



**CONVENTION ON  
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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

Third meeting

Curitiba, Brazil, 13-17 March 2006

Item 4 of the provisional agenda\*

**REPORT OF THE SECOND MEETING OF THE COMPLIANCE COMMITTEE UNDER THE  
CARTAGENA PROTOCOL ON BIOSAFETY**

**INTRODUCTION**

1. The Compliance Committee under the Protocol on Biosafety was established by decision BS-I/7 of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP) pursuant to Article 34 of the Protocol.
2. The first meeting of the Committee took place in Montreal from 14 to 16 March 2005. As it was its first meeting, the Committee focused on the development of rules of procedure for its meetings, and drawing up a work plan. The Committee submitted its rules of procedure for the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The latter approved, with few amendments, the rules of procedure through decision BS-II/1.
3. The Committee had agreed, at its first meeting, to hold its second meeting in the first quarter of 2006. Accordingly, the second meeting of the Committee took place in Montreal from 6 to 8 February 2006. The following members of the Committee were present at the meeting: Mrs. Mary Fosi Mbantekhu (Cameroon); Mr. Alvaro Rodriguez (Colombia); Mr. Veit Koester (Denmark); Mr. Gábor Nechay (Hungary); Dr. Nematollah Khansari (Islamic Republic of Iran); Mr. Gurdial Singh Nijar (Malaysia); Mr. Bather Kone (Mali); Mr. Victor Villalobos Arámbula (Mexico); Mr. Jürg Bally (Switzerland); and Mr. Sergiy Gubar (Ukraine).

**ITEM 1. OPEING OF THE MEETING**

4. Mr. Veit Koester, Chairman of the Committee, opened the meeting at 9.30 a.m. on 6 February 2006.

\* UNEP/CBD/BS/COP-MOP/3/1.

5. The Chairman invited the representative of the Secretariat to report on the attendance of the meeting.

6. The representative of the Secretariat reported that three members of the Committee—Mr. Tewolde Berhan Gebre Egziabher (Ethiopia); Ms. Birthe Ivars (Norway) and Ms. Biserka Strel (Slovenia)—were not able to attend the meeting. He nevertheless confirmed that there was a quorum for the meeting to proceed in accordance with rule 16 of the rules of procedure. He also recalled the resignation of Ms. Netatua Prescott (Tonga), and Mr. Leonard Wellington O'Garro (Barbados). He stated that the Secretariat has informed the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol about the resignation of the two members and asked the respective members of the Bureau from Asia and Pacific region and the Group of Latin America and the Caribbean, to undertake the measures necessary for effecting their replacement in accordance with paragraph 2 of rule 10 of the rules of procedure.

7. The representative of the Secretariat has also reminded the Committee that, in accordance with paragraph 1 of rule 10 of the rules of procedure, the term of four members would come to an end by the end of the current year, i.e., 31 December 2006. In that regard, the representative of the Secretariat added that the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol may be the first opportunity available for conducting election of new members of the Committee to replace those who resigned and those whose term comes to an end at the end of the year.

8. The Committee agreed to consider those questions relating to replacement and election of new members under item 5 of the agenda on "other matters".

## **ITEM 2. ORGANIZATIONAL MATTERS**

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

9. The Committee adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/BS/CC/2/1) prepared by the Chairman of the Committee in consultation with other members:

1. Opening of the meeting.
2. Organizational matters:
  - 2.1. Adoption of the agenda;
  - 2.2. Organization of work.
3. Consideration of the implementation of the rules of procedure of the Committee approved by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol
4. Reviewing general issues of compliance:
  - 4.1 Analysis of the interim national reports;
  - 4.2 Review of information available in the Biosafety Clearing-House.
5. Other matters.
6. Adoption of the report.

7. Closure of the meeting

**2.2. Organization of work**

10. The Committee agreed on the organization of its work as proposed by the Chairman. It also agreed on the schedule for its meetings as specified in annex I to the annotations to the provisional agenda (UNEP/CBD/BS/CC/2/1/Add.1).

**ITEM 3. CONSIDERATION OF THE IMPLEMENTATION OF THE RULES OF PROCEDURE OF THE COMMITTEE APPROVED BY THE SECOND MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL**

11. The Chairman recalled the note that he had prepared and, with the assistance of the Secretariat, circulated to members of the Committee, immediately after the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, for their comments. He recalled that the note was intended to facilitate consultations among members of the Committee as a follow-up to decision BS-II/1 of the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as regards rules of procedure for the meetings of the Compliance Committee, and preparation for the second meeting of the Committee.

12. The Chairman summarized the outcome of the consultations. Following the Chairman's background information, the Committee further discussed the implications and ways of implementing the following rules, as adopted by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

*Rule 14: Open or closed sessions*

13. The Chairman recalled the change made by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on rule 14 of the rules of procedure of the Committee. He recalled paragraph 1 of rule 14, where the Committee had agreed, at its first meeting, to have all its meetings in closed sessions unless it decides otherwise. The Conference of the Parties serving as the meeting of the Parties to the Protocol, however, decided that the Committee has to take a decision on whether it meets in open or closed session, give reasoning for such decision and to reflect that in its report.

14. Members of the Committee emphasized the extent of the difficulties involved and the responsibilities imposed on the Committee in its efforts to implement the rule as amended. The Committee discussed options on how to implement the rule.

15. It agreed to make decisions on whether to have a closed or open session on a case-by-case basis before the convening of each meeting. In that regard, the Committee, realizing that it would be difficult to make a decision at a previous meeting without knowing the agenda of the next meeting, on whether the next meeting should be open or closed, made the procedural decision to use rule 15 of the rules of procedure and to conduct consultations electronically on this matter. In the event that the Committee decides to have an open session, the Secretariat needs to announce that on its website and those who wish to attend such session should be required to register in advance.

16. The Committee also considered the question as to who should be allowed to be present at open sessions if they so wish – only Parties, or also other Governments and representatives of relevant international organizations as observers. Members agreed that as a general rule only Parties who express their desires to the Secretariat could be present at open sessions of the Compliance Committee. However, the Committee agreed to leave open the possibility of inviting observers to be represented at open session. The Committee recognizes that its decision as regards participation in its meetings is without prejudice to

the provisions in the Compliance Procedure and Mechanisms adopted by decision BS-I/7, including rule 13 of the rules of procedure, which are relevant to the right of a Party concerned to participate in the deliberations of the Committee.

17. Members of the Committee noted that the participation of Parties and, as appropriate, observers, could provide information, enrich the deliberations and facilitate the resolution of issues being considered by the Committee.

18. Members of the Committee expressed concern on the potential disadvantageous position that this rule might put on participants from developing countries if they wish to be present at open sessions of the Committee. Members of the Committee are of the view that there should be a balance in the participation of developing and developed country Parties in each open session. They agreed that the Conference of the Parties serving as the meeting of the Parties to the Protocol might consider the allocation of some financial resources in the budget with a view to supporting eligible country Parties' participation in open sessions of the Committee taking into account appropriate balance between developed and developing countries, geographical distribution, and demonstration of relevance to the agenda.

19. The Committee also noted with concern the lack of arrangements to provide financial support to those eligible Parties in cases where they need to be represented in the deliberations of the Committee as Parties concerned in the context of paragraph 4, section IV, annex, decision BS-I/7 and Rule 13 of the rules of procedure. It agreed to strongly recommend to the Conference of the Parties serving as the meeting of the Parties to the Protocol to provide for the necessary arrangements in this regard.

20. The Committee reaffirmed its decision to have a closed session of the present meeting. The decision to have a closed session of the second meeting of the Committee was made public as a note from the Chairman of the Committee dated 6 January 2006 (UNEP/CBD/BS/CC/INF/1). Members of the Committee unanimously agreed with the reasoning behind the decision. They stated that it was necessary to have a closed session of the present meeting in order to allow the Committee to assess the implications and possible options of implementing the rules of procedure, in particular paragraph 1 of rule 14 as amended and adopted by the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

21. Finally the Committee agreed to revisit issues relating to rule 14 with a view to developing possible recommendation to the Conference of the Parties serving as the meeting of the Parties to the Protocol at a future meeting.

#### *Rule 18: Voting*

22. The Chairman recalled the initial proposal of the Committee to the Conference of the Parties serving as the meeting of the Parties to the Protocol on voting in rule 18 of the rules of procedure favouring a two-third majority voting in case where all efforts to reach consensus have been exhausted. The rule is now in square brackets as a result of lack of consensus at the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. He noted that all members who responded to his follow-up note expressed their concern regarding the lack of agreement at the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on voting procedure for the meetings of the Compliance Committee.

23. Members of the Committee noted that rule 26.5 (c) of the rules of procedure for meetings of the Conference of the Parties to the Convention provides for decision taking by subsidiary bodies using a majority vote. They also considered the experience/precedent of compliance mechanisms under other multilateral environmental agreements, which similarly require a majority or qualified majority voting for their respective compliance bodies. In this respect, the Committee stated that to its knowledge all compliance mechanisms under other multilateral environmental agreements provide for a majority or a

qualified majority voting procedure for taking decision on matters of substance. The Committee also noted that the latest compliance mechanism adopted, namely the one under the Kyoto Protocol, provides for a qualified majority voting as a last resort on matters of substance.

24. After some deliberations, members agreed to submit a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting calling upon it to remove the square brackets from Rule 18.

25. In this connection, the Committee noted the possibility of reviewing, as appropriate, the entire rules of procedure for the meetings of the Compliance Committee by the Conference of the Parties serving as the meeting of the Parties to the Protocol along with or subsequent to any review of the procedures and mechanisms on compliance that it may undertake in accordance with Article 35 of the Protocol in general, and decision BS-I/7, annex, section VII, and decision BS-I/12, annex, paragraph 6 (b) (iii) (i.e. medium-term programme of work), in particular.

*Rule 11: Conflict of interest*

26. Members recalled paragraph 59 of the report of the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (UNEP/CBD/BS/COP-MOP/2/15) where the Compliance Committee is invited to give “further consideration to the issue of conflicts of interest as set out in rule 11 of the rules of procedure for the meetings of the Compliance Committee”.

27. The Committee agreed to look into the matter at its next meeting with a view to providing a final response.

**ITEM 4. REVIEWING GENERAL ISSUES OF COMPLIANCE**

28. The Chairman provided a brief overview of the background to this agenda item. He recalled paragraph (d) of section III of the annex to decision BS-I/7, which specifies review of general issues of compliance as one of the functions of the Committee. He also recalled the agreement of the Committee, at its first meeting, to have this item included in its work plan and, in particular in the agenda of the present meeting. He then invited the Secretariat to introduce the documents relating to this item.

29. The representative of the Secretariat referred to the note by the Executive Secretary (UNEP/CBD/BS/CC/2/2) prepared to assist the Committee in its deliberations on this item. He noted that while that note would serve as the main working document for the Committee, other documents, namely the notes by the Executive Secretary prepared for the third meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Protocol on the operation and activities of the Biosafety Clearing House (BCH) (UNEP/CBD/BS/COP-MOP/3/3), and the analysis of interim national reports (UNEP/CBD/BS/COP-MOP/3/12), were also important. He mentioned that those two documents were the main sources of information in the preparation of the working document for the meeting. The representative of the Secretariat informed the Committee that all the documents he mentioned were available for information and reference. He also indicated that interim national reports are still being submitted to the Secretariat and that all individual interim national reports received so far are accessible to members of the Committee on-line on the Secretariat’s Biosafety Clearing-House website at: <http://bch.biodiv.org/protocolreports/default.shtml>

30. The Chairman then invited members of the Committee to address the item on the review of general issues of compliance taking into account what has transpired from the analysis of the interim national reports (agenda item 4.1) and the review of information available in the Biosafety Clearing-House (agenda item 4.2).

**4.1 Analysis of interim national reports**

31. The Committee considered the analysis of the interim national reports (UNEP/CBD/BS/COP-MOP/3/12). It reviewed general issues of compliance arising from the analysis of the reports, including those highlighted in document UNEP/CBD/BS/CC/2/2. The Committee emphasized that the following general issues relating to compliance need due attention at this early stage of the Protocol process in order to ensure a good start in the effective implementation of its requirements and the achievement of its objective:

(a) Delay in putting in place the necessary regulatory and administrative measures to implement the Protocol, as required under paragraph 1 of Article 2 of the Protocol, and making such measures operational;

(b) Weakness in carrying out scientifically sound risk assessment (Article 15), and in designing and implementing appropriate risk management and monitoring measures (Article 16) as regards the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health;

(c) Limited or no steps taken by Parties towards promoting and facilitating public awareness and participation concerning the safe transfer, handling and use of living modified organisms, as well as facilitating public access to the Biosafety Clearing-House as provided for in Article 23 of the Protocol;

(d) About two thirds of Parties to the Protocol did not fulfil their reporting obligation as required under Article 33 of the Protocol and decision BS-I/9 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

32. The Committee noted that only 38 per cent of Parties to the Protocol had submitted their interim national reports fulfilling their obligation under Article 33 of the Protocol and decision BS-I/9 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. In that respect, the Committee emphasized that monitoring and reporting by each Party is essential not merely because it has been required under Article 33, but it is also a critical input for the effective implementation of other provisions of the Protocol. For example, national reports serve as important sources of information for the Conference of the Parties serving as the meeting of the Parties to the Protocol to appropriately discharge its functions and design its work programmes. Furthermore, the process and the outcome of an evaluation of the effectiveness of the Protocol every five years in accordance with Article 35 would also be influenced by the information that would be communicated by each Party through its national report.

33. In relation to the reporting obligation, the Committee also raised the importance of ensuring the quality of reports. Members of the Committee pointed out that all Parties should endeavour to provide specific, up to date and sufficient information in their national reports so that the implementation of the requirements of the Protocol at the national level could clearly be seen and measured.

34. Finally, members of the Committee recognized the extent of the difficulties involved for Parties in appropriately identifying or defining the requirements of the Protocol and implementing them. However, the Committee noted that difficulties in implementing the Protocol should not impede the fulfilment of monitoring and reporting obligations.

#### **4.2 Review of information available in the Biosafety Clearing-House**

35. The Biosafety Clearing-House (BCH) was another source of information that the Committee has used for identifying and reviewing general issues of compliance. In this regard, the Committee had before it a note by the Executive Secretary on the operation and activities of the Biosafety Clearing-House (UNEP/CBD/BS/COP-MOP/3/3), and a summary of records in the Biosafety Clearing-House regarding information that was made available by Parties to the Protocol, annexed to document

UNEP/CBD/BS/CC/2/2. The responses that Parties provided in their interim national reports as regards questions relevant to the provision of information to the Biosafety Clearing-House have also been taken into account.

36. The Committee underscored that the implementation of several obligations of the Protocol is dependent on the availability of relevant information in the Biosafety Clearing-House in a timely manner. The Committee identified a few general issues that affect compliance with the requirements of making various types of information available to the Biosafety Clearing-House as specified under paragraph 3 of Article 20 and several other provisions of the Protocol. These issues include:

(a) Several Parties are still behind in fulfilling the requirements to make information available to the Biosafety Clearing-House, including those time-bound requirements such as submitting information on national focal points and national competent authorities no later than the date of entry into force of the Protocol for that Party;

(b) Lack of information on some of the living modified organisms that were approved for domestic use including placing on the market and that are currently subject to transboundary movement.

37. The Committee considered the following as constraints that caused or contributed to the general issues of compliance identified above in relation to making information available to the Biosafety Clearing-House:

(a) Lack of capacity in terms of expertise, infrastructure and predictable funding to cover running costs necessary to gather relevant information available at the national level and to provide such information to the Biosafety Clearing-House. Often, this problem is exacerbated by the fact that relevant information is held by multiple national competent authorities;

(b) Lack of time as well as financial resources, to get the necessary information available at the national level in local languages translated into English or into one of the official United Nations languages before submission to the Biosafety Clearing-House;

(c) Lack of clarity on whether there is a need to make information available to the Biosafety Clearing-House central portal in cases where there are biosafety or Biosafety Clearing-House websites, nodes or database at national level;

(d) Situations where living modified organisms currently subject to transboundary movement have their origin in one or more of the non-Parties to the Protocol that are providing information to the Biosafety Clearing-House on voluntary basis. Furthermore, some of these organisms were approved for use, including placing on the market prior to the entry into force of the Protocol, in which case making available information about these living modified organisms retroactively is not a requirement under the Protocol.

#### *Concluding observations*

38. Having reviewed the general issues of compliance as described above, the Committee stressed the following points:

(a) The Committee realizes that the Protocol is a complex instrument and that its implementation could pose challenges to Parties during the initial stages after its entry into force in their jurisdiction;

(b) However, the Committee is concerned about the fact that a considerable number of Parties are having difficulties complying with the provisions of the Protocol due to lack of adequate legal, administrative, and technical frameworks, and sufficient financial resources;

(c) The Committee is also concerned about the relatively low number of transboundary movements of living modified organisms that are intended for direct use as food, feed, or for processing reported to the Biosafety Clearing-House and the fact that no single decision is reported as regards the transboundary movement of living modified organisms destined for intentional introduction into the environment;

(d) Equally, the Committee is concerned about the fact that a large proportion of Parties did not submit their interim national reports in compliance with the request of the Conference of the Parties serving as the meeting of the Parties to the Protocol in its decision BS-I/9 and that still, by 6 February 2006, a considerable number of Parties have failed to meet their reporting obligations under Article 33 of the Protocol;

(e) The Committee also expressed its concern that several reports submitted do not contain sufficient information, including information on how and whether their reports were elaborated through a consultative process as recommended by the Conference of the Parties serving as the meeting of the Parties to the Protocol in decision BS-I/9;

(f) Finally, the Committee, recognizing the upcoming date of submission for the first national reports, stresses the importance of sending out a strong message by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting, to all Parties to submit their first national reports in due time and fulfil their obligation. In this connection, the Committee observes the possible ambiguity arising from the request by the Conference of the Parties serving as the meeting of the Parties to the Protocol to submit national reports twelve months prior to the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol that is expected to consider the report (paragraph 5 (ii), decision BS-I/9). This requirement should not be interpreted to mean that: (i) only those who become Parties before the twelve-month period are under an obligation to submit national reports, and (ii) once the deadline has passed the need or the obligation to submit a national report ceases.

*Recommendations concerning the general issues of compliance*

39. After reviewing the issues above and other relevant information, the Committee agreed to submit recommendations to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol or to the Secretariat, as appropriate, with a view to better promote compliance to the Protocol.

40. In that context, the Committee recommends that the Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to:

(a) Call upon Parties to give appropriate attention to the development of national biosafety frameworks and urge those Parties that have duly completed their frameworks to take measures necessary to make these frameworks effective;

(b) Call upon Parties to allocate the resources necessary to make the frameworks operational;

(c) Request the Global Environment Facility (GEF) to expedite support to eligible Parties for the implementation of their national biosafety frameworks;

(d) Invite those with a well developed and functional biosafety frameworks or systems to cooperate and share their practical experiences with those Parties that have a demand in this regard;

(e) Call upon Governments and intergovernmental organizations, and, as appropriate, the private sector to continue extending their cooperation with developing countries with a view to strengthening biosafety capacity building programmes taking into account Article 22 of the Protocol on

capacity building, and the Action Plan for Building Capacities for effective Implementation of the Protocol adopted in decision BS-I/5 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, or any new or revised action plan that may be adopted in the future;

(f) Invite eligible Parties to make use of the biosafety Roster of Experts, and call upon donors to make financial contributions to the appropriate fund under the Protocol in order to cover the cost of using experts from the Roster of Experts taking also into account decision BS-II/4;

(g) Call upon GEF and other funding bodies to further enhance Biosafety Clearing-House related capacity-building activities, including the provision of support in putting in place appropriate public awareness and participation policies and action plans;

(h) Consider to include a budget line, or allow the Secretariat some flexibility in the use of its budget to cover costs that may be needed for translation of relevant national documents or information from local languages into English or into one of the official United Nations languages for submission to the Biosafety Clearing-House by Parties that may have difficulties in this regard, on the basis of their demand and eligibility;

(i) Request Parties and encourage non-Parties and relevant international organizations that have access to information regarding living modified organisms that are currently subject to transboundary movements to make such information available to the Biosafety Clearing-House, taking into account the minimum information requirements described in annex I, and annex II of the Protocol;

(j) Request each Party to fulfil its monitoring and reporting obligations and to ensure that its national reports provide information that adequately respond to the questionnaire in the reporting format. In this regard, the Conference of the Parties serving as the meeting of the Parties to the Protocol may also invite eligible Parties that may face difficulties in the preparation of their national reports to make these difficulties known to the Secretariat and to seek assistance from any available opportunities such as the Roster of Experts;

(k) Remind Parties who do not meet a deadline for submission of their national report that their obligation to submit the report continues to stand until it is fulfilled;

(l) Clarify that the deadline for submitting national reports of one year prior to the meeting at which they are to be considered, as specified in paragraph 5 (ii) of decision BS-I/9, is not intended to imply that States which become Parties to the Protocol after this deadline are not under obligation to submit their national reports. In other words, the Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to make it clear that all Parties are under obligation to monitor their implementation of the Protocol and to report that through national reports regardless of when they became Parties to the Protocol in a given reporting period.

(m) Encourage non-Parties to submit, on a voluntary basis, information similar to that requested for national reports, particularly regarding decisions on importation or release of living modified organisms.

41. The Committee also requested the Secretariat, as the administrator of the central portal of the Biosafety Clearing-House, to clarify to Parties that having a biosafety website, node, a database or a biosafety clearing-house at the national level does not exonerate them from their obligation to make available specific information as required by the Protocol to the Biosafety Clearing-House-central portal.

## ITEM 5. OTHER MATTERS

42. At the second session of the meeting, the Committee addressed item 5 of its agenda, on other matters.

43. The Chairman invited members of the Committee to raise any other item that may be relevant to the work of the Committee than those specifically addressed by it in accordance with the agenda of the meeting.

44. He reminded members of the information that the Secretariat provided at the beginning of the meeting regarding the need for replacement of those members of the Committee who already resigned and those whose term ends by the end of the year. The Committee requested the Secretariat to continue reminding the concerned regions, the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol, and the Conference of the Parties serving as the meeting of the Parties to the Protocol itself in this regard. Members of the Committee, particularly those who are elected for four-year term, were of the view that for the sake of ensuring continuity in the work of the Committee, regions and the Conference of the Parties serving as the meeting of the Parties to the Protocol might consider re-electing for another term the members whose terms would end by the end of the year.

45. The representative of the Secretariat informed the Committee about two items that are expected to be considered by the upcoming third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol which are also relevant to the issue of compliance and the Compliance Committee. He noted that the Conference of the Parties serving as the meeting of the Parties to the Protocol is expected to consider the issue of possible measures against repeated cases of non-compliance as envisaged in the Procedures and Mechanisms on Compliance, decision BS-I/7, annex, paragraph 2 (d) of section VI. He also informed the Committee about the suggestion that the Secretariat has made to the Conference of the Parties serving as the meeting of the Parties to the Protocol in relation to assessment and review of the implementation of the Protocol (i.e. item 15 on the provisional agenda for the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol) that the Compliance Committee could possibly be an option to undertake the process of assessment and review as envisaged in Article 35 and develop recommendations to the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee took note of the information.

46. The representative of the Secretariat also informed the Committee that the Secretariat has received the interim national report of a Party who requested that it be brought to the attention of the Committee. Accordingly, the Committee took note of this information but stressed that its mandate does not include scrutinizing, out of its own initiative, individual national reports with a view to identifying possible cases of non-compliance

47. As regards the consideration of measures against repeated cases of non-compliance by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, the Committee further noted the fact that no case of non-compliance was brought to its attention since it officially began its functions and, therefore, the question of repeated cases of non-compliance has not arisen to date.

48. The Chair informed the Committee of his participation in compliance-related meetings. He informed the Committee that he participated in his personal capacity in a meeting organized by the European Union where he provided information about the work of the Compliance Committee under the Protocol. He also informed the Committee that, as the Chair of the compliance mechanisms under the Biosafety Protocol and the Aarhus Convention, he had been invited to a high-level UNEP meeting on implementation of and compliance with multilateral environmental agreements. He had submitted, prior to the meeting, information documents as regards the UNEP high-level meeting to members of the Committee for their information and comments, as appropriate.

49. The Chairman also informed the Committee that the present meeting needs to prepare and forward, based on its recommendations, a draft decision for the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol following similar practice at the first meeting of the Committee. In that context he submitted a draft decision for the consideration of the Committee. The Committee reviewed the draft decision and agreed that it be submitted to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as an annex to this report.

50. It was mentioned that members of the Committee would benefit from attending the meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol, in particular from discussions by the Conference of the Parties serving as the meeting of the Parties to the Protocol that are relevant to compliance issues. It was also noted that in the event a member of the Compliance Committee is funded by the Secretariat to attend any meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in the capacity of his/her membership to the Compliance Committee, such a member shall not also be a member of a national delegation. The Committee agreed to further consider this matter at its next meeting. In this connection members have noted that funds are available for the Committee to hold two meetings a year. Nevertheless, the Committee has held only one meeting a year to date. If this situation continues the Committee suggests that the unused funds may be allocated to support the participation of some of the members of the Committee in meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

51. Finally, before winding up the item on other matters, the Chairman drew the attention of members to the question of determining the dates of the next meeting. The Committee agreed to have its next meeting in the last quarter of 2006 or the first quarter of 2007 unless there are reasons to decide otherwise, including receipt of submissions on possible cases of non-compliance. The Committee noted that this schedule as well as the agenda for the next meeting might be finalized in light of the outcomes of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee indicated that its next meeting could be open, primarily, for the purpose of gaining experience, but the final decision would be made through consultations with members based on *inter alia* the outcome of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. It was also mentioned that the meetings of the Compliance Committee could be held in conjunction with other meetings of the Convention and/or at a place where it may be more convenient for members in terms of reducing cost and travel time.

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

52. At its third session, the Chairman introduced the draft report of the second meeting of the Compliance Committee, which was adopted as orally amended.

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

53. The Chairman expressed his gratitude to members of the Committee for their valuable contributions, and the Secretariat for the preparation of documents and facilitation of the meeting. He declared the meeting closed at 2 p.m. on Tuesday, 7 February 2006.

*Annex***DRAFT DECISION**

*The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety,*

*Taking note of* the report of the second meeting of the Compliance Committee under the Cartagena Protocol on Biosafety, in particular the recommendations of the Committee regarding general issues of compliance as contained in document UNEP/CBD/BS/COP-MOP/3/2,

*Recalling* decision BS-II/2, paragraph 2 where Parties, Governments and other users were urged to provide relevant information to the Biosafety Clearing-House as soon as possible, including information pertaining to decisions on the release or import of living modified organisms taken prior to entry into force of the Protocol, and to undertake regular review of information previously made available in the BCH to ensure it has been accurately reported and categorized,

*Recognizing* the need to take measures to replace members of the Compliance Committee who have already resigned from their task as members of the Committee and those whose term comes to an end by the end of the year and also recognizing the need for ensuring continuity in the work of the Committee,

*Recognizing further* the need for reconsidering Rule 18 of the rules of procedure of the Committee on voting, and resolve the differences that emerged at the second meeting in a manner that ensures efficiency and effectiveness of the Committee and the independence of its members in taking decisions,

1. *Decides* to remove the square brackets around Rule 18 on voting, in order to ensure efficiency, effectiveness, and independence in the work of the Committee and its members;

2. *Calls upon* Parties that still have no appropriate legal and administrative mechanisms in place at the national level to take the necessary measures and specifically to give appropriate attention to the development of national biosafety frameworks as enabling tools in their efforts to effectively implement their obligations under the Protocol, and urges those Parties that have duly completed the development of their national biosafety frameworks to take measures necessary to make these frameworks effective;

3. *Calls upon* Parties to allocate the resources necessary to make the frameworks operational;

4. *Requests* GEF to expedite support to eligible Parties for the development and implementation of their national biosafety frameworks;

5. *Invites* Parties and other Governments with a well developed and functional biosafety framework or system to cooperate and share their practical experiences with those Parties that have a demand in this regard;

6. *Calls upon* Governments and intergovernmental organizations, and, as appropriate, the private sector to continue extending their cooperation with developing countries with a view to strengthening biosafety capacity-building programmes taking into account Article 22 of the Protocol on capacity-building, and the Action Plan for Building Capacities for effective Implementation of the Protocol adopted in decision BS-I/5 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, or any new or revised action plan that may be adopted in the future;

7. *Invites* eligible Parties to make use of the biosafety Roster of Experts, and calls upon donors to make financial contributions to the appropriate fund under the Protocol in order to cover the cost of using experts from the Roster of Experts;

8. *Calls upon* GEF and other funding bodies to further enhance BCH related capacity-building activities, including the provision of support in putting in place appropriate public awareness and participation policies and action plans;

9. *Decides* to include a budget line to cover costs of participation of a Party concerned (i.e. a Party in respect of which a submission is made or which makes a submission or an eligible Party who may wish to participate in open sessions of the Compliance Committee meetings) to attend Compliance Committee meetings, as and when the need arises;

10. *Decides* to allow the Secretariat flexibility in the use of appropriate funds to cover costs that may be needed for translation of relevant national documents or information from local languages into English or into one of the official United Nations languages for submission to the BCH by Parties that may have difficulties in this regard, on the basis of their demand and eligibility;

11. *Requests* Parties and encourages non-Parties and relevant international organizations that have access to information regarding living modified organisms that are currently subject to transboundary movements to make such information available to the BCH, taking into account the minimum information requirement described in annex I, and annex II of the Protocol, as well as decision BS-I/11 on transboundary movement of living modified organisms between Parties and non-Parties;

12. *Requests* each Party to fulfil its monitoring and reporting obligations and to ensure that its national reports provide information that adequately respond to the questionnaire in the reporting format. In this regard, the Conference of the Parties serving as the meeting of the Parties to the Protocol invites eligible Parties that may face difficulties in the preparation of their national reports to make these difficulties known to the Secretariat and to seek assistance from any available opportunities such as the Roster of Experts;

13. *Reminds* Parties who do not meet a deadline for submission of their national report that their obligation to submit the report continues to stand until it is fulfilled;

14. *Encourages* non-Parties to submit, on a voluntary basis, information similar to that requested in the national reports, particularly regarding decisions on importation or release of living modified organisms;

15. *Elects/re-elects* [.....] as members of the Compliance Committee to replace those who resigned and those whose term will end by 31 December 2006.

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