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CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY

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Item 4 of the provisional agenda*

REPORT OF THE COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

I. INTRODUCTION

1. During the inter-sessional period after the third meeting of the Parties to the Protocol, the Compliance Committee held its third and fourth meetings from 5 to 7 March 2007 in Kuala Lumpur, and from 21 to 23 November 2007 in Montreal. The Committee conducted both the meetings in open session.
2. Following the request in paragraph 2 of its decision BS-III/1, the Committee reviewed and compiled information on experience of other multilateral environmental agreements regarding measures that apply to cases of repeated non-compliance. It also reviewed general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the first regular national reports received by the Secretariat in accordance with Article 33.
3. The Committee also addressed a number of other items as a follow up to its previous meetings or as a matter of its overall functions as specified in the annex to decision BS-I/7, on procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety. The full text of the reports of the Committee on the work of its third and fourth meetings can be accessed from the Secretariat's website at: <http://www.cbd.int/doc/meeting.aspx?mtg=BSCC-03> and <http://www.cbd.int/doc/meeting.aspx?mtg=BSCC-04>.
4. The present report provides the outcomes of the two meetings of the Committee held during the inter-sessional period. It includes the report that the Committee was requested to prepare, in paragraph 3 of decision BS-III/15, on general issues of compliance. The compilation of further information on the experience of other multilateral environmental agreements regarding cases of repeated non-compliance is presented separately in an addendum to this report.

* UNEP/CBD/BS/COP-MOP/4/1.

5. Finally, the report also includes an annex containing the recommendations of the Committee for consideration and adoption, as appropriate, by the Parties to the Protocol at their fourth meeting.

II. FURTHER INFORMATION ON EXPERIENCE REGARDING CASES OF REPEATED NON-COMPLIANCE UNDER THE COMPLIANCE MECHANISMS OF OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS

6. Paragraph 2 (d) of section VI of the procedures and mechanisms on compliance (decision BS-I/7, annex) stipulates that in cases of repeated non-compliance, measures could be taken as may be decided by the Parties to the Protocol at their third meeting, and thereafter within the review process in accordance with Article 35 of the Protocol. In that respect, the Secretariat prepared a document reviewing the experience of other multilateral environmental agreements in defining measures that may be taken in cases of non-compliance for the consideration of the Parties to the Protocol at their third meeting. The latter considered the matter and decided, by paragraph 2 of decision BS-III/1, to request the Compliance Committee to compile further information on the experience of other multilateral environmental agreements in this regard.

7. Accordingly, the Committee reviewed and compiled information at both its third and fourth meetings on experience regarding cases of repeated non-compliance under the compliance mechanisms of other multilateral environmental agreements. The Committee has included observations as well as an indicative of list of measures adopted under the existing or emerging compliance mechanisms of the multilateral environmental agreements reviewed by it, with a purpose of facilitating consideration of the issue by the Conference of the Parties serving as the meeting of the Parties to the Protocol. The compilation from the Committee is presented in a separate document as an addendum to the present report (UNEP/CBD/BS/COP-MOP/4/2/Add.1) for consideration by Parties at their fourth meeting.

8. The Committee noted that no case of non-compliance was brought to its attention since it officially began its functions, and it might, therefore, be helpful to consider the question of cases of repeated non-compliance in that context.

III. REVIEW OF GENERAL ISSUES OF COMPLIANCE

9. The Committee reviewed information contained in the first regular national reports based on a synthesis of information and an analysis prepared by the Secretariat (UNEP/CBD/BS/COP-MOP/4/13 and UNEP/CBD/BS/COP-MOP/4/INF/11). Advance drafts of these documents were made available for the use of the Committee to respond to the request by the Parties at their third meeting (decision BS-III/15, para. 3) for the Committee to prepare a report on general issues of compliance by Parties with their obligations under the Protocol.

10. The Committee noted with concern the low number of first national reports received by the deadline and included in the analysis by 16 October 2007, i.e., 50 reports from Parties and two from non-Parties. Members explored the possible reasons for the low rate of reporting particularly when compared to the relatively high level of reporting under the Convention on Biological Diversity. The Committee, therefore, considered that it would be important to call, by means of a recommendation, the attention of the Conference of the Parties serving as the meeting of the Parties to the Protocol to this issue which, in the opinion of the Committee, constitutes a serious issue of non-compliance.

11. The Committee considered what lessons might be learned from the Convention process. In this regard, members of the Committee observed that funding was available to support the preparation of national reports under the Convention while such support has not been made easily available for the preparation of reports under the Protocol despite the guidance provided by the eighth meeting of the Conference of the Parties to the financial mechanism (paragraph 12 (i) of decision VIII/18) based on the

recommendation of the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, which, in turn, was based on a recommendation made by the Compliance Committee.

12. Some members noted that eligible Parties face a difficulty in accessing resources from the Global Environment Facility (GEF) for activities related to the implementation of the Biosafety Protocol, including the preparation of national reports. The Committee strongly suggested that access to GEF funding should be facilitated for eligible Parties to implement their obligations under the Biosafety Protocol, including their reporting obligation. In this connection, the Committee recommends that biosafety should also be included in the scope of the dialogue session between Parties to the Convention and the Chief Executive Officer of the GEF, proposed by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention at its second meeting (recommendation 2/3, para. 4), and to be organized by the Executive Secretary in Bonn on 17 May 2008.

13. The Committee applauded the high number of national reports submitted by African countries. It also noted that the difficulties in adhering to the obligation to submit national reports by the deadline is shared by both developed and developing country Parties, suggesting that improvements are needed at the national level.

14. The Committee requested the Secretariat to compile experience on the reporting rates under other multilateral environmental agreements and to make this information available.

15. The Committee recalled paragraph 4 of decision BS-III/14 wherein Parties were reminded that not submitting a national report within the deadline does not absolve them from fulfilling their obligation for that reporting period.

16. Based on the review of the national reports, the Committee noted the continued existence of significant gaps regarding the obligation to put in place at the national level the necessary legal, administrative and other measures required to implement the Protocol, which the Committee considered to be another serious issue of non-compliance. It recalled the recommendations that it made on this same general issue of non-compliance in the context of the interim national reports.

17. The Committee also considered that compliance with the obligation to promote public awareness and participation is not at a satisfactory level.

18. Finally, the Committee identified the gaps that exist with respect to implementing the requirement to adopt national measures addressing illegal transboundary movements of living modified organisms and reporting the occurrence of such movements to the Biosafety Clearing-House. The Committee noted that most of the incidents of illegal transboundary movements were reported by developed countries suggesting that lack of reporting by developing countries of such movements could be linked to the capacity to detect and identify the presence of living modified organisms. The Committee felt that it was appropriate to make a recommendation to the fourth meeting of the Parties to the Protocol with respect to the need for capacity-building for developing country Parties, in particular the least developed and small island developing States among them, as well as Parties with economies in transition, in the area of sampling and detection of living modified organisms in relation to illegal transboundary movements.

19. The Committee suggested that the format for national reports should include questions about the possible origin of living modified organisms deemed to be illegal transboundary movements and the nature of the living modified organism, where known, and should require explanations, where available, as to why such movements occurred or were illegal.

20. It is also further suggested to include a question in the reporting format in relation to Article 14. on “Bilateral, regional and multilateral agreements and arrangements”, seeking specific information on the nature and scope of any such arrangements and agreements.

IV. OTHER ITEMS RELATED TO THE EFFECTIVE FUNCTIONING OF THE COMPLIANCE PROCEDURES AND THE COMMITTEE

21. Taking into account the difficulty that Parties face in effectively implementing the Protocol, the Committee agreed to recommend that, at their fourth meeting, the Parties request Parties and other Governments to submit views and information on the lack of submissions by Parties with respect to themselves under section IV of the annex to decision BS-I/7, and to request the Committee to make observations and suggestions, on the basis of these views and information, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol, taking also into account experiences of compliance mechanisms under other multilateral environmental agreements.

22. The Committee recalled its recommendation to the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as regards the need for including a budget line to cover costs of participation of a Party in respect of which a submission is made or which makes a submission. The recommendation was not considered by the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee suggested that as and when a submission is made and in the event funds are available out of the budget allocated for the work of the Committee, the Executive Secretary may be allowed to use the balance of such budget for the purpose of covering the costs of participation of the concerned Parties that are eligible for funding and that may wish to be represented before the Committee. The Committee agreed to make a recommendation to the fourth meeting of the Conference of the Parties serving as the Meeting of the Parties in this regard.

23. The Committee considered paragraph 2 of rule 10 in its rules of procedure which specifies how replacement of a member of the Committee who has resigned or is unable to complete his or her term of office should take place. The Committee noted that although some Committee members had resigned inter-sessionally, no replacement has been effected prior to the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The Committee further noted that any reduction in the number of members from time to time would not only affect the effectiveness of the Committee, but might also result, eventually, in lack of quorum thereby potentially paralyzing the Committee until the next meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Members explored several possible ways and means that they thought would make the system work in this regard. They agreed to make a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Protocol to call upon each regional group to consider and apply mechanisms that would best suit their respective region and enable them to replace, expeditiously, members of the Compliance Committee who resign in an inter-sessional period or who are unable to complete their term of office.

24. The Committee considered the invitation from the Parties at their second meeting 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” (UNEP/CBD/BS/COP-MOP/2/15, para. 59). The Committee noted that it would be almost impossible to foresee the different circumstances under which conflict of interest could possibly arise, and that there were limited experiences of compliance mechanisms under other international instruments in elaborating what constitutes conflict of interest, or in handling practical cases of conflicts of interest.

25. The Committee referred to paragraph 3 of section II of the procedures and mechanisms on compliance (decision BS-I/7, annex), which requires members to serve objectively and in a personal capacity. The Committee believed that this requirement taken together with rule 11 of the rules of procedure provide general guidance to members of the Committee with respect to conflict of interest.

Therefore, it was decided that there was no need, at the moment, for the Committee to do anything as regards the rule. However, the Committee agreed to keep the issue under review in its future work.

26. Based on the experience from conducting its third and fourth meetings in open session, the Committee decided to conduct, as a general practice, its upcoming meetings in open session unless specific circumstances require otherwise. The Committee noted that any given meeting could have both closed and open sessions, as appropriate. The Committee was of the view that such a decision is consistent with rule 14 of its rules of procedure.

27. The Committee reiterated its recommendation in favour of removing the square brackets around rule 18 (voting) of the rules of procedure for meetings of the Compliance Committee (decision BS-II/1).

*Annex***RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE FOR SUBMISSION TO THE FOURTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE BIOSAFETY PROTOCOL***

The Compliance Committee recommends that the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety decides, at its fourth meeting, to:

1. *Remind* each Party of its obligation to submit national reports in accordance with Article 33 of the Protocol, emphasizing that failure to do so constitutes non-compliance, and urge Parties to respect relevant decisions on reporting including provisions on timeframes for the submission of national reports;

2. *Request* the Executive Secretary to include biosafety funding within the scope of the dialogue session with the Global Environment Facility as proposed by the second meeting of the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention in paragraph 4 of its recommendation 2/3, with a view to facilitating the availability of funding for eligible Parties to undertake activities related to the implementation of the Protocol including the preparation of national reports, taking into account the simple procedure used to make funding available for the purpose of reporting under the Convention on Biological Diversity;

3. *Remind* each Party of its obligation to adopt national measures addressing illegal transboundary movements of living modified organisms and to report the occurrence of such movements to the Biosafety Clearing-House;

4. *Encourage* Parties and other Governments to implement paragraph 10 of decision BS-III/10 relating to exchanging experiences and building capacities in the use and development of techniques for sampling and detecting living modified organisms with a view to, *inter alia*, facilitating the prevention, detection and reporting of illegal transboundary movements of living modified organisms, especially in developing country Parties, in particular the least developed and small island developing States among them, as well as in Parties with economies in transition;

5. *Request* Parties to submit views and information on the lack of submissions relating to compliance by Parties with respect to themselves under section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex) and to *further request* the Committee to make observations and suggestions, on the basis of these views and information, on how to make better use of the compliance procedures with a view towards improving the implementation of the Protocol, taking also into account experiences of the compliance mechanisms under other multilateral environmental agreements;

6. *Authorize* the Executive Secretary to use the balance of any funds that may be available in the budget allocated for two meetings of the Compliance Committee in any given year for covering the costs of participation of an eligible Party or Parties concerned in the consideration of any submission regarding their compliance before the Committee, as provided for in paragraph 4 of section IV of the procedures and mechanisms on compliance under the Protocol (decision BS-I/7, annex); and

7. *Call upon* the members of each regional group to consider and apply mechanisms that would best suit and enable them to replace members of the Compliance Committee who resign during an inter-sessional period or who are unable to complete their term of office in accordance with rule 10 of the rules of procedure of the Compliance Committee and to do so in an expeditious manner.

* Following the effective practice adopted by the Parties to the Protocol at their third meeting, each recommendation may be considered under the agenda item where it will substantively be relevant.