. The present report was adopted at the 6th session of the meeting, on 28 September 2001, on the basis of the draft report prepared and presented by the Rapporteur (UNEP/CBD/BS/EM-COMP/1/L.1), on the understanding that the Rapporteur and the Secretariat would be entrusted with the incorporation of the last part of the proceedings.

#### **ITEM 8. CLOSURE OF THE MEETING**

24. In his closing remarks, Mr. Salamat expressed his deep gratitude to all participating experts for their constructive and rich contributions to the discussions and positive atmosphere that had prevailed in the debate throughout the three-day meeting. He also expressed his appreciation for the excellent arrangements made by the Secretariat, in particular the preparation of documentation on compliance issues for consideration by the Meeting.

25. Following the customary exchange of courtesies, the meeting was closed at 7.30 p.m. on Friday 28 September 2001.

*Annex*

**DRAFT PROCEDURES AND MECHANISMS ON COMPLIANCE  
UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY**

The following procedures and mechanisms are developed in accordance with Article 34 of the Cartagena Protocol on Biosafety and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention on Biological Diversity:

***I. Objective, nature and underlying principles***

1. The objective of the compliance procedures and mechanisms shall be to promote compliance with the provisions of the Protocol, to address cases of non-compliance by Parties, and to provide advice or assistance, where appropriate.
2. The compliance procedures and mechanisms shall be simple, facilitative, non-adversarial and cooperative in nature.
3. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, fairness, expedition, predictability, [and common but differentiated responsibilities] [and take into account principle 7 of the Rio Declaration on Environment and Development, that States have common but differentiated responsibilities].

***II. Institutional mechanisms***

1. A Compliance Committee, hereinafter referred to as “the Committee”, is hereby established pursuant to Article 34 of the Protocol to carry out the functions specified herein.
2. The Committee shall consist of 15 members nominated by Parties and elected by the Conference of Parties serving as the meeting of the Parties to the Protocol on the basis of three members from each of the five regional groups of the United Nations [, and ensuring a balance between importing and exporting countries].
3. Members of the Committee shall have recognized competence in the field of biosafety or other relevant fields, including legal or technical expertise, [and they shall serve in their individual capacity].
4. Members shall be elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol for a period of four years, this being a full term. At its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall elect five members, one from each region, for half a term, and ten members for a full term. Each time thereafter, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol shall elect for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.
5. The Committee shall meet twice a year, unless it decides otherwise. The Secretariat shall service the meetings of the Committee.

6. The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol for consideration and appropriate action.

7. The Committee shall develop and submit its rules of procedure to the Conference of the Parties serving as the meeting of the Parties for its consideration and approval.

### ***III. Functions of the Committee***

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

(a) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;

(b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;

(c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Protocol;

(d) Review general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with Article 33 of the Protocol and also through the Biosafety Clearing-House;

(e) Take measures, as appropriate, or make recommendations, to the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(f) Carry out any other functions as may be assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

### ***IV. Procedures***

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

(a) Any Party with respect to itself;

(b) [Any Party with respect to another Party; or]

(c) [The Conference of the Parties serving as the meeting of the Parties to the Protocol].

2. The Secretariat shall, within fifteen days of receipt of submissions under paragraphs 1 (b) and (c) above, make the submissions available to the Party concerned, and once it has received a response and information from the concerned Party, it shall transmit the submission, the response and information to the Committee.

3. A Party that has received a submission regarding its compliance with the provision(s) of the Protocol should respond and, with recourse to the Committee for assistance if required, provide the necessary information preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.

4. A Party, in respect of which a submission is made or which makes a submission, is entitled to participate in the deliberations of the Committee. This Party shall not participate in the elaboration and adoption of a recommendation of the Committee.

#### ***V. Information and consultation***

1. The Committee shall consider relevant information from:

- (a) The Party concerned;
- (b) [The Party that has made a submission with respect to another Party.]

2. The Committee may seek or receive and consider relevant information, including from:

- (a) The Biosafety Clearing-House [and other bodies of the Convention on Biological Diversity and the Protocol];
- (b) [Non-governmental organizations, the private sector and other civil-society organizations and relevant intergovernmental organizations;]
- (c) [The Secretariat.]

3. The Committee may seek expert advice from the biosafety roster of experts.

4. The Committee, in undertaking all of its functions and activities, shall maintain the confidentiality of any information that is confidential under Article 21 of the Protocol.

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

1. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance:

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

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

2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, and taking into account such factors as the cause, type, degree and frequency of non-compliance, [and the capacity of the Party concerned, in particular of developing country Parties in complying with the Protocol], also decide upon one or more of the following measures:

(a) Provide financial and technical assistance, technology transfer, training and other capacity-building measures;

(b) [Issue a caution to the concerned Party;]

(c) [Publish cases of non-compliance; or]

(d) [Suspend the specific rights and privileges of the concerned Party under the Protocol [consistent with international law].]

#### ***VII. Review of the procedures and mechanisms***

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall, in line with Article 35 of the Protocol, review the effectiveness of these procedures and mechanisms and take appropriate action.

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