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

Eighth meeting

Cancun, Mexico, 4-17 December 2016

Item 4 of the provisional agenda*

REPORT OF THE COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY ON THE WORK OF ITS TWELFTH AND THIRTEENTH MEETINGS

1. During the intersessional period that followed the seventh meeting of the Parties to the Protocol, the Compliance Committee held two meetings: its twelfth meeting, from 13 to 15 May 2015, and its thirteenth meeting, from 24 to 26 February 2016. Both were held at the offices of the Secretariat in Montreal, Canada. The present document contains a consolidated report of the discussions and outcomes of the two meetings.

2. At its twelfth meeting, the Committee reviewed, among other things, the outcomes of the seventh meeting of the Parties to the Protocol as they relate to compliance and the Compliance Committee. Members discussed how to raise awareness of the supportive role of the Committee and, in that regard, developed a brief information note on the role of the Compliance Committee in assisting Parties.¹ The Committee noted the adoption of the reporting format for the third national report by the Conference of the Parties serving as the meeting of the Parties and requested the Secretariat to make available a page online where Parties could direct any questions they might have on the format and where clarifications by the Secretariat would be displayed for the benefit of all.²

3. The Committee also reviewed the information available in the Biosafety Clearing-House with a view to verifying whether it is complete and up to date and requested the Secretariat to continue to liaise with the Parties concerned to assist them in updating their records on the Biosafety Clearing-house and to provide the Committee with an update at its fifteenth meeting as part of the review of consistency of information between third national reports and the Biosafety Clearing-house.

4. With regard to the Global Environment Facility (GEF), the Committee expressed concern that its recommendation to make GEF funds available through a focal area set-aside was decided to be limited to national reporting.

* UNEP/CBD/BS/COP-MOP/8/1.

¹ The brief information note has been made available on the Secretariat's website at: http://bch.cbd.int/protocol/cpb_art34_cchelp.shtml.

² The requested web page is available at: <http://bch.cbd.int/protocol/ThirdNationalReportFAQ.shtml>.

5. The Committee decided to focus its input into the third assessment and review of the Protocol and the mid-term evaluation of the Strategic Plan on the review of matters relevant to compliance that can add value to the review of effectiveness of the Protocol and agreed on what the scope of the Committee's input would include.

6. At its thirteenth meeting, the Committee reviewed Parties' compliance with their obligation to submit national reports. It requested the Secretariat to continue to liaise with the Parties that had not submitted their third national report or had submitted an incomplete report. The Committee decided that its Chair would address a follow-up letter to the Ministries for Foreign Affairs of Luxembourg, the Marshall Islands and Nicaragua,³ with a copy to their national focal points, with a view to seeking an explanation of the situation that had prevented them from submitting their interim, first, second or third report to date and informing them that the Committee is recommending that the Conference of the Parties serving as the meeting of the Parties, at its eighth meeting, decide to issue a caution to these Parties as provided for in section VI, paragraph 2 (b), of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety, as contained in the annex to decision BS-I/7, unless a response is received before the eighth meeting of the Parties to the Protocol. The Committee also agreed on recommendations, including a draft text of the caution, as contained in the annex below.

7. The Committee extensively discussed the information in UNEP/CBD/BS/CC/13/3.⁴ The Committee prepared a revised analysis, incorporating the relevant elements presented in the document as well as conclusions and suggestions that could serve as a basis for developing recommendations of the Subsidiary Body on Implementation. The Committee agreed to forward the revised analysis to the Subsidiary Body as the input of the Committee to the third assessment and review and mid-term evaluation. The Committee further agreed to several recommendations in this regard to be submitted to the Conference of the Parties serving as the meeting of the Parties as contained in the annex below.

8. The Committee discussed general issues of compliance. Committee members noted the overlap between the general issues of compliance and the input it is providing to the assessment and review and mid-term evaluation of the Strategic Plan. The Committee decided that the general issues identified in the document for this agenda item had already been considered in the analysis for the input to the Subsidiary Body on Implementation and addressed in associated recommendations to the Conference of the Parties serving as the meeting of the Parties.

9. The Committee considered the obligation to submit information to the Biosafety Clearing-house in the context of general issues of compliance. In this regard, the Committee requested the Secretariat to continue liaising with Parties to encourage them to update and complete the information they are obliged to make available through the Biosafety Clearing-House, focusing in particular on information related to: (a) national biosafety frameworks, legislation, regulations and guidelines; (b) summaries of risk assessments; (c) final decisions regarding living modified organisms (LMOs) and living modified organisms intended for direct use as food or feed, or for processing (LMOs-FFP); (d) national focal points and national points of contact; (e) information on bilateral, regional or multilateral agreements or arrangements they have entered into with relevance for biosafety; and to report on the outcome of its efforts to the Committee.

10. The Committee considered what constitutes unintentional transboundary movements in contrast with illegal transboundary movements, as requested in decision BS-VII/10, and agreed to recommend that the Conference of the Parties serving as the meeting of the Parties consider for adoption two operational definitions, with an explanatory note. The Committee recommended that the operational definitions be presented to the Conference of the Parties serving as the meeting of the Parties along with information provided in UNEP/CBD/BS/CC/13/5,⁵ as it provides the necessary context.

³ On 4 April 2016, Nicaragua submitted its national report.

⁴ Evaluation of the status of implementation of the Protocol in meeting its objectives: input to the third assessment and review and mid-term evaluation of the Strategic Plan.

⁵ Clarifications on what constitutes unintentional transboundary movements in contrast with illegal transboundary movements.

11. The full text of the reports of the Committee on the work of its twelfth and thirteenth meetings as well as the working documents for each meeting are available on the Secretariat's website at the following links:

- <http://www.cbd.int/doc/?meeting=BSCC-12>;
- <http://www.cbd.int/doc/?meeting=BSCC-13>.

*Annex***RECOMMENDATIONS OF THE COMPLIANCE COMMITTEE TO THE EIGHTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE BIOSAFETY PROTOCOL⁶**

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

A. Compliance1. *General issues*

1. *Welcome* progress made by Parties in complying with their obligations under the Protocol, yet note with concern that, 13 years after the entry into force of the Protocol, a number of Parties are not in full compliance in relation to most obligations under the Protocol;

2. *Urge* Parties that have not yet completely done so to put in place legal, administrative and other measures to implement their obligations under the Protocol, paying particular attention to the importance of putting in place monitoring systems as a prerequisite for effective reporting;

3. *Request* the Secretariat, as appropriate and following guidance provided by the Committee, to continue following up with Parties that have not yet fully complied with their obligations under the Protocol, and to request Parties to collaborate fully in this regard;

2. *Caution*

Recalling Article 33 of the Protocol,

Also recalling section VI, paragraph 2 (b) of the Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety as contained in the annex to decision BS-I/7,

Noting with regret that Luxembourg, the Marshall Islands and Nicaragua⁷ have not submitted their interim, first, second or third national reports,

Also noting that the Compliance Committee and the Executive Secretary have contacted Luxembourg, the Marshall Islands and Nicaragua on numerous occasions, in accordance with decision BS-V/1, including by offering support to these Parties in preparing their reports,

4. *Caution* Luxembourg, the Marshall Islands and Nicaragua for failure to fulfil their obligations;

5. *Request* Luxembourg, the Marshall Islands and Nicaragua, as a matter of urgency, to submit their third national reports;

6. *Encourage* Luxembourg, the Marshall Islands and Nicaragua to seek the assistance of the Compliance Committee, in accordance with decision BS-V/1, should they require support to prepare their reports;

B. Operation and activities of the Biosafety Clearing-House

7. *Urge* Parties that have not yet completely done so to make all required information available to the Biosafety Clearing-house and keep the records up-to-date focusing in particular on information related to: (a) national biosafety frameworks, legislation, regulations and guidelines; (b) summaries of risk assessments; (c) final decisions regarding living modified organisms and living modified organisms intended for direct use as food or feed, or for processing; (d) national focal points and national points of contact;

⁶ Following the practice adopted at the earlier meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol, recommendations may be referred to the relevant agenda items where their consideration might be more appropriate.

⁷ On 4 April 2016, Nicaragua submitted its third national report. Any further updates on this matter will be provided during the eighth meeting of the Conference of the Parties serving as the meeting of the Parties.

(e) information on bilateral, regional or multilateral agreements or arrangements into which they have entered and which have relevance for biosafety;

C. Matters related to the financial mechanism and resources

8. *Recommend* that the Conference of the Parties, in adopting its guidance to the financial mechanism, with respect to support for the implementation of the Cartagena Protocol on Biosafety, invite the Global Environment Facility:

(a) To make specific funding available to eligible Parties to put in place their national biosafety frameworks;

(b) To extend funding for projects and capacity-building activities necessary for the implementation of the Cartagena Protocol on Biosafety;

D. Unintentional transboundary movements

9. *Adopt* the operational definitions of the terms “unintentional transboundary movement” and “illegal transboundary movement”, with corresponding explanatory notes, as follows:

(a) “Illegal transboundary movement” is a transboundary movement carried out in contravention of the domestic measures to implement the Protocol that have been adopted by the affected Party;

(b) “Unintentional transboundary movement” is a transboundary movement of a living modified organism that has inadvertently crossed the national borders of a Party whereby the living modified organism was released either deliberately or accidentally.

Explanatory note:

An illegal transboundary movement may include transboundary movements of living modified organisms that have not been approved for a particular use in the jurisdiction of the affected Party.

A transboundary movement can still be considered illegal, if it results in a contravention of the affected Party’s domestic measures to implement the Protocol, even if the transboundary movement is unintentional.

E. Monitoring and reporting

10. *Express* concern about the lower rate of submission of the third national reports in comparison to the previous reporting cycle, and *note* with concern that third national reports are still due from 58 Parties, including 12 Parties that have accessed GEF funds for the preparation of their third national reports;⁸

11. *Welcome* the funding that has once again been made available by the Global Environment Facility to a number of eligible Parties to support the preparation of their national reports, but note with concern that 39 Parties that were eligible for Global Environment Facility funding to complete their national reports either did not apply for that funding or were unable to access them;

12. *Note* with regret that administrative changes within the United Nations created systems challenges that resulted in delays for a number of eligible Parties in accessing funding, and also note that this has caused difficulties for a number of Parties in fulfilling their obligations under the Protocol, for example as regards submission of their third national reports;

13. *Welcome* the efforts made by the Secretariat to assist Parties in submitting national reports and to ensure their completeness;

⁸ As of 1 September 2016, third national reports were still due from 46 Parties, including 7 Parties that had accessed GEF funds for the preparation of their third national reports. This follows the submission of third national reports by Antigua and Barbuda, Botswana, Central African Republic, El Salvador, Ethiopia, Kiribati, Lebanon, Mauritius, Nicaragua, Niue, the Philippines and Samoa. A further update on this matter will be provided to the Conference of the Parties serving as the meeting of the Parties at its eighth meeting as necessary.

14. *Urge* Parties that have not yet submitted their third national report to do so as soon as possible;⁹
15. *Urge* Parties that have not submitted a complete third national report to do so as soon as possible;

**F. Third assessment and review of the effectiveness of the Cartagena Protocol and
midterm evaluation of the Strategic Plan**

16. *Welcome* the Committee's input to the assessment and review and mid-term evaluation, and request the Committee to continue providing inputs to the final evaluation of the Strategic Plan;

17. *Welcome* the Committee's supportive role, carried out pursuant to decision BS-V/1, as a contribution to the progress reported, and request the Committee to continue carrying out its mandate accordingly.

⁹ Afghanistan, Algeria, Angola, Armenia, Azerbaijan, Bahrain, Barbados, Belize, Cabo Verde, Comoros, Côte d'Ivoire, Democratic People's Republic of Korea, Djibouti, Fiji, Greece, Guinea, Guyana, Jamaica, Jordan, Libya, Luxembourg, Malta, Marshall Islands, Montenegro, Mozambique, Myanmar, Nauru, Oman, Pakistan, Palau, Papua New Guinea, Paraguay, Qatar, Saint Vincent and the Grenadines, Saudi Arabia, Serbia, Seychelles, Solomon Islands, Somalia, State of Palestine, Syrian Arab Republic, The Former Yugoslav Republic of Macedonia, Tonga, Trinidad and Tobago, Turkmenistan, and Venezuela.