



## CONVENTION ON BIOLOGICAL DIVERSITY

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### CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY

First meeting

Kuala Lumpur, 23-27 February 2004

Agenda item 6.5 of the provisional agenda\*

#### COMPLIANCE (ARTICLE 34)

#### *Procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety*

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. Article 34 of the Cartagena Protocol on Biosafety provides that the Conference of the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. In accordance with the work plan of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP), adopted by the Conference of the Parties to the Convention at its fifth meeting (decision V/1, annex, section B, item 5), the issue of compliance was taken up at the first meeting of ICCP. As requested at that meeting, an open-ended Meeting of Experts on Compliance was held in Nairobi from 26 to 28 September, prior to the second meeting of ICCP. At its second meeting, ICCP considered the report of the Meeting of Experts (UNEP/CBD/ICCP/2/13/Add.1) and further developed the text of draft procedures and mechanisms on compliance (UNEP/CBD/ICCP/2/15, annex, recommendation 2/11, annex).

2. At its third meeting, ICCP, in its recommendation 3/2, agreed to forward the text of the draft procedures and mechanisms on compliance contained in annex I to that recommendation to the first meeting of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for its consideration. It also agreed to forward annex II to the recommendation, containing options regarding the bracketed text on draft procedures and mechanisms on compliance, to the first meeting of the Conference of the Parties serving as the meeting of the Parties to

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the Protocol with a view to assisting that meeting in its consideration of this issue. The text of the draft procedures and mechanisms and the options regarding bracketed text are reproduced, respectively, in annexes I and II to the present note.

3. In paragraphs 3 and 4 of recommendation 3/2, the ICCP invited Parties and Governments to submit to the Executive Secretary their views or understandings with respect to the contents in square brackets in the text of the draft procedures and mechanisms no later than six months prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and requested the Executive Secretary to compile the views submitted and make them available for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Accordingly, the views received will be compiled by the Secretariat and made available as an information document to the Conference of the Parties serving as the meeting of the Parties to the Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to consider and adopt the draft procedures and mechanisms on compliance under the Protocol. In this connection, the Executive Secretary, in consultation with ICCP Bureau, has informed Governments that they may wish to prepare for the election of the Compliance Committee that may be established at the first meeting of Conference of the Parties serving as the meeting of the Parties to the Protocol, as the institutional mechanism envisaged in Article 34 of the Protocol and has invited Governments to identify suitably qualified candidates for this purpose.

*Annex I*

**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 the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety 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 to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for a period of four years, this being a full term. At its first meeting, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety 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 Cartagena Protocol on Biosafety 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, the Conference of the Parties of the Convention, the Conference of the Parties serving as the meeting of the Parties, and subsidiary bodies of the Convention on Biological Diversity and the Protocol;
  - (b) Relevant international organizations;
  - [(c) Non-governmental organizations, or],
  - [(d) 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, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance:
  - (a) Provide advice or assistance to the Party concerned, as appropriate;
  - (b) Make recommendations to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
  - (c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Protocol within a timeframe to be agreed upon between the Committee and the Party concerned; and
  - (d) Invite the Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its obligations under the Protocol.
2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance, 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 to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety Protocol shall, in line with Article 35 of the Protocol, review the effectiveness of these procedures and mechanisms and take appropriate action.

*Annex II*

**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].

**Option 1**

Retain the first bracketed text as it is, delete the second bracketed text.

**Option 2**

Delete the entire bracketed text.

**Option 3**

Delete the entire bracketed text in this section, but reflect the concept envisaged in the bracketed text in the chapeau of paragraphs 1 and 2 of section VI (see option 3 on paragraph 1 (c) and option 2 on the chapeau of paragraph 2 in section VI).

**Option 4**

**Combine options 1 and 3 above.**

***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].

**Option 1**

Delete the bracketed text.

**Option 2**

Retain the bracketed text as it is.

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].

**Option 1**

Retain the bracketed text as it is.

**Option 2**

Delete the bracketed text.

**Option 3**

Amend the bracketed text as follows:

and they shall serve in their individual capacity objectively and in the best interests of the Protocol.

**Option 4**

Replace the bracketed text with:

and they shall represent their Governments

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 to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for consideration and appropriate action.

7. The Committee shall develop and submit its rules of procedure to the Conference of the Parties to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety 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 to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, 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 to the Convention serving as the meeting of the Parties to the Cartagena Protocol on Biosafety;

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

#### **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]

##### **Option 1**

Delete the bracketed text.

##### **Option 2**

Amend the bracketed text as follows:

Any Party with respect to another Party, supported by corroborating information; or

##### **Option 3**

Amend the bracketed text as follows:

Any Party, if directly involved, with respect to another Party; or

##### **Option 4**

Add the following sentence in relation to subparagraph (b) at the end of paragraph 1:

The Committee may reject to consider any submission made pursuant to paragraph 1 (b) of this section that is *de minimis* or ill-founded.

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

##### **Option 1**

Retain the bracketed text as it is.

##### **Option 2**

Delete the bracketed text.

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.]

#### **Option 1**

Retain the bracketed text as it is.

#### **Option 2**

Delete the bracketed text.

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

- (a) The Biosafety Clearing-House, the Conference of the Parties of the Convention, the Conference of the Parties serving as the meeting of the Parties, and subsidiary bodies of the Convention on Biological Diversity and the Protocol;
- (b) Relevant international organizations;
- [(c) Non-governmental organizations; or]
- [(d) 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, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance:

- (a) Provide advice or assistance to the Party concerned, as appropriate;

(b) Make recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;

(c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan regarding the achievement of compliance with the Protocol within a timeframe to be agreed upon between the Committee and the Party concerned; and

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

2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, taking into account the capacity of the Party concerned, especially developing country Parties, in particular the least developed and small island developing States amongst them, and Parties with economies in transition, to comply, and such factors as the cause, type, degree and frequency of non-compliance, 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;]

#### **Option 1**

Retain the bracketed text as it is.

#### **Option 2**

Delete the bracketed text.

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

#### **Option 1**

Retain the bracketed text as it is.

#### **Option 2**

Delete the bracketed text.

#### **Option 3**

Amend the bracketed text as follows:

Publish a declaration of non-compliance; or

or

Publish cases of possible non-compliance; or

or

Make reports of cases of non-compliance available to the public; or

#### **Option 4**

Change the bracketed text into a general provision and place it after section VI, which reads as follows:

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall make reports of the meetings of the Compliance Committee and the Conference of the Parties serving as the meeting of the Parties to the Protocol available to the public.

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

**Option 1**

Retain the bracketed text but delete the words “consistent with international law”.

**Option 2**

Delete the bracketed text.

**Option 3**

Replace the bracketed text with:

In appropriate cases, take additional measures consistent with international law as reflected in Article 60 of the Vienna Convention on the Law of Treaties.

**Option 4**

Replace the bracketed text with:

May take, in cases of repeated or continued non-compliance, additional stronger measures, excluding trade-related measures, within the framework of the Protocol and in accordance 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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