



**Item 5.1(c) of the Draft Provisional Agenda**

**COMMISSION ON GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE**

**First Meeting of the Commission on Genetic Resources for Food and  
Agriculture acting as Interim Committee for the International Treaty  
on Plant Genetic Resources for Food and Agriculture**

Rome, 9–11 October 2002

**PROCEDURES TO PROMOTE COMPLIANCE WITH THE  
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE**

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## PROCEDURES TO PROMOTE COMPLIANCE WITH THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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### I. INTRODUCTION

1. The Conference at its Thirty-first Session in November 2001 adopted Resolution 3/2001 adopting the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the Treaty”), and mandating interim arrangements for the implementation of the Treaty. As part of these interim arrangements, the Conference requested the Commission acting as Interim Committee for the Treaty to prepare, for consideration at the first session of the Governing Body, proposed procedures to promote compliance with the Treaty in accordance with Article 21.

Article 21 of the Treaty provides as follows:

*“Article 21– Compliance*

*The Governing Body shall, at its first meeting, consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Treaty and to address issues of non-compliance. These procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.”*

2. The provisions of Article 21 of the Treaty reflect a growing concern within the international community to ensure effective implementation of international agreements, particularly those dealing with environment and natural resources, and compliance by the Parties thereto with their obligations under those agreements. The provisions mirror, with some modifications, those contained in the Cartagena Protocol on Biosafety adopted under the Convention on Biological Diversity<sup>1</sup>.

3. The present document reviews the practice with respect to compliance control under other international agreements and in other forums, and makes recommendations with respect both to substance and the process for dealing with this matter.

### II. PRACTICE IN OTHER FORUMS

#### ***United Nations Environment Programme (UNEP) Draft Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements***

4. The Governing Council of UNEP in February 2001 called on the Executive Director of UNEP to continue the preparation of the draft guidelines on compliance with multilateral environmental agreements and on the capacity-strengthening. Effective national environmental enforcement in support of the ongoing developments of compliance regimes

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<sup>1</sup> Article 34 of the Cartagena Protocol provides as follows: “Compliance

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.”

within the framework of international agreements is required. Draft guidelines have now been prepared for submission to the UNEP Governing Council for review and adoption. The Guidelines draw on the work of various groups of experts that have met since 1999.

5. The guidelines are intended to be advisory only in nature, and provide approaches for enhancing compliance with multilateral environmental agreements and strengthening the enforcement of laws implementing those agreements. They are presented in two chapters, the first dealing with enhancing compliance with the agreements and the second dealing with national enforcement of implementing laws and international cooperation in combating violations of those laws.

6. The initial parts of the guidelines on international agreements deal with work preparatory to and during the negotiation of agreements. The guidelines then set out a number of compliance considerations for multilateral environmental agreements, including that the competent body of the agreement could, where authorized to do so, regularly review the overall implementation of obligations under the agreement, and examine specific difficulties of compliance and consider measures aimed at improving compliance.

7. In dealing with non-compliance mechanisms under multilateral environmental agreements, the guidelines suggest that

- (i) The Parties can consider the establishment of a body, such as a compliance committee, to address compliance issues. Members of such a body could be Party representatives or Party nominated experts, with appropriate expertise on the relevant subject matter.
- (ii) Non-compliance mechanisms could be used by the Parties to provide a vehicle to identify possible situations of non-compliance at an early stage and the causes of non-compliance, and to formulate appropriate responses including, addressing and/or correcting the state of non-compliance without delay. These responses can be adjusted to meet varying requirements of cases of non-compliance, and may include both facilitative and stronger measures as appropriate and consistent with applicable international law.
- (iii) In order to promote, facilitate and secure compliance, non-compliance mechanisms can be non-adversarial and include procedural safeguards for those involved. In addition, non-compliance mechanisms can provide a means to clarify the content to promote the application of the provisions of the agreement, and thus lead significantly to the prevention of disputes.
- (iv) The final determination of non-compliance of a Party with respect to an agreement might be made through the Conference of the Parties of the relevant multilateral environmental agreement or another body under that agreement, if so mandated by the Conference of the Parties, consistent with the respective multilateral environmental agreement.

8. In dealing with national implementation, the guidelines stress the importance of national measures such as the adoption of compliance plans, implementing laws and regulations, national implementation plans, enforcement frameworks and programmes, economic instruments, strengthening national institutions and fostering public awareness. They also deal with the building and strengthening of national capacities, particularly for the least developed countries and countries with economies in transition, and technology transfer.

9. In the second chapter dealing with national enforcement and international cooperation, the guidelines deal in more detail with national laws and regulations and the development of an appropriate institutional framework, national coordination, training for

enhancing enforcement capabilities, public awareness and education programmes, and international cooperation. The latter includes ensuring consistency in laws and regulations, cooperation in judicial proceedings, strengthening the institutional framework for international cooperation and coordination, and capacity building and strengthening.

### ***The Cartagena Protocol on Biosafety***

10. As noted above, the Cartagena Protocol on Biosafety (the Protocol) contains a provision similar to Article 21 of the Treaty requiring the governing body (meeting of Parties) of the Protocol to consider and approve, at its first meeting, cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. Like the Treaty, the Protocol has not yet entered into force, and interim arrangements, including preparations for the first meeting of the Parties, are being dealt with by an interim Intergovernmental Committee. To date, three sessions of the Intergovernmental Committee have been held.

11. At its first meeting in December 2000, the Intergovernmental Committee considered a note by the Executive Secretary on the development of compliance procedures and mechanisms under the Protocol<sup>2</sup> reviewing existing compliance regimes in multilateral environmental agreements and other processes and proposing elements and options for a compliance regime under the Protocol. The note presented these elements and options under six main headings, namely objectives, nature and principles of the regime; structure and functions of the institutional mechanism; invocation of the procedure; the outcomes/consequences of non-compliance; role of the secretariat; and the role of Conference/Meeting of Parties. The Intergovernmental Committee, as suggested in the note, invited Parties and Governments to communicate their views in writing on the elements and options on the basis of the questionnaire annexed to the note, requested the Executive Secretary to make a compilation of the views submitted and to organize an open-ended meeting of experts with relevant expertise to review the synthesis report, to be held back-to-back with the second meeting of the Intergovernmental Committee<sup>3</sup>.

12. The Open-ended Meeting of Experts was convened in October 2001, and having considered draft elements and options for a compliance regime developed by the Executive Secretary on the basis of the views submitted by Parties and Governments, entrusted the Chair of the Meeting with the preparation of a Chair's text. The Chair's text then provided the basis for further discussions in the Meeting. The Meeting annexed a set of Draft Procedures and Mechanisms on Compliance under the Protocol to its report to the second meeting of the Intergovernmental Committee.

13. The Draft Procedures and Mechanisms, which still contained some provisions in brackets, were considered by the Second Meeting of the Intergovernmental Committee in October 2001 and formed the basis for Recommendation 2/11 as adopted by the Meeting. The text of Recommendation 2/11, appending the Draft Procedures and Mechanisms, is attached as *Annex A* to the present document for the information of the Interim Committee for the Treaty. The written views of the Parties and Governments on the provisions still contained in brackets have since been solicited and compiled for consideration by the Third Session of the Intergovernmental Committee in April 2002.

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<sup>2</sup> Document UNEP/CBD/ICCP/1/7.

<sup>3</sup> See Report of the Intergovernmental Committee, document UNEP/CBD/ICCP/1/9.

### *Compliance regimes under other multilateral environmental agreements<sup>2</sup>*

14. Compliance regimes have been set up under a number of other multilateral environmental agreements, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the United Nations Economic Commission for Europe (UNECE) Convention on Long-range Transboundary Air Pollution and its Protocols (LRTAP).

#### ***CITES***

15. The CITES compliance regime is based on more general provisions in the 1973 Convention and decisions of the Conference of Parties and has developed piecemeal over the years. Article VIII of the Convention required Parties to submit periodic reports on national implementation, including information on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention. Article XIII requires the Secretariat to communicate information it receives on non-compliance with obligations established under the Convention to the Management Authority of the Party or Parties concerned: those Parties are then required to inform the Secretariat of relevant facts and propose remedial action, including inquiries where desirable. The information provided by the Parties or resulting from an inquiry is to be reviewed by the Conference of Parties, which may make whatever recommendations it deems appropriate.

16. These provisions have been filled out by decisions of the Conference of Parties. These include the establishment of a Standing Committee of the Convention composed of Parties elected from each of the six major geographic regions in accordance with criteria established by the Conference of Parties. In addition to overseeing the work of the Convention in inter-sessional periods, the Standing Committee provides general policy and operational direction to the Secretariat concerning the implementation of the Convention. It reviews non-compliance by Parties with the provisions of the Convention, takes appropriate decisions relating thereto and recommends action by the Conference of Parties.

17. Separate reports are to be submitted on infractions and other implementation problems to each regular meeting of the Conference of Parties. In practice, compliance is normally monitored by the Animals and Plants Committees and by the Secretariat on the basis of information provided by a joint trade monitoring programme of WWF and IUCN.

18. Once it is determined by the Secretariat that major problems exist with the implementation of the Convention by a Party, the Secretariat is required to: (i) work together with the Party to try to solve the problem and offer advice and technical assistance; (ii) refer the matter to the Standing Committee which may pursue the matter in direct contact with the Party concerned; and (iii) keep the Parties informed as fully as possible, through notifications, of such implementation problems and the actions taken to solve them. In cases of persistent non-compliance or failure to comply with decisions of the Conference of the Parties regarding remedial measures, the Standing Committee can advise Parties to impose bans on trade in CITES specimens on the offending Party. Such trade sanctions have been imposed on a number of Parties. It should be noted, however, that trade prohibitions are a measure of last resort. The CITES framework puts significant emphasis on inducing Parties into compliance through negotiation and technical assistance and advice.

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<sup>2</sup> The following account is drawn partially from document UNEP/CBD/ICCP/1/7.

***The Montreal Protocol on Substances that Deplete the Ozone Layer***

19. The Montreal Protocol was adopted in 1987 and sets target dates for the reduction and eventual elimination of specified ozone-depleting substances. The Protocol is the first multilateral environmental agreement that sought to address the issue of non-compliance in a comprehensive manner. The legal basis for the development of the non-compliance procedure is provided by Article 8 of the Protocol, which, similarly to both the Biosafety Protocol and the Treaty, required Parties, at their first meeting, to “*consider and approve procedures and institutional mechanisms for determining non-compliance with its provisions and for treatment of Parties found to be in non-compliance*”.

20. In 1990, the Parties approved an interim procedure for monitoring and enforcing compliance with the Protocol. This interim procedure was reviewed and established on a permanent basis by the Fourth Meeting of the Parties, in 1992. An *Ad Hoc* Working Group of Legal and Technical Experts established by the Ninth Meeting of the Parties further reviewed the operation of the procedure, and amendments to the non-compliance procedure were adopted by the Tenth Meeting of the Parties, in November 1998.

21. The procedure was conceived as a non-confrontational, conciliatory and cooperative mechanism calculated to encourage and assist those Parties that were in breach of their obligations to achieve full compliance with the Protocol. Indeed, the Working Group that developed the regime emphasized that the non-compliance procedure should aim at simplicity, be non-confrontational, be transparent, and leave the taking of decisions to the Meeting of the Parties. The Group believed that the objectives of the Protocol were better served by a regime that assisted and encouraged Parties to comply rather than one that was accusatorial and confrontational in nature.

22. The procedure is administered by an Implementation Committee consisting of ten Parties elected by the Meeting of the Parties for two years on the basis of equitable geographical distribution. The procedure can be triggered in one of three ways:

- (a) by one or more Parties lodging a complaint with the Secretariat about another Party’s implementation of its obligations;
- (b) by the Secretariat becoming aware of a possible case of non-compliance by a Party; and
- (c) by a Party itself concluding that despite its best, bona fide efforts, it is unable to comply fully with its obligations under the Protocol.

The functions of the Committee are, *inter alia*, to:

- (a) receive, consider and report on any submissions to it regarding non-compliance;
- (b) receive, consider and report on any information or observations forwarded to it by the Secretariat;
- (c) request, where it considers necessary, through the Secretariat further information on matters under its consideration;
- (d) identify the facts and possible causes relating to individual cases of non-compliance referred to it and make recommendations to the Meeting of the Parties;
- (e) undertake, upon the invitation of the Party concerned, information gathering in the territory of that Party; and
- (f) exchange information with the financial mechanism of the Protocol for the purposes of drawing up its recommendations.

23. The Committee is required to consider the submissions, information and observations before it “with a view to securing an amicable solution to the matter on the basis of respect for the provisions of the Protocol”. The Committee submits its report, including any recommendations it considers appropriate to the Meeting of the Parties. On receipt of the report of the Committee, the Meeting of the Parties may decide upon and impose measures to secure full compliance with the Protocol, including measures to assist the Parties’ compliance with the Protocol, and to further the objectives of the Protocol.

24. At the request of the Meeting of the Parties, the Working Group developed an indicative list of measures that may be taken by a meeting of the Parties in respect of non-compliance. Three types of measures were proposed by the Working Group and adopted as an indicative list by the Fourth Meeting of the Parties. These are:

- (a) appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training;
- (b) issuance of cautions;
- (c) suspension, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, of specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements.

25. The Implementation Committee has so far mainly dealt with cases of countries with economies in transition that have experienced difficulties in meeting their phase-out target dates. The drastic measures of suspension of rights and privileges under the Protocol, withdrawal of financial assistance or the imposition of trade sanctions have not been applied to these Parties. A number of recent cases of non-compliance by such countries with the London Amendment illustrate the use of financial assistance to promote compliance with the Protocol. In these cases, the Seventh Meeting of the Parties, in 1995, recommended international assistance for ozone depleting substances phase-out projects in the countries concerned but at the same time provided for close monitoring of their efforts to achieve compliance. In 1998 and 1999, the Meeting of Parties adopted a number of decisions on non-compliance by several countries with economies in transition. In those decisions, the Parties referred to the full range of measures in the indicative list; and they decided that the countries should continue to receive international assistance to enable them to meet their commitments but at the same time cautioned them that in the event that they failed to do so, the Parties would consider measures consistent with those listed in paragraph (c) above, including the possibility of actions under article 4 of the Protocol, which restricts trade with non-Parties.

#### ***UNECE Convention on Long-range Transboundary Air Pollution and Protocols***

26. The Convention on Long-range Transboundary Air Pollution (LRTAP) was adopted in 1979 and provides a framework for cooperation with regard to transboundary air pollution. It lays down the general principles for cooperation in air pollution abatement and establishes a framework for scientific research, assessment and monitoring, and for information exchange. Since its entry into force the general framework of the Convention has been extended through the adoption of eight protocols, including the 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (hereinafter the “VOC Protocol”).

27. The Convention, like all multilateral environmental treaties of its time, does not contemplate a non-compliance procedure. However, Article 10 provides for a review of implementation by the Executive Body, composed of representatives of Parties. In 1991, the

Parties to the Convention, drawing on the experience of the Montreal Protocol, decided to include in the VOC Protocol a provision on compliance. Article 3, paragraph 3, of the Protocol requires the Parties to “establish a Mechanism for monitoring compliance with the Protocol”. As a first step, Article 3 (3) of the Protocol empowered the Executive Body to receive and decide upon cases referred to it by Parties with regard to non-compliance by other Parties. In 1997, the Executive Body adopted a non-compliance procedure applicable to all protocols under the Convention. The regime is modelled on the Montreal Protocol procedure although there are important points of divergence.

28. An Implementation Committee is established composed of eight Parties to the Convention. The functions of the Committee are, *inter alia*, to review periodically compliance by Parties with the reporting requirements of the protocols and to consider any submissions or referrals made to it concerning a Party’s non-compliance with treaty obligations. The decision does not establish any objectives or general principles underpinning the procedure. For example, there is no requirement that the Implementation Committee should seek “an amicable solution with the Party in breach”, as is the case under the Montreal Protocol.

29. Submissions or referrals can be made to the Committee by a Party or Parties to a protocol; by a Party that concludes that it is unable to comply with its obligations under a protocol; or by the Secretariat becoming aware, particularly through its review of national reports, of cases of possible non-compliance. In the discharge of its functions, the Committee may request, through the Secretariat, further information on matters under its consideration; undertake, at the invitation of the Party concerned, information gathering in the territory of the Party; and consider any information forwarded by the Secretariat concerning compliance with the protocols.

30. The Committee is required to report and make recommendations annually to the Executive Body on cases of non-compliance. The Parties to a protocol, meeting within the Executive Body, consider the report of the Committee together with its recommendations, and decide on the measures to be imposed. These measures are supposed to be non-discriminatory in nature, calculated to bring about full compliance with the protocol, and assist a Party’s compliance. It should be noted, however, that the decision does not expressly specify the range of measures that can be imposed on a Party in non-compliance.

### ***Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal***

31. The Basel Convention was adopted in 1989 and aims at protecting human health and the environment from adverse effects associated with the generation, transboundary movement and management of hazardous wastes. The major focus is on the regulation of international trade in hazardous wastes listed in its annexes.

32. The Basel Convention does not, as yet, have a non-compliance procedure. Article 19, dealing with verification, provides that a Party which has reason to believe that another Party is in breach of its treaty obligations may inform the Secretariat and the offending Party. The Secretariat is required to submit all relevant information to the Parties. The Convention does not specify what is to happen thereafter. Given the limitations of Article 19 and the need to promote compliance with the Convention, the Conference of the Parties at its third meeting, mandated the Convention’s Consultative Sub-Group of Legal and Technical Experts to study all issues related to the establishment of a mechanism for monitoring implementation and compliance with the Convention and its design and to report its findings to the Conference of Parties.

33. At its first session in June 1996, the Consultative Sub-Group developed a questionnaire to gather views from Parties concerning the proposed mechanism. In June 1998,



the Consultative Sub-Group identified principles and elements of a regime for monitoring implementation of, and compliance with the Convention. These draft elements were forwarded to the fifth meeting of the Conference of the Parties, which mandated the Legal Working Group to prepare a draft decision for adoption by the Conference of the Parties at its sixth meeting establishing a mechanism for promoting implementation and compliance based on the draft elements annexed to the decision. In its decision, the Conference of Parties contemplated the establishment of a mechanism to be administered by an existing or a new body to monitor implementation of, and compliance with the Convention, with a view to recommending the best way to promote full implementation of the provisions of the Convention. The mechanism is to be “transparent, cost-effective, preventive in nature, simple, flexible, non-binding and oriented in the direction of helping Parties to implement the provisions of the Basel Convention”.

***The United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol***

34. The UNFCCC was adopted in 1992 and has as its objective to stabilize concentrations of greenhouse gases in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Kyoto Protocol was adopted at the third meeting of the Conference of the Parties in December 1997 and contains new emissions targets for Annex I Parties for the post-2000 period.

35. Article 13 of the Convention provides that the Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process (MCP) for the resolution of questions regarding the implementation of the Convention. The Conference of the Parties at its first meeting, established an *Ad Hoc* Working Group of Technical and Legal Experts “to study all issues relating to the establishment of a multilateral consultative process and its design.” The final report of the *Ad Hoc* Working Group submitting the text of the multilateral consultative process, was approved by the Conference of the Parties at its Fourth Meeting in November 1998.

36. The multilateral consultative process is designed to be facilitative, cooperative, non-confrontational, transparent and timely in manner, and non-judicial. A standing Multilateral Consultative Committee (MCC) will be established to provide assistance to Parties to overcome difficulties they encounter in implementing the Convention, promote understanding of the Convention, and prevent disputes from arising.

37. Issues regarding implementation may be raised by a Party regarding its own implementation; by a Party or group of Parties regarding implementation by other Parties; or by the Conference of the Parties. The MCC is to consider the issue(s) raised in consultation with the Party or Parties concerned and provide assistance in relation to the difficulties encountered in implementation by: (i) clarifying and resolving questions; and (ii) providing advice and recommendations on the procurement of technical and financial resources for the resolution of difficulties regarding implementation. The MCC reports to the Conference of the Parties.

38. The final adoption of the multilateral consultative process has been postponed to the sixth meeting of the Conference of the Parties due to a lack of consensus on a number of outstanding issues, in particular the composition of the MCC and the nomination of its members.

39. The relevant provisions of the Kyoto Protocol call for the development of a full-fledged non-compliance procedure. For example, Article 16 of the Protocol makes it clear that any multilateral consultative process that may be applied to the Protocol shall operate without prejudice to the non-compliance procedure to be established in accordance with Article 18,

which requires the Conference of the Parties, serving as the meeting of the Parties to the Protocol, at its first meeting, to develop appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance, including through an indicative list of consequences of non-compliance. Any procedures and mechanisms entailing binding consequences shall be adopted by means of amendment to the Protocol.

40. The Conference of the Parties at its fourth meeting, established a Joint Working Group (JWG) of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI) to look into the issue of procedures and mechanisms relating to a compliance system under the Kyoto Protocol. By the time of the fifth meeting of the Conference of the Parties in November 1999, the Joint Working Group had, on the basis of inputs from Parties, tentatively identified the elements of a compliance regime under the Protocol. At its fifth meeting, the Conference of the Parties requested the Joint Working Group to submit its findings at its sixth meeting so as to enable the Conference to adopt a decision at that meeting on a compliance regime for the Protocol. The elements of the regime were further refined during the twelfth sessions of the subsidiary bodies held in June 2000. At the thirteenth session of the subsidiary bodies, in September 2000, the Co-Chairs of the Joint Working Group submitted a draft text on a compliance system for the Kyoto Protocol for the consideration of delegates. As a result of their deliberations, a revised text was produced and adopted by the joint session of the subsidiary bodies as a basis for negotiation at the sixth meeting of the Conference of the Parties, November 2000.

#### ***Compliance regimes in Fisheries Agreements***

41. Compliance and enforcement of fisheries agreements have traditionally be regarded as primarily the responsibility of flag states. In this context, both the UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement), and the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the FAO Compliance Agreement), lay stress on the responsibilities of flag states. The Fish Stocks Agreement, however, also calls on States to cooperate through subregional or regional fisheries bodies in establishing appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement.

42. In this context, a number of regional fisheries management organizations have recently established Compliance Committees, the functions of which are to provide the respective organizations with information, advice and recommendations on the implementation of, and compliance with, conservation and management measures established by those organizations. Examples are the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (called the Technical and Compliance Committee), and Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (the SEAFO Convention).

#### ***Special dimensions of compliance under the Treaty***

43. Many of the multilateral environment agreements referred to above deal primarily with the issues of compliance by States Parties to the agreement with their obligations under the agreements. Under the Treaty, issues of compliance may also arise in connection with the Material Transfer Agreements (MTAs) under which facilitated access is to be granted for Annex I crops within the Multilateral System of Access and Benefit-sharing established under the Treaty. Since under the Treaty, the legal obligations will be passed on to private enterprises and individuals through a contractual nexus, issues relating to judicial mechanisms and cooperation will also be important. Article 12.5 of the Treaty, while recognizing that

obligations arising under MTAs rest exclusively with the Parties to those MTAs, provides that Parties shall ensure that an opportunity to seek recourse is available, consistent with applicable jurisdictional requirements, under their legal systems, in case of contractual disputes arising under such MTAs. In this context, the specific reference in Article 21 of the Treaty to legal advice or legal assistance is noted. More generally, the established capacity of the FAO in providing legal assistance, including in the drafting of legislation, is also to be noted.

### III. CONCLUSIONS AND RECOMMENDED ACTION BY THE INTERIM COMMITTEE FOR THE TREATY

44. The Interim Committee for the Treaty is invited to review the above information on the practices of other organizations and agreements with respect to the establishment of compliance regimes in the light of the special requirements of the Treaty, and with a view to formulating appropriate recommendations for consideration and approval by the Governing Body of the Treaty at its first meeting.

45. Drawing on the experience under other instruments, the Interim Committee for the Treaty may wish in particular to consider the following possible actions:

- (a) request the Director-General to seek the views of Members of the FAO and other States entitled to become Parties to the Treaty on the principles and elements of procedures and operational mechanisms to promote compliance with the provisions of the Treaty and to address issues of non-compliance, and in particular on the need for the establishment of a Compliance Committee by the Governing Body and the possible functions and powers of such a Committee;
- (b) request the Secretary to compile and analyse the responses of the FAO Members and other States and suggest appropriate principles and elements for such procedures; and
- (c) request the Director-General to **convene an open-ended Working Group of Legal Experts**, with appropriate technical support, to review the responses and suggestions and recommend appropriate draft procedures and operational mechanisms for consideration and approval by the Governing Body of the Treaty at its first meeting.

## ANNEX A

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

*The Intergovernmental Committee for the Cartagena Protocol on Biosafety,*

*Recalling Article 34 of the Cartagena Protocol on Biosafety, which requires that the Conference of the Parties serving as the meeting of the Parties to the Protocol 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,*

*Recalling also decision V/1 of the Conference of the Parties to the Convention with regard to the work plan of the Intergovernmental Committee for the Cartagena Protocol on Biosafety,*

*Having considered the report of the Open-ended Meeting of Experts on a Compliance Regime under the Cartagena Protocol on Biosafety, held in Nairobi from 26 to 28 September 2001 (UNEP/CBD/ICCP/2/13/Add.1) and the text of the draft procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety annexed to that report,*

- 1. Agrees to forward that text, as contained in the annex to the present recommendation, to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as a basis for further discussion;*
- 2. Invites Parties to the Convention and other States to submit to the Executive Secretary their views or understandings with respect to the contents that are in square brackets in the annex referred to in paragraph 1 above no later than three months prior to the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;*
- 3. Requests 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.*

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

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

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

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

***II. Institutional mechanisms***

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

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

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

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

- (a) Identify the specific circumstances and possible causes of individual cases of non-compliance referred to it;
- (b) Consider information submitted to it regarding matters relating to compliance and cases of non-compliance;
- (c) Provide advice and/or assistance, as appropriate, to the concerned Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the Protocol;
- (d) Review general issues of compliance by Parties with their obligations under the Protocol, taking into account the information provided in the national reports communicated in accordance with Article 33 of the Protocol and also through the Biosafety Clearing-House;
- (e) Take measures, as appropriate, or make recommendations, to the Conference of the Parties serving as the meeting of the Parties to the Protocol;
- (f) Carry out any other functions as may be assigned to it by the Conference of the Parties serving as the meeting of the Parties to the Protocol.

### **IV. Procedures**

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

- (a) Any Party with respect to itself;
- (b) [Any Party with respect to another Party; or]
- (c) [The Conference of the Parties serving as the meeting of the Parties to the Protocol].

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

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

information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.

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

***V. Information and consultation***

1. The Committee shall consider relevant information from:

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

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

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

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

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

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

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

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

2. The Conference of the Parties serving as the meeting of the Parties may, upon the recommendations of the Committee, and taking into account such factors as the cause, type,

degree and frequency of non-compliance, [and the capacity of the Party concerned, in particular of developing country Parties in complying with the Protocol], also decide upon one or more of the following measures:

- (a) Provide financial and technical assistance, technology transfer, training and other capacity-building measures;
- (b) [Issue a caution to the concerned Party;]
- (c) [Publish cases of non-compliance; or]
- (d) [Suspend the specific rights and privileges of the concerned Party under the Protocol [consistent with international law].]

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

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